



The right to strike in the public sector

Denmark

Contents

1. Legal basis
 2. Who has the right to call a strike?
 3. Definition of strike
 4. Who may participate in a strike?
 5. Procedural requirements
 6. Legal consequences of participating in a strike
 7. Case law of international/European bodies
 8. Recent developments
 9. Bibliography
- Notes

This factsheet reflects the situation in June 2019, it was elaborated by Andrea Iossa (independent expert), updated by Stefan Clauwaert (5ETUC/ETUI) and reviewed by EPSU/ETUI; no comments were received from the Danish EPSU affiliates.

1. Legal basis

International level

Denmark has ratified:

UN instruments¹

International Covenant on Civil and Political Rights
(ICCPR, Article 22)
International Covenant on Economic Social and Cultural Rights
(ICESCR, Article 8)

ILO instruments²

Convention No. 87 concerning Freedom of Association and Protection of the Right to Organise
ratified on 13 June 1951;
Convention No. 98 concerning the Right to Organise and to Bargain Collectively
ratified on 15 August 1955;
Convention No. 151 concerning Labour Relations (Public Service)
ratified on 5 June 1981.

Denmark did not ratify Convention No. 154, Collective Bargaining Convention, 1981

European level

Denmark has ratified:

Denmark has ratified the **1961 European Social Charter**, including Article 6(4) (on 3 March 1965), and signed but not ratified the 1996 (Revised) European Social Charter (on 3 May 1996);

Denmark has not accepted the Protocol on Collective Complaints Procedure;

Denmark ratified the **European Convention on Human Rights on 3 September 1953**; the ECHR has been formally incorporated into Danish law with a special Act adopted on 29 April 1992.

National level

The Constitution of Denmark

There are no specific constitutional provisions protecting the right to strike.³

Applicable law(s)

- In Danish collective labour law, the only statutory acts concern the settlement of labour disputes. They are the Labour Court and Industrial Arbitration Act (*Lov om Arbejdsretten og faglige voldgiftsretter*, No. 106 of 2008) and the Public Conciliation Service Act (*Bekendtgørelse af lov om mægling i arbejdsstridigheder*, No. 192 of 1997);
- Public employees (*offentligt ansatte*) are considered to have a contractual relationship. Therefore, they fall within the scope of private law rules with regard to employment and labour matters. However, civil servants (*tjenestemænd*) employed by the State fall within the scope of the (Consolidated) Act on Civil Servants (*Tjenestemandsløven*, No. 488 of 2010).
- The case law of the **Labour Court** plays a fundamental role in establishing a body of rules in collective labour law, owing to the sporadic presence of statutory regulations, by interpreting, in the event of disputes, the industry-wide collective agreements in force. The Labour Court also has competence to interpret the Basic Agreements signed by the trade union confederations and employers' associations at national (cross-sectoral) level.⁴ Furthermore, the Labour Court has jurisdiction over the assessment of the lawfulness of collective actions.⁵
- As a **general rule**, the entry into force of a collective agreement gives rise to a peace obligation for the parties and their members. Collective agreements are of primary relevance in laying down formal rules on strikes, lockouts and other forms of collective action as well as on the peace obligation. This is usually done by the major organisations at national level through cross-sectoral collective agreements known as Basic Agreements. The Basic Agreement between the major trade union confederation LO and the Confederation of Danish Employers DA attributes to collective action the prerogative to terminate an industry-wide agreement which otherwise would continue to be valid even after its expiry.⁶
- A **specific feature** of the Danish system concerns the presence of a document laying down the 'Standard Rules for Handling Industrial Disputes',⁷ which is a bilateral text concerning negotiations and mediation procedures in the event of industrial disputes. The text was negotiated and issued in 1907 within a joint Commission consisting of representatives of the Government and of the major labour market parties, the LO and the DA. It was last updated in 2006, albeit with only minor amendments to the original version. As a general rule, the provisions of this text apply where there are no specific provisions on negotiations and mediation in the event of a dispute contained in the collective agreement concerned.

2. Who has the right to call a strike?

As a general principle, the right to call a strike or initiate collective action is the preserve of the collective organisations, owing to the industrial origin of collective labour law in Denmark (as in the other Scandinavian countries) and its strict linkage with the right to bargain collectively. The right to strike is deemed as a collective right rather than an individual one, and its exercise is related to the conclusion or renewal of a collective agreement.

