



3 Resolving conflict: Employer and employee

Learning objectives

In this chapter you will learn about:

- 1 Industrial relations/Trade unions
- 2 Industrial Relations Act 1990
- 3 Unfair Dismissals Act 1977–1993
- 4 Employment Equality Act 1998
- 5 Labour Relations Commission
- 6 Labour Court.

Industrial relations

Industrial relations refers to the quality of the relationships between employers and employees. The quality of these relationships may be referred to as the **industrial relations climate**.

Causes of industrial disputes

- Claims for better **pay and reward systems** by workers
- Claims for better **working conditions**
- Threat of **redundancies**
- Changes employers want to make in **work practices**
- Claims of unfair treatment of workers, **discrimination or unfair dismissals**

- **Demarcation issues**, i.e. disputes about who does which tasks in the workplace
- Disagreement about the **promotion** of employees
- Introduction of **new technology**
- **Relocation** of staff

Trade unions

Trade unions are organisations that are set up by workers to represent the interests of workers.

Functions of trade unions

- Give workers **strength** in acting together through the union
- **Negotiate** with employers for better pay and conditions of work
- **Organise** industrial action by workers to put pressure on the employer in a trade dispute

- Help to protect workers' **job security**
- Provide services for their members such as **insurance and savings schemes**
- Lobby for laws protecting workers

Types of industrial action

- **Strike**: Official withdrawal of labour; workers do not attend work
- **Work-to-rule**: Workers do only work specified in their employment contract and nothing else
- **Go-slow**: Workers attend work but they do not make a good effort
- **Overtime ban**: Workers refuse to do additional work outside their normal hours

The role of the Irish Congress of Trade Unions (ICTU)

- **Negotiate** with employers and government
- **Promote** trade union membership
- **Help** resolve disputes between member unions
- **Sanction** all-out strikes
- **Research** developments in industrial relations
- Provide **education and training** for union members
- Promote **mergers** between unions for the benefit of their members

Industrial Relations Act 1990

- Sets out **rules** for the proper conduct of industrial disputes
- Established the **Labour Relations Commission**

Main points of the Act

- **Legitimate trade disputes** are disputes between employers and employees about issues such as pay, conditions of work, dismissal, union recognition or work duties.
- A union must conduct a **secret ballot** of workers in deciding to go on strike.
- **Picketing** of the workplace is allowed as long as it is peaceful.
- **Secondary picketing** of another workplace is allowed only if the picketers believe that the second employer is helping the first employer to frustrate the strike action.
- **One week's notice** of industrial action should be given to the employer.
- The employer cannot get a **court injunction** to stop picketing where the union has followed the correct procedures for going on strike.
- Unions and workers **cannot be sued for damages** related to industrial action if the correct procedures have been followed.



Unfair Dismissals Act 1977–1993

This law was enacted to protect workers from being dismissed by their employer for unfair reasons.

- The Act covers all employees between the ages of **16 and 66** who have worked over **8 hours per week** for a period of more than **1 year**.
- The **burden of proof** is on the employer to show that the dismissal was fair.

Grounds for dismissal

Unfair grounds

- Pregnancy
- Race
- Membership of the Travelling community
- Membership of a trade union
- Taking strike action
- Sexual orientation
- Political or religious beliefs

Fair grounds

- Worker misconduct
- Worker incapable of doing the job
- Worker not properly qualified
- Necessary redundancy to remain competitive

Proper procedures

Proper procedures must be followed before dismissing an employee, including a **verbal warning** followed by **written warnings**.

Employees' rights

- To know the **reasons** for their dismissal
- To **reply** or argue against those reasons
- To be **represented** at any hearing on the dismissal
- That any hearing should be **fair**

Actions an employee can take

- Complain to the employer
- Complain to a Rights Commissioner
- Bring their complaint to the Employment Appeals Tribunal

Remedies the employee may get if successful

- **Reinstatement** in their job without financial loss
- **Financial compensation**

Top Tip!

Learn the fair and unfair reasons for dismissal.

Employment Equality Act 1998

- **Discrimination** against employees is outlawed under nine specified grounds:
 - 1 Gender
 - 2 Marital status

- 3 Family status
 - 4 Sexual orientation
 - 5 Religious belief
 - 6 Age
 - 7 Disability
 - 8 Race
 - 9 Membership of the Travelling community
- **Full- and part-time** employees and **applicants for employment** and training are covered by the Act.
 - **Harassment, sexual harassment** and **bullying** in the workplace are outlawed under the Act.
 - The Act also set up the **Equality Authority**.

Equality Authority

- **Eliminates discrimination** in employment and in other areas of public access to goods and services
- **Promotes equality** of opportunity for all
- **Informs the public** in relation to equality issues
- **Monitors** the operation of all equal status legislation
- **Assists** people bringing **complaints** under the Employment Equality Act

Top Tip!

Learn the provisions of the Employment Equality Act and the role of the Director of Equality Investigations in solving conflict in business.

Director of Equality Investigations

Under the Employment Equality Act, complaints are made to the **Director of Equality Investigations**. The director may deal with complaints in one of two ways:

- Refer the case to an **Equality Officer** whose decision is binding (but may be appealed to the Labour Court)
- Refer the case to an **Equality Mediator** who helps the parties to reach their own agreement on a voluntary basis without having to impose a ruling.

