

WorkLife 2.0

# Employee activism and the new world of labour relations

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The fact that technology is changing the world of work goes without saying and the COVID-19 pandemic has accelerated this change. But technological change has impacted not only the way in which work is being performed but also labour relations, and it is giving rise to and supporting new forms of 'employee activism'.

This brochure will hopefully help you to better understand this recent phenomenon, where it came from and how to best approach it as a global employer.

## **Employee activists take on tech**

Employees in the tech industry have become more vocal over the past couple of years, raising their voice on a wide range of topics, from those directly concerning them - such as their treatment within the company - to more political and social topics. Examples of the latter include concerns about a tech giant offering AI services to the Pentagon to interpret camera footage from drones; a company working on a censored search engine for China; a tech company agreeing to a cloud-computing deal with a US immigration agency that was accused of separating migrant children from their families; and another working with fossil fuel companies and allegedly funding climate change denying lobbyists and politicians.

More recently, employees of social media platforms have requested that management adjust content moderation rules for messages posted by public figures. And we can expect challenge against any wide-ranging collection of data through Covid-19 tracing apps.

These employees aim not only to influence their own employer's policies and actions, but also to have an impact on public opinion, on the policies and actions of other companies (both within and outside their own industry) and, more widely, to change the focus of the media and governments.

These activists raise these sorts of concerns outside the classic labour relations framework. They are not organized according to any traditional trade union model, and their requests are far from the typical ones that come through trade unions (wages, benefits, working conditions, etc.) Instead, they directly address the company's top management or its customers through social media and other platforms. The means by which they make their opinions known are far removed from those of traditional collective bargaining. Employee activists demand that their employers take immediate action.

## What is triggering these new forms of activism?

Employee activism seems to have started for a variety of reasons, including:

- a shift in generational values – surveys conducted by Weber Shandwick and Povaddo indicate that Generation Y seems to care more about the “big picture” than their own personal interests. They are particularly likely to voice their views, with 48% speaking up, compared with 33% of Generation X and 27% of baby boomers. More than 40% of employees at US-based Fortune 1000 companies say that a company’s actions on important societal issues impact upon their decision to work for it; and
- top down inspiration – CEOs of many tech companies are active on social media, expressing their views on social and political matters and encouraging direct questions through regular “town hall” meetings and company Q&A sessions. This in turn encourages employees to speak up on the matters that concern them and to expect immediate (re)action.

## Why the tech industry?

This wave of employee activism has found a home in the tech industry for several reasons:

- tech workers generally have good working conditions and salaries – having fulfilled their personal interests, they are more likely to focus on the bigger picture and try to have an impact on society;
- tech workers play an important role in their companies – they make a significant contribution to various projects and offer skills in areas where demand outstrips supply. Consequently, they have leverage;
- the role of tech companies in society is increasing central, and tech workers believe they can make a change from within by influencing the decision-making process .

## Towards a global phenomenon?

So far, employee activism has mostly affected tech companies in the US, but the walkouts of employees in Europe and Asia are a sign that activism can spread globally throughout a company. Employee activism is also spreading across different businesses sectors and is no longer limited to the tech giants. For instance, employee walkouts took place in the US retail industry last summer in relation to the sale of furniture to detention centres, forced arbitration, and other topics.

New forms of activism are also present amongst gig workers. For this category of worker, activism is sometimes seen as the only possible means to raise concerns on a group basis as antitrust rules often stop them from organising together in unions in several

jurisdictions, including the US. There have been occasions where legislation or courts have allowed self-employed gig workers to organise, but the issue remains highly controversial. This might change in the near future, at least in the EU, with the European Commission having launched the consultation process to address the issue of collective bargaining for the self-employed, which is expected to be far-reaching and to allow gig workers to collectively bargain for their rights.

## The impact of COVID-19

Activist walkouts did not stop during the global lockdown; they moved on-line, with employees disconnecting from the company’s systems at a pre-agreed time (for example, “Blackout Tuesday” in the music industry). On-line action is likely to become even more popular in the years to come, with home working becoming the “new normal”. Health and safety and environmental issues will continue to be a focus but racial, social, financial and other inequalities will be another top priority for activists. No doubt employee activists will hold their companies more accountable for their ESG commitments (and will keep asking for more).

## Unionization of employee activists - what’s next?

In the current unregulated environment, how much can workers achieve without unionizing?

So far, the tactics of the activists have led to mixed reactions: some positive, with businesses agreeing to the requested changes and adjustments with others refusing to do this or even sanctioning activists for breaches of contractual obligations. Without being formally organized there may be limits to what activists can achieve.

The reasons for not unionizing seem to be both internal and external. Internal reasons come from activists themselves, who in the tech world see their bosses as their peers, rather than authority figures, and are reluctant to organize themselves collectively against them. Furthermore, many engineers and tech workers consider themselves as independent operators, and they see no need to join a trade union’s efforts as they do not believe collective bargaining will bring them an advantage.

