

THE RIGHT TO FORM AND JOIN TRADE UNIONS AND TO STRIKE

(oryg. title in Polish: *Prawo do zakładania i przystępowania do związków zawodowych oraz prawo do strajku*)

TRADITIONAL UNDERSTANDING OF THE RIGHT IN THE CONTEXT OF RELATIONS BETWEEN STATE AND INDIVIDUAL

Everyone has the right to form and join trade unions as they choose in order to support and protect their social and economic interests.

Trade unions have the right to operate freely and any restrictions must stem from regulations and be necessary from the point of view of democratic society, national security or public order or protection of rights and freedoms of other persons.

Trade unions have the right to join national federations of confederations, and these can form or join international trade union organisations.

At national level, the largest trade union headquarters are part of the Social Dialogue Council and have the right to, among others, consult on draft laws and European regulations.

Collective actions conducted by social partners can take 3 basic forms:

- strike,
- or other protest by employees and their representatives,
- and lockout by the employer.

Usually a strike action takes on the form of refusal to work. The right to strike may be restricted or have some exclusions stipulated by applicable law. This occurs when strike actions constitute danger to public security or human life and health.

Employers who have no right to strike can protest in other forms, such as picketing, wearing certain colours or symbols, etc.

WHAT DOES IT MEAN IN THE BUSINESS CONTEXT?

- Individuals who are gainfully employed (both full-time employees and service performers) can form trade unions without employer's consent, however, they must inform the employer of this fact as well as the size of the organization.
- A trade union with at least 10 employers can exercise its rights, such as:
 - the right to co-create company by-laws,
 - the possibility to negotiate with the employer in order to reach a collective bargaining agreement or other agreements (for instance concerning layoffs),
 - monitoring OHS conditions,
 - the right to consultations in cases of termination of contract with union members,
 - for certain members they have the right to special protection from termination and the possibility to be absent from work to enable union-related activities.
- A trade union can conduct a collective dispute procedure in relation to working conditions, remuneration or social benefits, as well as union rights and freedoms.
- If negotiations and mediations fail to produce an agreement, a trade union can announce a strike or protest action.
- All employees can join a strike or protest action, regardless of union membership.

POSITIVE EXAMPLE

- Company Y wants to modify its rules of remuneration. The CEO informs the trade union of this plan and initiates negotiations. Both parties act in good faith, meaning they share information in an approachable manner and are determined to reach agreement. Negotiations lead to the publication of new rules.
- Union members in Company Z can contact employees during breaks and, if need be, during work. They can call a meeting but without disrupting the work of the company. The union can also invite a lawyer, mediator or other experts, if their support is needed, for instance during negotiations with the employer.

NEGATIVE EXAMPLE

- In Company X there is a trade union. The employer knows which employees are unionised because membership fees are deducted from salary. The employer consistently overlooks. These employees in access to training and promotions, which constitutes discrimination based on union membership.
- In a collective dispute process the managing director of a company calls a meeting during which they warn employees that they will be fired for union membership and those who refuse to join the strike will get bonuses. Such behaviour hinders the collective dispute process.

WHAT ACTIONS, ACCORDING TO THE UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS, SHOULD COMPANIES TAKE? (PREVENTION, MITIGATION)

- Employees of Company F decided to form a trade union. The management board learnt about it informally. The CEO, in their internal communication reminds employers that the company respects human rights therefore communications among employees cannot be hindered and, more importantly, employees intending to form the union cannot be harassed.
- A collective dispute in Company V is proving difficult to resolve. Negotiations and mediations have failed, so the trade union announced that a strike action will start in 5 days. Despite it being a serious setback for the employer, employees – even non-unionised ones – cannot be prevented from going on strike. If contracts of trade union activists or strike participants have been terminated, such termination can be withdrawn by the employer.

WHAT DO I DO WHEN MY RIGHTS HAVE BEEN VIOLATED?

1. Inside the company:
 - Employees know that they can turn to the trade union in case of problems.
 - If the employer is covered by a European Works Council, its employees can file complaints with headquarters (central management) via the Council.
2. With a non-judicial body:
 - Violations can be reported to the National Labour Inspector.
 - Whenever employer agrees, a mediation can be conducted.
 - A report can be filed with the [OECD National Contact Point](#) (the complaint procedure is described [here](#)).



3. In court:

- Obstructing the work of trade unions, discrimination based on union membership (or non-membership) as well as obstructing the course of a collective dispute are offenses. Such cases can be reported to the National Labour Inspector and the Prosecutor's Office.
- An employee who is discriminated against based on union membership or refusal to join the union may demand compensation (no less than the minimum wage).
- In case of an unlawful termination an employee can take legal action and demand compensation or reinstatement. The latter case may also involve compensation for the period when the individual was out of work (a lawsuit can drag for over a year).

WHERE DO I FIND MORE INFORMATION?¹

- [Dialog Społeczny – Protesty i strajki \(Social Dialogue – protests and strike actions\)](#).
- [Infor – Związki zawodowe w Polsce \(Infor – Trade Unions in Poland\)](#).
- [Zgodnie z prawem i bezpiecznie \(Legally and safely\)](#).
- [Związki Zawodowe w Polsce – aktualna sytuacja, struktura organizacyjna, wyzwania \(Trade Unions in Poland – current situation, organisational structure, challenges\)](#).
- [Ogólnopolskie Porozumienie Związków Zawodowych \(The All-Poland Alliance of Trade Unions \(OPZZ\) Polish Agreement of Trade Unions\)](#).
- [NSZZ Solidarność \(Solidarity Independent Trade Union\)](#).
- [Forum Związków Zawodowych \(Trade Union Forum\)](#).
- [Ogólnopolski Związek Zawodowy Inicjatywa Pracownicza \(Polish National Trade Union – Employee Initiative\)](#).

INTERNATIONAL LAW

- Article 8 International Covenant on Economic, Social and Cultural Rights.
- Article 11 of the European Convention on Human Rights (Convention for the Protection of Human Rights and Fundamental Freedoms).
- Article 5 of the European Social Charter – the right to organise.
- Article 6 of the European Social Charter - the right to bargain collectively.

¹ BHR Information sheets were originally developed with Polish readers in mind. Thus the resources refer to sites that are of relevance to the Polish context. It was decided to keep the original resources in and not remove them completely as in many cases the BHR Info Sheets will be used by non-Polish readers living in Poland, for whom they might be useful.



OTHER STANDARDS

Article 23 paragraph 4 of the Universal Declaration of Human Rights linked to Article 22 of the International Covenant on Civil and Political Rights and other international regulations, including the following:

- ILO Convention 98, 1949, on the right to organise and collective bargaining;
 - ILO Convention 135, 1971, on protection of workers' representatives in companies and enabling them to carry out their functions;
 - ILO Convention 141, 1975, on organisations of agricultural workers and their role in economic and social development;
 - ILO Convention 144, 1976, on tripartite consultation for international labour regulations;
 - ILO Convention 151, 1978, on the right of public sector workers to organise and the procedures for determining employment conditions in the public sector;
 - ILO Convention 154, 1981, on encouraging and promoting the development of collective bargaining.
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