

The right to time off work for trade union duties and activities allows union members and officials time off work to acquire the skills they need and to work on behalf of their members.

This leaflet aims to explain when and how a trade unionist can exercise these rights and what to do if an employer refuses to allow them.

TIME OFF WORK FOR TRADE UNION DUTIES AND ACTIVITIES

Although the right to time off depends upon the employers' recognition of a trade union, it is given to individual employees.

An employee who is an official of a recognised trade union may claim paid time off work to carry out certain functions or to undergo training (Section 168 Trade Union Labour Relations (Consolidation) Act 1992 [TULRA]).

Trade union members may also claim unpaid time off work in order to take part in certain union activities.

Although there is no absolute right to take time off work an employer should not refuse a reasonable request to do so. If a reasonable request is refused, the employee may complain to an employment tribunal.

An employee cannot however simply take time off without the employer's permission. The right is triggered by the employee's request.

These statutory provisions are supplemented by the ACAS code of practice on time off, which gives practical guidance to unions and employers.

The code is not legally enforceable but represents a statement of good practice which will be taken into account by an employment tribunal or the Central Arbitration Committee (CAC). It recognises that there are a wide variety of circumstances and problems which can arise in different industries and emphasises the importance of unions and employers agreeing a formal time off agreement.

TIME OFF WORK FOR TRADE UNION DUTIES

An employer must allow an employee, who is an official of an independent trade union recognised by that employer, to take paid time off during their working hours in order to carry out their union duties.

The union must be recognised to some extent for bargaining. Representational rights or some lesser form of recognition is not enough.

Specified purposes

Trade union officials may claim time off work either to carry out official duties, such as collective bargaining or representing members, or to undergo training which is relevant to being able to carry out these duties.

Collective bargaining

The ACAS code lists examples of trade union duties where an official should have reasonable time off.

These include duties concerned with:

- terms and conditions of employment
- the termination or suspension of employment
- allocation of work or the duties between employees or groups of employees
- discipline
- trade union membership

facilities for officials of trade unions

machinery for negotiation or consultation

The courts usually adopt a wide interpretation of the right to time off. The ACAS code states that reasonable time off may be sought to:

- prepare for negotiations
- inform members of progress
- explain outcomes to members

Duties

The duties an employee can claim time off for are essentially a matter between the official and their union.

Permission must be got from the union to attend meetings and the right to time off only applies to time off work for relevant negotiations or other industrial duties agreed by the employer.

Negotiations can include preparing for bargaining such as union meetings to formulate strategy. Ultimately, it is for the employment tribunal to decide whether the duty in question is sufficiently close to collective bargaining to be a duty “concerned with” negotiations.

The ACAS code paragraph 12 sets out those issues that the duty must relate to. These are:

- terms and conditions of employment (including pensions, equal opportunities, vocational training)
- the physical working environment (including health, safety and welfare)
- hiring and firing, termination and suspension of employment (including redundancy arrangements)
- allocation of work (including demarcation issues, job evaluation, grading, flexible working arrangements)

discipline (including disciplinary procedures)

union membership (including representational rights and induction procedures)

facilities for union officials

negotiating consultation and other machinery

Not only must the reason be on the list it must also be something for which the employer has recognised the union.

Industrial relations duties

A union official may also seek time off for wider industrial relations duties.

Those duties must pass three tests before they qualify as appropriate for time off:

duties have to be performed on behalf of employees of the employer concerned

the duties must relate to an industrial relations function

the function must be one which the employer has agreed to let the union perform

There is no right to time off for trade union activities which consist of taking industrial action. However, it is possible for an official to claim time off if they are representing members taking part in industrial action.

TRAINING AND INDUSTRIAL RELATIONS

An official may seek time off to train for their duties.

The training must be:

relevant to those official duties

approved training

Relevant training

Training must be relevant to the official duties performed by the official. This includes training in issues that are likely to become relevant in the future.

Approved training

The training course must be approved either by the TUC or the official's own union. The fact that the TUC or the union may consider that a course is relevant is not conclusive. The ACAS code of practice suggests that an employer should consider releasing an official for initial training in basic skills as soon as they take office. Other occasions when additional training is likely to be required are when circumstances change, or when new legislation is likely to be relevant.

REQUESTING TIME OFF

The code says that the official should give as much notice as possible of the time, place, purpose and duration of the course and be prepared to supply a prospectus or syllabus.

Permission

The onus is on the member to request time off. If the employer does not permit time off, the official can complain to the employment tribunal and obtain a declaration and, possibly, compensation.

The law does not say what would happen where an official takes time off in the face of an employer's unreasonable refusal.

The employer could argue that the official was in breach of the contract of employment on the grounds that the right to time off was a statutory but not a contractual entitlement.