Labour Relations Commission (LRC)

- Improves the **industrial relations climate** nationally
- Provides an **industrial relations advisory service**
- Provides a **conciliation service** to help resolve disputes
- Appoints **Rights Commissioners** to investigate disputes
- Develops **codes of practice** in industrial relations with employers and employees
- **Researches and publishes information** in the industrial relations area
- Assists the work of **Joint Labour Committees (JLCs)**
- Assists **Joint Industrial Councils (JICs)**

How the LRC helps to resolve disputes

- The parties to a dispute may ask the LRC to appoint an **Industrial Relations Officer (IRO)** to provide a **conciliation service**.
- The LRC may appoint a **Rights Commissioner** to investigate a dispute involving one or a small number of employees. The Rights Commissioner makes a recommendation that is not binding, as either party can appeal to the Labour Court for a legally binding decision (**arbitration**).

Top Tip!

Study the role of the LRC in industrial relations and in dispute resolution through conciliation and arbitration.

Labour Court

The **Labour Court** is the court of last resort in resolving industrial disputes. It has three members: one representative of employers from IBEC, one representative of employees from ICTU and an independent chairperson.

Disputes may be referred to the court if:

- The Labour Relation Commission cannot resolve it
- A decision of a Rights Commissioner is appealed

- A decision of an Equality Officer is appealed
- Exceptional circumstances require it.

The Labour Court will investigate the dispute and then make a **recommendation (decision)**. The Labour Court decisions are generally **not legally binding**. However, in the case of an appeal against the decision of a Rights Commissioner or of an Equality Officer, the Labour Court's decision is **legally binding**.

Functions of the Labour Court

- Investigate disputes referred to it and make recommendations for their settlement (**arbitration**)
- Decide on **appeals** against decisions of **Rights Commissioners**
- Decide on **appeals** against decisions of **Equality Officers**
- Set up **Joint Labour Committees**
- Register **Employment Regulation Orders**, which are recommended by JLCs
- Investigate **breaches of codes of practice** when breaches are referred to it by the Labour Relations Commission
- Register **agreements** that are negotiated between employers and employees; registration by the Labour Court makes these agreements **legally enforceable**

Non-legislative methods of resolving industrial disputes

- Workers and managers meet and **discuss** the issue and come to an agreement.

- The workers can go to their **shop steward**, who will take up the issue with the manager and try to **negotiate** a solution.
- **Trade union officials** from the head office may meet with the **management** to seek a resolution.
- The employer and workers follow the steps in the agreed **grievance procedure** that they have worked out to resolve disputes between them.

Legislative methods of resolving industrial disputes

- The LRC appoints an IRO to provide a **conciliation service**.
- The LRC appoints a **Rights Commissioner** who investigates the dispute and makes a recommendation (**arbitration**).
- The Director of Equality Investigations appoints an **Equality Mediator** to provide a **mediation service**. Both parties must agree to work with the mediator towards an agreed solution, which remains confidential.
- The Director of Equality Investigations appoints an **Equality Officer** to provide an **arbitration service**. She will investigate the complaint and make a recommendation. Her recommendation may be appealed by either party to the Labour Court.
- The **Labour Court** hears a dispute and makes a decision/recommendation (**arbitration**).

Top Tip!

Learn the non-legislative and legislative methods of resolving industrial disputes.

Free collective bargaining

Free collective bargaining is the process in which employers and employees negotiate with each other on issues such as pay and conditions. This may take place within a workplace, within an industry or at national level. Sometimes wage increases are agreed based on workers producing higher levels of output. This is called a **productivity agreement**.

National agreements

The government invites all the **social partners** together to negotiate a national agreement, usually to cover a period of three years. The social partners include representatives of the government, employers, employees, the unemployed, farmers and voluntary and community organisations.

A national agreement is a package of measures which may include

- Wage increases to be paid to workers
- Actions to be taken by employers, e.g. better safety at work

- Actions to be taken by employees, e.g. no strikes
- Actions to be taken by the government, including tax changes, social welfare payments and other spending plans
- Creation of jobs
- Development of infrastructure
- Changes in agriculture
- Provisions for the less well-off in society.

Benefits of national agreements

- Provide certainty about the level of pay rises
- Provide stability over a three-year period, which allows forward planning
- Save on negotiating several times over at local level
- Help to control inflation by preventing high wage increases
- Improve the industrial relations climate and reduce the number of strikes
- Help economic growth and development

Exam questions

- 1 (i) Outline the impact on trade unions of the main provisions of the Industrial Relations Act 1990.
(ii) Describe two types of official industrial action a trade union can undertake as part of a trade dispute. (2010, Section 3 Question 1A, 30 marks)

Sample answer

(i)

1 Trade Dispute as defined by the **Industrial Relations Act 1990** is 'any dispute between employers and workers, which is connected with the employment or non-employment or the terms or conditions of employment of any person'.

The following issues may give rise to a legitimate trade dispute: dismissal, employment policy, range of duties, trade union membership, pay and conditions, health and safety at work.

