

# What climate issues can be the basis of lawful industrial action?

The framework of the law covering industrial action is in the Trade Union and Labour Relations (Consolidation) Act 1992, usually known as TULR(C)A 1992, which was amended by subsequent legislation including the Trade Union Act 2016: <https://www.legislation.gov.uk/ukpga/1992/52>

For a trade union to organise lawful industrial action it must be '*in contemplation or furtherance of a trade dispute*' between workers and *their own employer*.

Section 244 requires any action to relate *wholly or mainly* to one or more of:

- a) terms and conditions of employment, or the physical conditions in which any workers are required to work;
- b) engagement or non-engagement, or termination or suspension of employment or the duties of employment, of one or more workers;
- c) allocation of work or the duties of employment between workers or groups of workers;
- d) matters of discipline;
- e) a worker's membership or non-membership of a trade union;
- f) facilities for officials of trade unions; and
- g) machinery for negotiation or consultation, and other procedures, relating to any of the above matters, including the recognition by employers or employers' associations of the right of a trade union to represent workers in such negotiation or consultation or in the carrying out of such procedures.

The legislation is a huge infringement of workers' rights. Workers themselves, not unelected judges, should decide whether workers will work or not, based on all the circumstances at the time.

Workers in each workplace need to discuss what climate issues are important to them that might fit within this framework, and their reps will need to discuss the set of issues with the relevant union staff (e.g. legal department) to convince them that the union can ballot over them.

Examples might include:

- air quality (see <https://www.greenerjobsalliance.co.uk/air-pollution/>)
- being allocated work nearer home
- better insulated buildings
- bike shelters
- carbon literacy training for staff
- commitments to retraining, job security and just transition
- free public transport passes, electric vehicle charging points, or shuttle bus to nearest station
- free zero-carbon canteen
- greener vehicles
- hiring staff to work on decarbonisation
- less travel for work. Facilities and training for online alternatives
- on-site childcare or collection of children to reduce journeys
- paid time for union reps to deal with environmental issues
- policy on leaving work without loss of pay if temperatures are too high
- shorter working week and/or working fewer days per week, flexible hours to reduce peak-time travel
- support (e.g. paid time off, rehousing) for workers made homeless or unable to work by climate events (e.g. fires, floods, epidemics)

Striking lawfully in Britain is difficult, with undemocratic turnout thresholds and slow archaic processes.

| Verify membership records | Notice of ballot | Ballot period      | Announce result, notice of action | Start action |
|---------------------------|------------------|--------------------|-----------------------------------|--------------|
| Often weeks               | 1 week           | Typically 2 weeks+ | 2 weeks                           |              |

People who want to see effective action over climate change should also support repeal of all the anti-union legislation and a clear right to strike.

# Can workers refuse to work under safety legislation?

Section 7 of the Health and Safety At Work Act 1974 (HSAWA 1974): <https://www.legislation.gov.uk/ukpga/1974/37> places a duty on every employee while at work:

- a) to take reasonable care for the health and safety of himself and of other persons who may be affected by his acts or omissions at work; and

Section 44 of the Employment Rights Act 1996 (known as ERA 1996) <https://www.legislation.gov.uk/ukpga/1996/18> protects the employee (with no qualifying service period) from any 'detriment':

- d) in circumstances of danger which the employee reasonably believed to be serious and imminent and which he could not reasonably have been expected to avert, he left (or proposed to leave) or (while the danger persisted) refused to return to his place of work or any dangerous part of his place of work, or
- e) in circumstances of danger which the employee reasonably believed to be serious and imminent, he took (or proposed to take) appropriate steps to protect himself or other persons from the danger.

The Labour Research Department explain "*As long as the employee forms a genuine view of a risk that they reasonably regard as serious and imminent, the fact that the employer disagrees with the seriousness of the risk or the appropriateness of the steps taken is irrelevant.*"

For example, RMT members at Manchester's Victoria station recently withdrew to a place of safety after abuse from passengers angry about the failing private railway service. Leaving a work area if there are unexplained smells of smoke or chemical fumes is another example.

Raising awareness of these rights and duties can help workers respond to incidents but they are less useful for pre-planned worker action over longer-term risks.

If there was a protest by members of the community at a workplace entrance, workers might feel that it would be dangerous to try to enter the workplace. Drivers certainly shouldn't drive their vehicles into a crowd, even slowly.

## Unofficial or unlawful strikes

Strikes which don't jump through all the legal loopholes are not *illegal* (banned by law), they are *unlawful* (not authorised by law). If you take part in an unlawful strike you have no legal remedy should your employer dismiss you. This was the case for lawful strikers too until relatively recently. What stopped most unlawful action wasn't the threat to workers themselves but the threat of injunctions (and unlimited fines and sequestration of assets) against unions unless the unions did all they could to stop workers taking action ('repudiation'). While some unions have policy backing action outside the legislation, this has not been implemented, making unlawful strikes *unofficial* (not authorised by the union). The law relies on pressuring unions to police their own members.

Unofficial and unlawful strikes still happen and have recently been most common in Royal Mail, transport and engineering construction. The main protection for unofficial strikers is solidarity – large numbers sticking together and refusing to return to work unless everyone does.

In the case of climate strikes workers may have additional protection. Many employers want to 'greenwash' their brand and would not want to risk publicity from being seen to victimise workers supporting global climate strikes.

For 20 Sept 2019 workers in some workplaces campaigned in advance for commitments from their employers that there would be no sanctions (other than loss of pay) for workers joining the climate strike. The process of demanding this commitment and campaigning for it raised the profile of the climate strike and support for it, built a team of climate activists around the workplace, and exposed corporate greenwash.

Even when unions won't make climate strikes official, getting union backing for days of action or solidarity with school strikers helps legitimise going further where we can. There's a model motion you can adapt for workplaces and union bodies at <http://tiny.cc/cop26motion>.