3. Definition of strike

A statutory definition of what is a strike or a collective action is lacking in Danish labour law. However, strikes, lockouts and blockades by employees and employers are generically referred to as 'stoppages of work' (*arbejdsstandsning*). Although not institutionalised in industrial relations practices, other forms of collective action may be undertaken by employees, such as 'work-to-rule' and 'go-slow' action or an 'overtime ban'. However, these types of action are generally considered unlawful given that they imply a potential breach of the peace obligation (the assumption being that they are undertaken when a collective agreement is already in force), although the burden of proof is on the employer.

One condition that must be fulfilled in the event of a strike is that participating workers share a common purpose – what kind of purpose is irrelevant as long as it is 'fair and legal'. The aim of the strike action must, however, be deemed by the Labour Court to be of relevance to the organisation, which accordingly must have a genuine interest in the dispute in order to call for collective action. As for lockouts, which entail the collective dismissal of employees, their purpose must be found in the will to fight the other party. Any other collective dismissal by the employer, especially if not followed by reinstatement after the strike action has ended, cannot be considered a lockout.

Blockades constitute a common form of collective action in Denmark. From the trade union's perspective, a blockade is often used in support of a lawful strike as well as a form of secondary or sympathy action. From the employer's point of view, a blockade entails the blacklisting of employees, but it may be deemed as a lawful action if undertaken in connection with a lawful lockout.

Picketing as part of a blockade is permitted in so far as it does not involve any physical violence. Exerting moral pressure on employees, encouraging them not to enter the workplace, is, however, unlawful.

Sympathy action is always lawful if undertaken in support of lawful primary action. Such action is recognised as a legitimate tool by the Basic Agreement between the LO and the DA.⁸ The Agreement refers to the provisions of the 1899 September Compromise (*Septemberforliget*, the founding agreement of Danish collective labour law and industrial relations), which allowed the parties to breach peace obligation clauses in order to initiate collective action in support of lawful primary actions. Trade unions may call for sympathy action by their members who are employed by other employers and covered by the same collective agreement as the workers undertaking the primary action. If the sympathy action is to be extended to workers not covered by the same collective agreement, certain procedural requirements must be fulfilled with regard to giving notice, and the LO confederation must give its approval to extending the action. The same applies to the employer(s) and the employers' association DA.

A **political strike** is, in principle, deemed as a breach of the peace obligation if the party engaged in the strike is bound by a collective agreement. However, in practice, a political strike of short duration falls within the scope of the exemption set by the Labour Court and Industrial Arbitration Act, which prohibits fines for brief stoppages of work.⁹

4. Who may participate in a strike?

- **Participation in a strike** is dependent on union membership. Non-union member employees are not entitled to strike, as the right to strike derives from a collective agreement. Accordingly, workers who fall outside the scope of a collective agreement do not enjoy the right to strike. Non-union member workers must join the trade union that called the strike in order to participate.¹⁰
- **Public sector**
 - Employees known as ‘crown servants’ (*tjenestemænd*) – a group of civil servants who are considered to be bound by a special relationship of trust – do not enjoy the right to strike. Denmark has gradually reduced the number of categories and the number of workers employed as ‘civil servants’, so as to comply with international labour law standards on the entitlement of the right to strike. As of 2012, deputy police prosecutors, public prosecutors and state prosecutors are also no longer considered to be ‘civil servants’ as such, and they enjoy the right to strike. In its 33rd report submitted to the ECSR, the Danish Government states that, in 2013, the total number of civil servants stood at 44,000 employees.
 - These categories of civil servants are not entitled to enter into any disputes over interests with their employer, which means that they are not entitled to strike. Their working and employment conditions are defined by a collective agreement concluded with the competent ministry, but in the event of failure of negotiations over such an agreement, its terms are set by the Ministry of Public Sector Innovation (that deals with issues of public administration) after consulting a special council of the Ministry of Finance (the Salary Council, *Lønningsrådet*).
 - There is no statutory definition of ‘**essential services/sectors**’. However, the Folketing, or Danish Parliament, can step in during a collective labour dispute if the interest of the national economy is put at risk and enact a special act to end the dispute (and the related strike or collective action) by compulsory arbitration. This act can enforce a collective agreement or extend an expired collective agreement. This practice has been in force since 1933.