2 Secret Ballots

Under the provisions of the **Industrial Relations Act 1990** no strike or other industrial action can take place without a secret ballot.

All members are given a fair opportunity of voting.

The act also provides that the union should not organise or participate in industrial action without a majority of votes having being cast in favour of industrial action.

The union must make known to the members (entitled to vote) the results of a secret ballot as soon as practicable after the vote.

One week's notice of action must be given to the employer involved in a dispute.

3 Official disputes, unofficial disputes and injunctions

Official dispute is one where a union has received approval from workers in a secret ballot and is confirmed by ICTU.

Unofficial disputes have no ICTU or union approval and workers receive no strike pay.

According to the **Industrial Relations Act 1990** organisers of unofficial disputes do not have legal protection against being sued by their employer.

If trade union members engage in an illegal dispute then an employer can get an **injunction** (a court order restricting certain activities) against the workers involved.

4 Picketing

Primary picketing. According to the **Industrial Relations Act 1990** it is lawful for workers to picket peacefully at a place where their employer works or carries on business provided the picketing is for the purpose of peacefully communicating information.

Secondary picketing. The Act provides that secondary picketing (i.e. picketing of an employer other than primary employer involved in the dispute) is lawful only in situations where it is reasonable for those workers picketing to believe that the second employer was acting to frustrate the industrial action by directly assisting their employer.

5 Immunity

The **Industrial Relations Act 1990** states the trade unions and workers are immune from legal action/prosecution for damages or losses suffered by the employer as a result of a trade dispute. This means an employer cannot sue a trade union and its members for losses suffered as a result of a strike (provided it is an official trade dispute) and where a secret ballot (members must have voted in favour of the industrial action) was held by the trade union before the strike action.

(ii)

1 Work to rule/overtime ban

- They work only as per their contract.
- They follow the rules of their employment contracts to the 'letter of the law'.

2 Go-slow

- They stay on their jobs but drastically slow down the operations, sometimes making it impossible for the business to operate.
- As they are still at work they are entitled to get paid.

3 An **official strike** is organised, by unions, so as to comply with the law. It is a complete withdrawal of labour. Workers are entitled to strike pay. Certain conditions must be met in advance of any strike taking place.

Marking scheme

(i)

- Any three provisions: 3 x 6 marks (6 = 3 + 3)
 - 3 marks for naming the provision of the Act
 - 3 marks for explaining impact on trade unions

(ii)

- Any two types of industrial action: 2 x 6 marks (6 = 3 + 3)
 - 3 marks for naming each action
 - 3 marks for development/explanation/example

Questions

Higher Level long questions

- Outline the procedures an employer should follow under the Unfair Dismissals Acts of 1977–2007, before dismissing an employee. (2012, 20 marks)
- Describe how conflict between an employer and an employee could be resolved in a non-legislative manner. (2011, 15 marks)
- (i) Explain the term 'employment discrimination' as set out in the Employment Equality Act 1998. List four distinct grounds on which discrimination is outlawed under the Act.
(ii) Evaluate the role of the Director of Equality Investigations in resolving complaints of discrimination in the workplace. (2009, 35 marks)
- Evaluate how under the terms of the Industrial Relations Act 1990 (i) the Labour Relations Commission and (ii) the Labour Court deal with industrial relations conflict.

Key-points!

- Role of ICTU
- Industrial Relations Act 1990
- Unfair Dismissals Act 1977–1993
- Employment Equality Act 1998
- Role of the Labour Relations Commission (LRC)
- Role of the Labour Court

Key-definitions!

arbitration: When a third party investigates a dispute between two parties and makes a decision or recommendation to resolve the dispute.

collective bargaining: When groups of employees and employers negotiate pay and conditions in an individual business, in an industry or at national level.

conciliation: A third party investigates a dispute and works with the parties to achieve mutual understanding and hopefully a voluntary agreement.

constructive dismissal: When the behaviour of an employer is such that it makes it impossible for the employee to attend for work.

grievance procedure: An agreed set of steps that employees and employers must follow if there is an industrial dispute in the workplace.

industrial relations: The relationship between employers and employees within a firm.

national agreements: Agreements between the government and social partners that cover wages, employment, taxation and other issues and usually last for a three-year period.

negotiation: A process where two or more parties with different objectives discuss what they want and finally make an agreement between them.

official dispute: An industrial dispute that has the approval of the national executive of the union involved. This gives the dispute legal protection.

picketing: Workers who are on strike publicise their dispute by gathering outside the workplace with protest signs.

productivity agreement: A wage agreement between an employer and workers that allows pay rises which are dependent on increases in output achieved by workers.

secret ballot: When members of a trade union are voting on whether to go on strike, the voting must be done so that no one knows how each individual has voted.

shop steward: An employee in an organisation who is elected by the union members in the workplace (shop) to represent them to management when industrial relations issues arise.

social partners: A term used to refer to the participants in negotiations of national agreements with government, namely employers, employees (trade unions), farmers, the unemployed, voluntary and community organisations.

unofficial strike: A work stoppage by workers that does not have the approval of the trade union executive.