

Employment Act (Northern Ireland) 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 15: Time off for study or training

55. *Section 15* inserts, as a new Part 7A (Articles 95A to 95G) of the 1996 Order, the provisions set out in Part 1 of Schedule 3 to the Act. It also makes amendments, set out in Part 2 of Schedule 3, which are required to be made as a consequence of the insertion of the new Part 7A of the 1996 Order.
56. New Article 95A of the 1996 Order introduces a right for qualifying employees to make a statutory application to their employer in relation to study or training. The request must meet certain conditions in order to be valid; for example, it must be for study or training that is intended to improve an employee's effectiveness at work and the performance of the employer's business. Further validity conditions may be set out in regulations made by the Department.
57. Under paragraph (6) of the new Article, an employee must meet certain requirements as to duration of employment in order to qualify for the right, and paragraph (7) makes clear that the right does not apply to employees of compulsory school age, young people who already have a statutory right to paid time off for study or training and agency workers. To allow for flexible responses to changing circumstances, the Department is empowered to make regulations specifying other types of person to be excluded from the right. Article 95A finally provides, in paragraph (8), that the statutory arrangements do not affect other approaches to determining and delivering training needs (for example through annual appraisal systems).
58. New Article 95B allows a request to be for training of any kind (including in-house training or attendance at external events). It also specifies that more than one course of training or study may be included in a single request; thus, an employee who identifies a need for basic skills training in numeracy followed by a full job-related course at level 2 would be able to include both courses of training in their request. Paragraph (3) of new Article 95B provides that it is not essential that the training lead to the award of a qualification of any sort. It will therefore be possible for an employee to request to undertake any study or training that the employee believes will make him or her more effective in a current or future role in the employer's business and improve the employer's business performance.

59. Article 95B(4) sets out the information which an employee must include in a request. The request must include details of the subject matter of the study or training, where and when it would take place, who would provide or supervise it and whether it would lead to a qualification. The request must also state how the training would make the employee more effective and improve the performance of the business. Paragraph (5) also includes a power for the Department to make regulations specifying the form of the application.
60. New Article 95C specifies that employers must deal with requests in accordance with regulations made by the Department. Paragraph (1) means that an employer has to deal with only one application from the employee in any 12 month period. However, in certain circumstances, an employer could be required to disregard an earlier application which has been submitted. These circumstances would be set out in regulations made under paragraph (3).
61. Paragraph (4) enables the Department to make regulations specifying how employers should deal with an application. An employer may refuse a request (or part of one) only where the employer thinks that granting it (or part of it) would be detrimental to the business for one or more of the following reasons: lack of benefit to the business in terms effectiveness or performance; burden of additional costs; negative effect on meeting customer demand, on quality or on performance; inability to re-organise work or recruit staff to accommodate the request; lack of work for the employee during the periods he or she proposes to work; and planned structural changes. The Department may make regulations to add reasons to this list. An employer could refuse part of a request for one of the reasons above. This could mean that an employee requesting to undertake two courses may have only one approved.
62. New Article 95D makes provision about regulations under Article 95C(4) specifying the manner in which an application is to be handled. Such regulations may include provision for the employee to be accompanied to relevant meetings, such meetings to be postponed where the companion is unavailable, rights to paid time off to act as a companion, rights to complain to an industrial tribunal and not be subjected to a detriment and unfair dismissal in relation to the previous requirements, and the circumstances in which an application is to be treated as withdrawn.
63. Where an employer agrees or agrees in part to a request, an employee is required under new Article 95E to inform his or her employer if he or she does not start or ceases to attend the agreed study or training. The employee also needs to tell the employer if he or she takes on study or training differing from that which was agreed. Regulations made by the Department under this Article may specify how an employee should inform the employer of any changes in the training.
64. New Article 95F makes provision for an employee to complain to an industrial tribunal where the employer has failed to comply with the duties concerning the consideration of a request (including procedural requirements) or where the employer's decision to refuse a request, or part of it, was based on incorrect facts. A tribunal complaint (unless the tribunal exercises its discretion to grant

an extension) must be made within three months of either an employer notifying an employee, following an appeal, of the decision to refuse a request, or (in certain kinds of cases specified by the Department) from the point where the employer is alleged to have failed to comply with a duty. Paragraph (4) excludes employees from complaining to tribunals under Article 95F in relation to the right to be accompanied at meetings if regulations under Article 95D make provision about such complaints instead.

65. New Article 95G provides that an industrial tribunal, where it finds the applicant's complaint well-founded, must make a declaration to that effect and may require the employer to reconsider the request. It may also make an award of compensation. The limit on the number of weeks' pay which a tribunal may award as compensation will be specified by the Department in regulations.
66. New Article 70F of the 1996 Order, inserted by paragraph 4 of Part 2 of Schedule 3, ensures that an employee has a right not to be subjected to any detriment by his or her employer as a result of making, or proposing to make, an Article 95A application, exercising, or proposing to exercise, rights under Article 95C or submitting a complaint to an industrial tribunal under Article 95F, or alleging circumstances that would justify such a claim.
67. New Article 135D of the 1996 Order, inserted by paragraph 6 of Part 2 of Schedule 3, ensures that an employee will be able to claim unfair dismissal if the reason for the dismissal is that the employee made, or proposed to make, a request for time to train, exercised, or proposed to exercise, rights under Article 95C or submitted a claim to an industrial tribunal under Article 95F, or alleged circumstances that would justify such a claim.