

Legislation Update

Employment



NEW RIGHT TO REQUEST TIME OFF WORK FOR STUDY OR TRAINING

Employees already have a number of statutory rights in respect of time off work for various reasons including holiday or annual leave, public duties such as jury service, maternity and paternity leave and to care for dependants.

From 6 April 2010 many employees will have a new right to request time off work to study or train under new provisions in the Employment Rights Act 1996 introduced by the Apprenticeships, Skills, Children and Learning Act 2009. The details relating to the new right are set out in the Employee Study and Training (Procedural Requirements) Regulations 2010. It is very similar to the right to request flexible working.

The Government has stated that it is introducing the new right to request time off work for study or training in order to “make skills a hot topic of discussion in the workplace” and that a “better skilled workplace is more productive, more adaptable, more innovative and better motivated – better able to help you [employers] take your business to the next level”, whatever that means.

What is the new right to request time?

The right to request time off work is for the purposes of undertaking study or training.

The study or training requested must be for the purposes of:

- improving the employee’s effectiveness at work; and
- the performance of the employer’s business.

When does the new right take effect?

- From **6 April 2010** employees in businesses with **250** or more people will have the right to request time off work for study or training; and
- From **6 April 2011** employees in **all** businesses (regardless of the number of staff) will have the right to make the request.

Who can make the request?

- Only employees with at least 26 weeks’ continuous service will be eligible to make the request;
- The right only applies to employees and not to worker (including non-employed consultants and contractors); and
- The right does **not** apply to:-
 - agency workers;
 - school-age children;
 - members of the Armed Forces; or
 - employees aged 16-18 who already have a separate statutory right to time off for training.

What is the procedure for making a request?

- The procedure for making the request is very similar to that for the existing statutory right to request flexible working;

“From 6 April 2010 employees in businesses with 250 or more people will have the right to request time off work for study or training.”

- As a general rule, only one request for time off to study or train can be made by an employee in any twelve month period; and
- The request must be made in writing and contain certain prescribed information; including in particular:
 - A statement that the request is made under section 63D of the Employment Rights Act 1996; and
 - Details about the proposed study or training:
 - The subject matter;
 - Where and when it would take place;
 - Who would provide or supervise it;
 - What qualification (if any) it would lead to; and
 - How it would improve the employee's effectiveness in the employer's business and the performance of the employer's business.

“An employer is not obliged to pay for the training or for the time the employee spends off work studying or training.”

What steps do employers need to take?

- The new statutory right is to **request** for time off work to study or train. It is not an actual right to time off for that purpose unless the employer agrees.
- The employer must be seen to consider the employee's request seriously and there are only certain specified business reasons upon which requests for time off can be refused. These are similar to the reasons which may lawfully be used for refusing an employee's request for flexible working and include:-
 - the additional costs burden to the employer;
 - the employer's belief that the training would not meet the specified statutory criteria of improving employee effectiveness and business performance;
 - an inability to reallocate work away from the person who seeks absence for training, etc; and
 - the effect of granting the request on the ability to meet customer or client demand.
- The employer and the employee must both follow the timetable of steps to be taken set out in the new legislation. These include a meeting and a right of appeal (if appropriate).

Is there any right to payment?

- An employer is not obliged to pay for the training or for the time the employee spends off work studying or training, although it may of course choose to do so.

How much time off can be taken?

- If the request is granted, it is at the discretion of the employer as to how much time may be taken.

What if I get this wrong?

Employees will have the right to bring a claim in the Employment Tribunal if the employer:

- Fails to hold a meeting with them within 28 days of receiving their application, or within 14 days of their notice to appeal against an initial decision;
- Fails to notify them of their decision within 14 days of the initial meeting to discuss their application, or within 14 days of an appeal meeting;
- Refuses the application, in full or in part, for a reason other than one or more of the statutory grounds for refusal and fails to correct the decision on appeal;

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- Has made the decision to refuse all or part of their application on incorrect facts and fails to correct the error on appeal; or
 - Fails to allow them to be accompanied by a colleague of their choosing to any meeting under the procedure, fails to allow their colleague to address the meeting, or confer with them during the meeting, or fails to postpone a meeting under the procedure because the employee's chosen companion is unavailable.

The Tribunal may award compensation of up to eight weeks' pay (currently capped at £380 per week) (or up to two weeks' pay for a breach of the right to be accompanied provisions) and/or order the employer to reconsider the application.

The new legislation also:

- Protects an employee from suffering a detriment for making an application for time off to study or train; and
- Makes it automatically unfair to dismiss an employee because an application for time off to study or train has been made.

Likely impact on employers

In the current difficult economic climate many employees may seek to boost their 'employability' by obtaining new or additional qualifications, and employers are likely to face numerous requests for time off to study or train under the new legislation. They will need to take particular care to comply with the procedural requirements and statutory timescales and, if they wish to refuse a request, to ensure that they are able to back up the refusal with one or more of the business reasons prescribed by the new legislation. The new right to request time off work to undertake study or training will be discussed at our April breakfast workshop, together with a consideration of the practical and legal implications for employers. To find out more, and to book a place click [here](#).

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