This could mean that an official may lose pay, be disciplined or even be dismissed for taking time off in the face of an employer's refusal.

Members have a lot to lose and little to gain in taking time off without permission. If an employer refuses time off then the member should seek advice from their union and complain to an employment tribunal.

Working hours

The right to time off during working hours means those hours during which the member is contractually required to be at work. It may be possible to persuade an employer to agree to pay for more but the employer is not obliged to do so.

Purpose

The right to time off work is restricted to the time necessary to do the official's duties, or training. An official who works Monday to Friday does not actually need time off work to attend a weekend training course. It may be reasonable for an employer to give the official a day or two off work to compensate for attending a weekend course. However the wording of the legislation does not entitle an official to claim payment in such circumstances.

Obvious problems arise if a night worker attends a day time course. Common sense dictates that there should be some compensatory time off to catch up on sleep and the Working Time Regulations may apply.

Reasonable time off

Time off can only be claimed where it is reasonable and necessary for carrying out duties. But factors such as the effect on the employers' business for granting the time off and the effect on the official and the union if it is refused can be considered.

An employer should bear in mind:
the amount of time off taken
the purposes for which time off is taken
the occasions for which time off is taken (including the frequency)

the conditions subject to which time off is allowed
the size of the organisation and the number of workers
the production process
the need to maintain a service to the public
health and safety and security at all times

Employers must also bear in mind the difficulties for trade union officials and members in representing and communicating with:

shift workers
part-time workers
employees at dispersed locations
employees with particular domestic commitments

Test of reasonableness

The legislation and the code of conduct place much emphasis on both sides acting reasonably. If the employer and the official cannot agree, the employment tribunal must decide.

The reasonableness or otherwise of a refusal to allow time off, or to make payment for that time off, is essentially a matter of fact. However, the tribunal must consider whether the employer's assessment came within a band of reasonableness.

Pay for time off

An official who has been allowed time off work for trade union duties during work hours is entitled to be paid in full for the time off.

Where the official works on any sort of payment by results then the payment is based on average earnings.

Remedies

A complaint to an employment tribunal that the employer has failed to permit time off must normally be made within three months of the request being refused.

The claim

Where the employer allowed time off but did not pay for it the tribunal can simply order payment of the sum due.

The tribunal can award compensation for injury to health or feelings and other non-financial loss, as well as the actual financial loss.

Complaints that the employer failed to allow reasonable time off are not restricted to refusals. Failure can include permitting too little time off.

If an employer refuses a reasonable request for time off, the employee would be unwise to take the time off anyway, although doing so would not necessarily prejudice a tribunal claim. Ensure the tribunal claim is made as soon as the time off is refused.

TIME OFF WORK FOR TRADE UNION ACTIVITIES

This right applies to all members of independent trade unions that are recognised by the employer for bargaining.

A union member may claim time off work to take part in the activities of the union, such as workplace meetings. There is no statutory right to payment but the ACAS code recommends that the employer should pay “in certain circumstances, for example to ensure that workplace meetings are fully represented”.

Examples of activities include:

- attending workplace meetings
- consulting union officials
- voting in union ballots (including strike ballots)
- voting in union elections
- membership of branch, area, regional or national committees of the union
- being a delegate to the union’s annual conference
- meetings with full time officials to discuss issues relevant to the workplace

To participate in representative activities such as being a delegate to a union conference, a member needs to be “nominated by the union as an ‘official’ representative”.

In *Luce v London Borough Of Bexley* (1990), a teacher was denied time off to attend a lobby of parliament organised by his union to protest about the Education Reform Bill. The EAT said that the lobby was not capable of being a trade union activity and so the teacher was not entitled to time off.

Time off may be sought for any activity. It is not for the tribunal to decide what is or is not a reasonable activity for a trade union. It is the union’s decision alone. However the tribunal must take into account the nature of that activity when assessing what is the reason for not granting time off.

The activities of the union refer to any activity into which the union properly engages except for industrial action (which is expressly excluded).

Requesting time off

The same principle applies to a member seeking time off for trade union activities as applies to an official seeking time off for trade union duties. A member must give reasonable notice to management and should advise them of the purpose, time, place and location.

Assessing reasonableness

For time off to be reasonable, these criteria apply:

- the amount of time off

- the purposes for which it is sought

- the occasion for which it is sought (including frequency)

- the conditions, subject to which time is granted

When assessing reasonableness certain circumstances are taken into account including:

- the effect on the employers' business operations
- the extent of the member's need to take time off work in order to participate effectively
- it is also relevant to take into account how much time the member has already been permitted to take off or has been promised, on either trade union activities or other grounds

In *Wignall v British Gas Corporation* (1984) a member was refused 10 days off work to prepare a union magazine. The EAT decided that the employers were reasonable in refusing the request because the member had already enjoyed 12 weeks leave a year, partly paid and partly unpaid.

