

Insights

TRADE UNION ACCESS IS COMING. IS YOUR WORKPLACE READY?

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Summary

From October 30 2026, the ERA gives trade unions a new right to request workplace access from employers with 21 or more workers, even where they have no members. If agreement cannot be reached, the Central Arbitration Committee (**CAC**) can order access, and if the employer breaches the order, the penalties are significant.

What is happening?

This new right is part of the Government's agenda to improve union rights and follows on from the April 2026 change which reduced statutory recognition thresholds, giving unions greater scope to campaign in workplaces.

The new access right can be physical, digital or both, and enables unions to meet, support, represent, recruit or organize workers and facilitate collective bargaining. Many commentators say this is the first step in the unions gaining more workplace recognition. Access cannot be used to organize industrial action and must not unreasonably interfere with the employer's business.

This represents a material improvement in union rights. Currently, unions have no general right of access and can only exercise functions for existing members already in the workplace, or where the employer has voluntarily agreed access.

What this means for employers

The duty is triggered where the employer has at least 21 workers (including associated employers, in Great Britain) on the day the request is received, and no fewer than an average of 21 over the preceding 13 weeks. Access is not without conditions: an overlapping recognition or access arrangement with another union, or an overlapping recognition ballot involving another union, may justify refusal, although an existing union presence is not an automatic bar.

Unlike statutory recognition, there is no minimum membership or support threshold a union must show, and the CAC cannot take this into account. This is a key point.

For employers with little union engagement, this could be the most impactful of the ERA reforms. Once a request lands, the clock starts with a very short timetable for employers to meet. There are only 15 working days for an employer to respond, followed by a 25 working day negotiation period. If no deal is reached, or the employer does not respond, the union can apply to the CAC, usually within 55 working days of the original request. The CAC will then decide whether the union can have access. The Government has issued a Code of Practice which offers guidance on the process. Whilst not legally binding, it does provide a detailed framework which employers will need to be familiar with. Importantly, the Code includes “model terms”, which include physical or digital access once a week with provisions for the required notice, meeting space and privacy. The CAC applies five statutory “access principles” with the presumption that access should be granted and will refuse it entirely only where reasonable in all the circumstances, a very broad test. Requests which are consistent with the model terms are also more likely to be granted.

The penalties for breach are material and the union has time, up to 3 months, to make a CAC complaint. On a first complaint, the CAC can order steps to secure compliance. Where this doesn't work and subsequent complaints are made, the CAC has the power to issue financial penalties (capped at up to £75,000 for a first penalty, £150,000 for a second and £500,000 thereafter). This is intended to be a serious deterrent to prevent employers from deliberately obstructing access. Further, separate breaches at different sites will be counted together provided that they are covered by the same access agreement, so in theory employers who do not comply could quickly find themselves subject to multiple fines.

What to do now

Given the short timetable, it is essential for employers to plan now for an access request. Key steps include:

- appointing one response owner and requiring same-day escalation of every request. The 15-working-day clock starts when the organization receives it, not when it reaches the right person;
- preparing a template response and negotiation position. Employers can use the model terms as a starting point: weekly physical or digital access, five working days' notice initially and two thereafter, reasonable use of existing facilities and privacy safeguards. The Code of Practice envisages access during normal working hours, at times minimizing disruption, with workers paid in full for attending meetings;
- considering what practical steps may be required to facilitate digital access. This could include cascading information via the employer's existing systems or using IT systems to

facilitate online meetings. This will not override any data protection obligations, so employers should not share personal contact details for employees without complying with applicable data protection requirements;

- educating managers to escalate requests immediately rather than responding directly and to make sure they understand the framework which will apply once access is granted.

Short deadlines and substantial penalties make this a commercial risk, not a paperwork exercise. Prepare now, not when the first request lands.

For further information about the new trade union right of access under the Employment Rights Act 2025, please get in touch with your usual employment contact.

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Meet the team



Jackie Thomas

Counsel, London

jackie.thomas@bclplaw.com

[+44 \(0\) 20 3400 4776](tel:+442034004776)

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