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## **INTRODUCTION.**

### **The right to request time off for training – all you need to know**

From 6 April 2010, all businesses with over 250 employees - and from April 2011 all business regardless of size - must offer employees the right to request time off work to undertake study or training.

The Institute of Directors (IOD) has claimed that the Time to Train initiative could cost businesses as much as £555 million. At a time when businesses are doing all they can to reduce costs, this new legislation has predictably come under a lot of criticism from employers.

### **The Legals**

#### **Who is entitled?**

Employees with more than 26 weeks' service are entitled to make a request for time off. The purpose of the training must be to improve the employee's effectiveness at work and to improve the performance of their employer's business. The training does not necessarily have to lead to a formal qualification. The right does not apply to agency workers, school-aged children, or 16 to 18-years-olds who qualify for a separate right to time off for training.

#### **The procedure**

The application must include the following information:

- A statement that it is made under section 63D of the Employment Rights Act 1996;
- The subject matter of the training;
- Where and when it would take place;
- Who would provide or supervise it;
- What qualification (if any) it would lead to;
- How the employee thinks the study or training would improve both the employer's effectiveness in the business, and the performance of the employer's business.

The employer's duty to deal with the request is very similar to that contained within the flexible working legislation. An employee may put only one request in every 12 months.

The employer must hold a meeting with the employee within 28 days of receiving an application to discuss the document. Following the meeting, the employer has 14 days to give the employee a written, dated notice of their decision. There are strict guidelines to follow with regard to what the notice must state depending on whether the request is granted or refused.

The employee can appeal a refusal by the employer within 14 days of the employer's decision and there is further guidance as to the conduct of the appeal hearing. It is worth noting that the employee has the right to be accompanied by a colleague at any meeting under the procedure.

#### **How much time off can be taken?**

As there is no statutory right to have the request granted, the amount of time off is at the discretion of the employer. The employer's options are to grant all, part or none of the time off requested by the employee.

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## **Will the employee be paid for the time off?**

There is no right to payment, however some employers may exercise their discretion to make a payment.

## **What discretion does the employer have with regard to the time off?**

Employers will be required to consider all requests seriously. They may only refuse a request if they think that one of the specified business reasons apply. The business reasons include:

- Cost burden;
- Inability to reallocate work;
- Effect on ability to meet customer demand;
- The employer's belief that the training would not improve employee effectiveness or business performance;
- The burden of additional costs;
- Agreeing to the request would have a detrimental impact on performance;
- Agreeing to the request would have a detrimental impact on quality.

## **Remedies**

- Employees have a right to bring a tribunal claim if the employer has failed to follow the appropriate procedure or has not given one of the permissible reasons for refusal. The tribunal may award compensation of up to eight weeks' pay (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.
- There is protection from any detriment for making an application and it is automatically unfair to dismiss an employee because an application has been made.

## **In conclusion**

More than 11 million employees are expected to have this new right from 6 April 2010, and many more from 6 April 2011. It is therefore important that employers are aware of the right and the process to follow should a request be made.

Although some employers see the right as another burden which they have to deal with, it is perhaps worth looking at it in a more favourable light. The right is intended to improve employee effectiveness at work and the performance of the employer's business. Providing the correct process is followed, employers should be able to consider each request on its merits and only grant the time off when there is a positive outcome for the employer's business

## ***Useful Information Sources***

This document has been prepared with the help of law firm Cobbetts Birmingham office. For more information, please call your usual Cobbetts contact or:

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