Remedies

If the employer fails to permit time off, the employee can complain to the employment tribunal.

If the member's complaint is substantiated, the tribunal may award financial compensation. The tribunal can award whatever it considers just in the circumstances. The tribunal can award compensation for injury to health or feelings and other non-financial loss suffered by the employee.

Agreements on time off

A formal agreement on time off can:

- provide clear guidelines in which applications for time off can be determined
- avoid misunderstanding
- facilitate better planning
- ensure fair and reasonable treatment

Agreements should specify:

- the amount of time off permitted
- the occasions for which time off can be taken
- in what circumstances time off would be paid

to whom time off would be paid

the procedure for requesting time off

It is sensible for an agreement to make clear: arrangements for the appropriate payment to be made when time off relates in part to union duties and in part to union activities when a payment (to which there will no be statutory entitlement) might be made to shift workers and part-time employees undertaking union duties outside their normal working hours

Clearly worded, effective agreements can prevent disputes on the definition of time off, the reasonableness or otherwise of a refusal, or indeed the nature and timing of a request for time off.

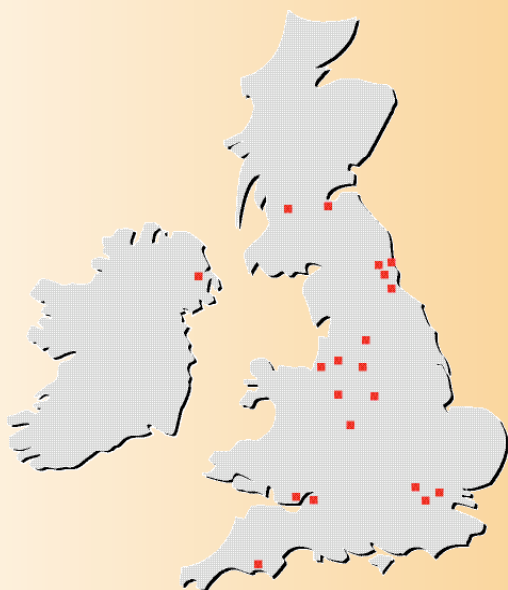
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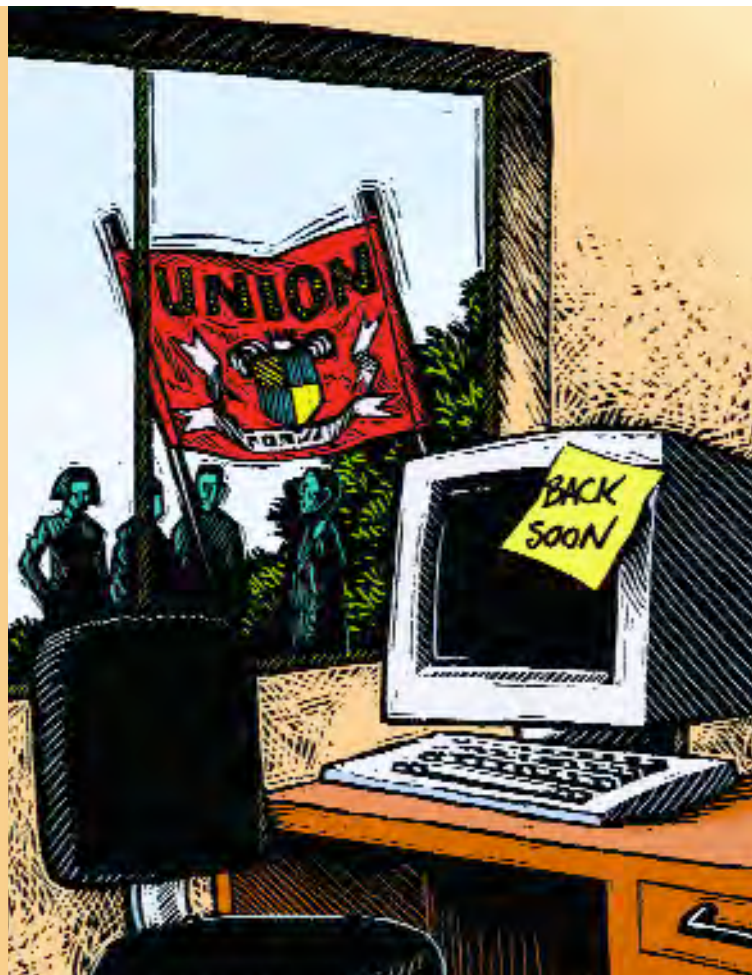
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