5. Procedural requirements

- The '**Standard Rules for Handling Industrial Disputes**' lay down an obligation for the parties to a dispute (also in the case of renewal of a collective agreement) to attempt to settle the dispute through negotiations, to be held in the first instance at local level and then by the national-level trade union and employers' organisations.¹¹ If the negotiations fail, each party is entitled to undertake collective action. Section 9(2) of the Labour Court and Industrial Arbitration Act lays down an obligation for the organisations to meet in the event of a strike or collective action, as well as in the event of an illegal strike.
- The **Public Conciliation Service Act** establishes the Public Conciliation Service as the body responsible for assisting the parties in reaching a settlement to a dispute, as well as with regard to the renewal of collective agreements. Its remit covers all sectors of the labour market, including the public sector. The parties are obliged to forward a copy of the strike notice to the Public Conciliation Office, which provides assistance at the request of one of the parties or can decide to step in on its own accord in cases where the strike or collective action involves a sensitive societal issue.¹²
- The parties to a dispute can voluntarily agree to refer the matter to an Arbitration Tribunal.¹³
- The **Basic Agreement** provides that a strike or collective action can be legally initiated only if it has been approved by the body of the organisation responsible for calling such action (usually the governing body or the general assembly).¹⁴
- The party that intends to **initiate a strike or collective action** must give two notices. An initial notice must be given to the main organisation of which the other party to the dispute is a member (a trade union must give notice to the employers' association DA and an employer or employers' association to the LO) at least two weeks before the possibility of taking strike action will be discussed by the organisation's competent body. The second notice relates to the actual commencement of the strike action and must be submitted at least seven days before the action is due to commence. The terms of the second notice must not differ from those laid down in the first notice, for instance with regard to the employees covered by the action – failure to comply with this requirement renders the notice null and void, and the whole procedure must start again.
- If conciliation has no prospect of success, the **Public Conciliator** declares the conciliation proceedings terminated, as a result of which the strike or collective action may commence. However, if the Public Conciliator considers that the strike action would be of far-reaching social significance, he/she may postpone the action for an additional period of 14 days, during which time further attempts to settle the dispute peacefully are made. If no agreement between the parties is reached, then the conciliation proceedings are declared terminated and the Public Conciliator may not postpone the action any longer.¹⁵
- As a **general rule** of Danish labour law and industrial relations, a **peace obligation** is an unwritten clause of any collective agreement. The entry into force of a collective agreement gives rise to a peace obligation for the parties.

6. Legal consequences of participating in a strike

Participation in a lawful strike

- It is a **general principle** of law that participation in a strike entails termination of the individual employment relationship. This means that the employment contract is not suspended but is legally terminated. Therefore, the strike notice includes a notice of termination of the employment contracts of all employees participating in the strike action. Termination of the employment contract takes effect as soon as the strike or collective action commences. The agreement that terminates a strike generally includes a clause which provides that those employees who took part in the strike are reinstated in the company (known as the 'no detriment clause', which is considered as a general prerequisite for calling a strike). This is formally considered to be a new employment relationship. However, the agreement usually states that the employment relationship is considered to be a continuation of the one terminated when the strike began.
- **Workers on strike** are not entitled to salary or any other benefits, such as pension contributions, paid leave and unemployment or sickness benefit.¹⁶
- **Economic losses** caused by a strike or collective action are usually compensated for through funds set up by labour market organisations.
- Employers are entitled to declare a **lockout** (see above). They may not replace workers on strike with workers recruited through public-sector recruitment agencies. Non-striking workers can refuse to perform the work of employees participating in the strike.

Participation in an unlawful strike

- **Participation in an illegal strike** is considered a serious breach of the employment contract that entitles the employer to dismiss the worker concerned without notice. However, in practice, this rule is rarely applied, and employers abstain from using it. Furthermore, if the employer is covered by a collective agreement, there can be no claim of liability for individual workers.¹⁷
- A trade union that is bound by a peace obligation (i.e. bound by a collective agreement) has the responsibility to prevent an illegal strike by its members from taking place.¹⁸
- **Illegal lockouts** entitle workers to receive pay and any other benefits associated with the employment relationship as agreed in the employment contract. If an illegal lockout is of long duration, employees are entitled to terminate the employment relationship (i.e. to resign) without notice.
- Section 12(4) of the Labour Court and Industrial Arbitration Act states that an organisation is liable for breaches of the collective agreement (thus also of the peace obligation). In the event of **unlawful collective action**, the trade union is required to pay what is known as '*bot*', which is a hybrid sanction incorporating both damages and fines.

