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STATUTORY INSTRUMENTS

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**1996 No. 1919**

**The Employment Rights (Northern Ireland) Order 1996**

**PART VII**

**TIME OFF WORK**

*Trade union duties and activities*

**Right to time off for carrying out trade union duties**

**92.**—(1) An employer shall permit an employee of his who is an official of an independent trade union recognised by the employer to take time off during his working hours for the purpose of carrying out any duties of his, as such an official, concerned with—

- (a) negotiations with the employer related to or connected with matters falling within Article 96(1) of the 1992 Order in relation to which the trade union is recognised by the employer, or
- (b) the performance on behalf of employees of the employer of functions related to or connected with matters falling within that provision which the employer has agreed may be so performed by the trade union.

(2) He shall also permit such an employee to take time off during his working hours for the purpose of undergoing training in aspects of industrial relations—

- (a) relevant to the carrying out of such duties as are mentioned in paragraph (1), and
- (b) approved by the Northern Ireland Committee of the Irish Congress of Trade Unions or by the independent trade union of which he is an official.

(3) The amount of time off which an employee is to be permitted to take under this Article and the purposes for which, the occasions on which and any conditions subject to which time off may be so taken are those that are reasonable in all the circumstances having regard to any relevant provisions of a Code of Practice issued by the Agency under Article 90 of the 1992 Order.

(4) For the purposes of this Article the working hours of an employee shall be taken to be any time when, in accordance with his contract of employment, the employee is required to be at work.

**Right to remuneration for time off under Article 92**

**93.**—(1) An employer who permits an employee to take time off under Article 92 shall pay him for the time taken off pursuant to the permission.

(2) Where the employee's remuneration for the work he would ordinarily have been doing during that time does not vary with the amount of work done, he must be paid as if he had worked at that work for the whole of that time.

(3) Where the employee's remuneration for the work he would ordinarily have been doing during that time varies with the amount of work done, he must be paid an amount calculated by reference to the average hourly earnings for that work.

- (4) The average hourly earnings mentioned in paragraph (3) are—
  - (a) those of the employee concerned, or
  - (b) if no fair estimate can be made of those earnings, the average hourly earnings for work of that description of persons in comparable employment with the same employer or, if there are no such persons, a figure of average hourly earnings which is reasonable in the circumstances.

(5) A right to be paid an amount under paragraph (1) does not affect any right of an employee in relation to remuneration under his contract of employment (“contractual remuneration”).

(6) Any contractual remuneration paid to an employee in respect of a period of time off under Article 92 goes towards discharging any liability of the employer under paragraph (1) in respect of that period; and, conversely, any payment under paragraph (1) in respect of a period goes towards discharging any liability of the employer to pay contractual remuneration in respect of that period.

### **Right to time off for trade union activities**

**94.**—(1) An employer shall permit an employee of his who is a member of an independent trade union recognised by the employer in respect of that description of employee to take time off during his working hours for the purpose of taking part in—

- (a) any activities of the union, and
- (b) any activities in relation to which the employee is acting as a representative of the union.

(2) The right conferred by paragraph (1) does not extend to activities which themselves consist of industrial action, whether or not in contemplation or furtherance of a trade dispute.

(3) The amount of time off which an employee is to be permitted to take under this Article and the purposes for which, the occasions on which and any conditions subject to which time off may be so taken are those that are reasonable in all the circumstances having regard to any relevant provisions of a Code of Practice issued by the Agency under Article 90 of the 1992 Order.

(4) For the purposes of this Article the working hours of an employee shall be taken to be any time when, in accordance with his contract of employment, the employee is required to be at work.

### **Complaints to industrial tribunals**

**95.**—(1) An employee may present a complaint to an industrial tribunal that his employer—

- (a) has failed to permit him to take time off as required by Article 92 or 94, or
- (b) has failed to pay him in accordance with Article 93.

(2) An industrial tribunal shall not consider a complaint under this Article unless it is presented—

- (a) before the end of the period of three months beginning with the date when the failure occurred, or
- (b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

(3) Where an industrial tribunal finds a complaint under paragraph (1)(a) well-founded, the tribunal—

- (a) shall make a declaration to that effect, and
- (b) may make an award of compensation to be paid by the employer to the employee.

(4) The amount of the compensation shall be such as the tribunal considers just and equitable in all the circumstances having regard

- (a) the employer’s default in failing to permit time off to be taken by the employee, and

(b) any loss sustained by the employee which is attributable to the matters complained of.

(5) Where on a complaint under paragraph (1)(b) an industrial tribunal finds that an employer has failed to pay an employee in accordance with Article 93, it shall order the employer to pay the amount which it finds to be due.