

Employment Law

June 2010

Time off for training and study

Many employers offer their employees opportunities to develop their skills. There is now legislation in place which formalises the process and gives certain employees the right to request time off to study or undertake training. This month, we look at this right in more detail.

The right to request time off for training and study

Since 6 April 2010, employees who work for an employer who employs 250 or more employees have the right to request time away from their usual duties to study or attend training. It is intended that the provisions will be extended to all employers from April 2011. The key point is that this is a right **to request** time off, not a right to time off.

Which employees are entitled to make a request?

To be eligible to make a request, an employee must have worked for their employer for 26 weeks and not have made an application in the previous 12 months. The study or training must be intended to increase the employee's effectiveness in the business and to improve the performance of the business, but it need not lead to a formal qualification.

The right does not apply to agency workers or school-age children and certain employees aged 16 and 17.

What does an employee have to do?

To make a request the employee will need to make an application in writing. The request should be dated and must:

- state that it is made in accordance with the employee's statutory right to request a period of study or training;
- confirm his or her eligibility to do so as described above;
- state the subject matter of the study or training they wish to request; where and when it would take place; who would provide or supervise it and what qualification (if any) it would lead to;
- explain how they think the proposed study or training would improve their effectiveness in the business and the overall performance of the business;
- state whether any previous application has been made and, if so, when and how it was made.

What procedure does the employer need to follow?

On receipt of a request, the employer must consider it. As with a request

for flexible working if they agree to the request they can write to the employee saying so. If they need more information or want to discuss it before making a decision they need to set up a meeting. In both cases this must be done within 28 days. The employee has the right to be accompanied at a meeting by a colleague and should be asked if they wish to have a companion with them. The employer should inform the employee of the outcome within 14 days of the meeting.

The business reasons which an employer can rely on to reject an application are set out in the legislation. The employer must specify which reason it seeks to rely on if it rejects an application. The permitted reasons for refusal include the cost burden, inability to reallocate work, the effect on ability to meet customer demand, the employer's belief that the training would not improve employee effectiveness or performance.

If the employer agrees to the application, it is a good idea to confirm in writing the subject of the agreed training; where and when it will take place; who will provide or supervise it; what qualification (if any) it will lead to; any changes to the



employee's hours during the training or study period; whether the employee will be paid for the time spent studying or training and how any fees will be met.

Is there a right to pay while studying?

There is no right to be paid for time spent training or studying under this legislation. However, under the National Minimum Wage Regulations 1999, the time spent training 'approved by the employer' during normal working hours counts as 'time work' for national minimum wage purposes. In practice, an employee whose hourly pay is at or close to the national minimum wage is likely to have a right to pay for time spent training to ensure that their total pay for the period does not fall below the national minimum wage.

Appeal

The employee should be given an opportunity to appeal against a decision to refuse their application. The appeal decision should be final. The Regulations set out a timetable for the appeal process.

What can an employee do if they think their employer has acted in breach of the Regulations?

An employee can complain to an Employment Tribunal. They must do so within 3 months of the employer's alleged failure to comply with the Regulations. The maximum

compensation an employment Tribunal may award for failure by the employer to comply with the legislation is eight weeks pay (currently capped at £380 per week). The Tribunal can require the employer to reconsider the request. An employee who makes a request to be allowed to undertake training or study is protected against any detriment they suffer for doing so. Any dismissal made as a result of an application will be automatically unfair.

What should employers be doing now?

Employers with 250 or more employees should now be putting in place a policy setting out the process an employee should follow to apply to take time off to undertake training or study. Smaller organisations will need a policy in place for next April. We would be happy to assist you in drafting such a policy.

Please contact one of the employment team if you wish to discuss this further.



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