Lack of consideration for the actual economic losses caused to the opposing party is taken as a basis for determining the amount of the financial sanction to be imposed. The Labour Court decides on the amount of the financial sanction, taking into account the circumstances of the case,¹⁹ including the reasons for the strike action, its excludability and any participation in conciliation procedures.²⁰

- It is customary to include clauses that provide for the **reinstatement of striking workers** in the company workforce after the strike has ended, thus preventing dismissal.

7. Case law of international/European bodies on standing violations

International Labour Organisation (ILO)

Decisions of the Committee on Freedom of Association (CFA)

In 2013, the Danish Union of Teachers (*Danmarks Lærereforening*, DLF) filed a complaint with the ILO's CFA, supported by the Salaried Employees and Civil Servants Confederation (*Funktionærernes og Tjenestemændenes Fællesråd*, FTF), alleging the violation by the Danish Government of Conventions No. 87 and 98 during the negotiations concerning renewal of the collective agreement for teachers in 2012-2013.

The complaint pointed out that, in the initial phase of the negotiations, the role of the State as employer in collective bargaining, represented by the employers' organisation Local Government Denmark (LGDK) and by a department within the Ministry of Finance, was not entirely separate from the role of the State as legislator. In fact, after the failure of the negotiations and of conciliation, the employer called for a lockout which affected 55,000 teachers.

The lockout was ended by the adoption by the Government of an act amending and extending the collective agreements for certain groups of employees in the public sector, including the teachers' collective agreement. In requesting to be kept informed of developments during subsequent rounds of collective bargaining, the CFA also recalled the importance of promoting free and voluntary negotiations in the education sector, and the need for the State as employer to conduct collective bargaining in good faith and as legislator to consult with the social partners in drafting any legislation relevant to collective agreements.²¹

Observations of the Committee of Experts on the Application of Conventions and Recommendations (CEACR)

The CEACR has, for a long time, requested the Danish Government to take adequate measures in order to ensure that the right to strike can be exercised by public employees without restrictions and without the risk of their incurring a penalty or sanction. In particular, the issue has concerned the education sector and the exercise of the right to strike for teachers.

In a Direct Request adopted in 2013 and published at the 103rd ILC session (2014), the CEACR recalled that the right to strike may be restricted, or even prohibited, only for those civil servants who exercise authority in the name of the State. According to the CEACR, teachers do not fall into this category. The Danish Government was therefore requested to ensure that teachers could exercise the right to strike without the risk of being sanctioned.²² Similar requests had already been made by the CEACR to the Danish Government in Direct Requests adopted in 2008,²³ 2009²⁴ and 2011.²⁵

(Revised) European Social Charter

Collective complaints under article 6(4)

Denmark did not accept the Collective Complaints Procedure Protocol.

European Committee of Social Rights (ECSR) conclusions

In its 2014 conclusions, the ECSR found the situation in Denmark not in conformity with Article 6(4) of the 1961 Charter owing to :

- (a) the total ban on the right to strike for certain categories of civil servants and;
- (b) the need for non-unionised workers to join the trade union that called a strike in order to participate in the action.

As for the ban on the right to strike for civil servants, the ECSR recalls that, although limitations and restrictions on certain categories of public employees are permitted within the scope of the Charter, a total ban for civil servants is not in conformity with the provisions of Article 6(4) ESC. As regards the right to strike for non-unionised workers, the ECSR recalls that the fact that only trade unions have the right to call a strike is not a violation of the Charter provided that forming a trade union is not subject to excessive formalities.

However, it also recalls that, once a strike has been called, any worker must be entitled to participate, regardless of trade union membership. In the opinion of the ECSR, the position of non-unionised workers also differs from that of unionised workers in relation to the 'no detriment clause' contained in a collective agreement that ensures that striking workers are reinstated in the company after the strike action has ended. Non-unionised workers appear to enjoy a different level of protection with regard to dismissal in the event of a strike.²⁶

In its most recent Conclusions XXI-3 (2018), the ECSR noted and concluded the following:

Specific restrictions to the right to strike and procedural requirements

The Committee recalls that the situation in Denmark has been in violation of the 1961 Charter since Conclusions XX-3 (2014) on the grounds that civil servants employed under the Civil Service Act are denied the right to strike and that the workers who are not members of a trade union having called a strike are prevented from participating in the strike unless they join the relevant trade union, and they do not enjoy the same protection as the trade union members if they participate in a strike. It notes from the report submitted by Denmark that there have been no changes to the situation.

The Committee refers to its general question on the right of members of the police force to strike.