We are in the early days of a wider reshaping of the classic labour relations landscape. One should keep an eye on what global trade unions will say and do and on wider policy changes.

Watch this space!

# Our recommendations

## What should businesses do?

Employee activism comes with reputational and financial risks for businesses. Whether they are current employees engaged in walkouts and protests on social or political issues, or former employees going public about having left the company because of a shift in its values, employee activism affects the reputation of the company not only with respect to its customers, but also for attracting new talent. Reputational damage is often followed by financial damage. To help businesses overcome these challenges and make the most out of the employee activism phenomenon, we would make the following recommendations:

### Understand the legal regime

Employee activism is generally not governed by any specific legal framework. It should be kept in mind that employee activism is often planned during normal working times (e.g. by sending calendar invitations, organizing meetings etc.), which is likely to be an employment law issue in most jurisdictions. A walkout could be an illegal strike in some jurisdictions. Depending on the nature of the activism, the steps taken by employees may violate internal company guidelines or individual employment contracts (e.g. not to take steps that would damage the reputation of the company).

But as a practical matter, companies will need to consider whether they want to take disciplinary steps in response to activism – will this help to manage the situation, or will it lead to other complaints and actions?

### Review your policies

Have another look at your culture and governance and review existing policies and internal systems for escalation and reporting, so as to provide all employees with a controlled platform to raise their concerns. The policies could make it clear the values and culture that the company stands for, and this may help to channel employees' concerns and prevent them from raising issues that the company cannot do anything about. Employers will want to revisit and refresh their CSR / ESG policies on an ongoing basis to ensure they align with the views of the workforce and other stakeholders.

Employers may also want to take a look at labour relations policies so as to make sure they are still relevant to their workforce, whatever generation they are from and however their relationship with the company is structured (employee, contractor, gig worker etc).

### Consider setting up global employee representative bodies

Would setting up representative bodies at a global level (on a voluntary basis), that serve as a global employee forum, be a solution that tech and non-tech companies would like to embrace? It is an option that comes with both positives and negatives. Such a forum is practical and potentially gives a voice to employees regarding corporate values, projects, or any other matter they deem important, it may be difficult to keep the forum focussed. Their requests might conflict with management strategy or relate to matters outside the company's control. However, particularly in the tech sector, employees are known for not being interested in trade unions and works councils so it is not clear that they would be interested in such a forum modelled after the classic employee bodies.

## Be responsive, even if it is to say no

The responsiveness of the company may affect how employees feel. So far, tech companies have indicated a certain degree of responsiveness. For instance, one of the companies which was targeted by employee activists announced that it would aim for net zero emissions by 2040 and be fuelled by 100 per cent renewable energy from 2030. Another one has also maintained a responsive approach towards employees seeking to cancel contracts with US Immigration and Customs Enforcement. More recently, a tech company kept encouraging its employees to express their opinions, even if those were clearly against management, and supporting their virtual walkouts. If you are not going to support the change advocated by employees, explain this promptly and clearly.

## Be consistent

Another way of dealing with employee activism is by maintaining a consistent management position and sticking to what you have said. What seems to have added fuel to the fire for a tech company is promising, on the one hand, Shipment Zero (a commitment to make 50% of its shipments net zero carbon by 2030) and, on the other, signing contracts with the fossil fuel industry.

## Manage potential retaliation claims

Employee activism not only entails risks for employers, but also for the employees themselves. The risk of retaliation is real, and there is no clear protection for employees, unlike the case of formal trade union activity, where the law often protects works council members and other officially appointed employee representatives. The fact that some of the employees seem to speak or participate in protests anonymously indicates a fear of retaliation. They fear that people who stand up and report discrimination, abuse, and unethical conduct may be punished, side-lined or pushed out. What can be done to address this? Companies need to decide whether to have a strong policy against retaliation in these circumstances (accepting that this might encourage activism) but also ensure that there is sufficient scope to take disciplinary action where activism may be in breach of internal policies or employment terms.

Some tech giants have already faced retaliation claims. For instance, two companies have been accused for retaliating against their employee activists, after some employees were allegedly dismissed. Both companies had established internal policies that had been breached by the employees claiming to have faced retaliation (e.g. data security policy and external communications policy), which helped the company's position. Another tech company is being faced with a retaliation claim for having allegedly dismissed an employee who had organised a live protest despite COVID-19 social distancing rules.

Activists may claim whistleblower protection in some circumstances and employers will need to be even more careful as showed by another recent example which saw a top executive at a tech company having to leave the company after having dismissed an activist who had blown the whistle on health and safety issues.

# Contacts

For further advice on any of the issues raised in this briefing,  
please contact one of the lawyers below.



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