Conclusion

The Committee concludes that the situation in Denmark is not in conformity with Article 6§4 of the 1961 Charter on the grounds that:

- civil servants employed under the Civil Service Act are denied the right to strike and
- the workers who are not members of a trade union that has called a strike are prevented from participating in the strike unless they join the relevant trade union, and they do not enjoy the same protection as the trade union members if they participate in a strike.²⁷

8. Recent developments

No such recent developments have been reported.

9. Bibliography

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Notes

- ¹ Status of ratification by Bulgaria of UN treaties: <https://treaties.un.org/Pages/ParticipationStatus.aspx?clang=en>.
- ² For an overview of the ILO Conventions ratified by Denmark, see https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102609.
- ³ Sections 78 and 79 of the Danish Constitution refer only to the right to association and to peaceful assembly respectively.
- ⁴ Disputes over any other type of collective agreement are dealt with by Industrial Tribunals; see Section 21 of the Labour Court and Industrial Arbitration Act (No. 106 of 2008).
- ⁵ Section 9 of the Labour Court and Industrial Arbitration Act (No. 106 of 2008).
- ⁶ Section 7(2) of the Hovedaftale mellem LO og DA.
- ⁷ *Regler for behandling af faglig strid*, full text available (in Danish) at: <http://www.arbejdsretten.dk/arbejdsretten/regler/normen.aspx>.
- ⁸ Section 2 of the Hovedaftale mellem LO og DA.
- ⁹ Section 12(2) of the Labour Court and Industrial Arbitration Act (No. 106 of 2008).
- ¹⁰ See the 33rd National Report on the Implementation of the 1961 European Social Charter submitted by the Government of Denmark, RAP/RCha/DEN/33(2014): <https://rm.coe.int/168048a043>.
- ¹¹ Sections 1 and 2 of the Standard Rules for Handling Industrial Disputes.
- ¹² Section 3 of the Public Conciliation Service Act.
- ¹³ Section 21 of the Labour Court and Industrial Arbitration Act (No. 106 of 2008).
- ¹⁴ Section 2 of the Hovedaftale mellem LO og DA.
- ¹⁵ Section 4(5) of the Public Conciliation Service Act.
- ¹⁶ This is statutorily set by the respective Act on Sickness Benefits and Act on Unemployment Insurance.
- ¹⁷ Section 12(1) of the Labour Court and Industrial Arbitration Act states that fines can be issued only to the ‘participants’ in an action in breach of a collective agreement; however, as a general rule, individual workers are not considered legally to be parties to the agreement – only the trade unions.
- ¹⁸ Section 2 of the Hovedaftale mellem LO og DA.
- ¹⁹ Section 12(5) of the Labour Court and Industrial Arbitration Act.
- ²⁰ Section 12(7) of the Labour Court and Industrial Arbitration Act.
- ²¹ Full text of the Decision is available at: http://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:3189052. Further information in the follow-up report, available at: http://www.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:3282110.
- ²² Full text of the Direct Request is available at: http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:3148996,102609,Denmark,2013.
- ²³ Full text of the Direct Request is available at: http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:2277486,102609,Denmark,2007.
- ²⁴ Full text of the Direct Request is available at: http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:2314945,102609,Denmark,2009.
- ²⁵ Full text of the Direct Request is available at: http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:2698640,102609,Denmark,2011.
- ²⁶ Full text of the Conclusions is available at: <http://hudoc.esc.coe.int/eng?i=XX-3/def/DNK/6/4/EN>.
- ²⁷ Conclusions XXI-3 (2018), Denmark, Article 6(4), available at : [https://hudoc.esc.coe.int/eng/#{%22sort%22:\[%22ESCPublicationDate%20Descending%22\],\[%22ESCArticle%22:\[%2206-04-000%22\],\[%22ESCDcLanguage%22:\[%22ENG%22\],\[%22ESCDcType%22:\[%22Conclusion%22\],\[%22ESCStateParty%22:\[%22DNK%22\],\[%22ESCDcIdentifier%22:\[%22XXI-3/def/DNK/6/4/EN%22\]}](https://hudoc.esc.coe.int/eng/#{%22sort%22:[%22ESCPublicationDate%20Descending%22],[%22ESCArticle%22:[%2206-04-000%22],[%22ESCDcLanguage%22:[%22ENG%22],[%22ESCDcType%22:[%22Conclusion%22],[%22ESCStateParty%22:[%22DNK%22],[%22ESCDcIdentifier%22:[%22XXI-3/def/DNK/6/4/EN%22]}).