



Employment Rights Act 1996

1996 CHAPTER 18

PART VI

TIME OFF WORK

Public duties

50 Right to time off for public duties

- (1) An employer shall permit an employee of his who is a justice of the peace to take time off during the employee's working hours for the purpose of performing any of the duties of his office.
- (2) An employer shall permit an employee of his who is a member of—
 - (a) a local authority,
 - (b) a statutory tribunal,
 - (c) a police authority,
 - (d) a board of prison visitors or a prison visiting committee,
 - (e) a relevant health body,
 - (f) a relevant education body, or
 - (g) the Environment Agency or the Scottish Environment Protection Agency,to take time off during the employee's working hours for the purposes specified in subsection (3).
- (3) The purposes referred to in subsection (2) are—
 - (a) attendance at a meeting of the body or any of its committees or sub-committees, and
 - (b) the doing of any other thing approved by the body, or anything of a class so approved, for the purpose of the discharge of the functions of the body or of any of its committees or sub-committees.
- (4) The amount of time off which an employee is to be permitted to take under this section, and 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, in particular, to—

- (a) how much time off is required for the performance of the duties of the office or as a member of the body in question, and how much time off is required for the performance of the particular duty,
- (b) how much time off the employee has already been permitted under this section or sections 168 and 170 of the Trade Union and Labour Relations (Consolidation) Act 1992 (time off for trade union duties and activities), and
- (c) the circumstances of the employer's business and the effect of the employee's absence on the running of that business.

(5) In subsection (2)(a) “a local authority” means—

- (a) a local authority within the meaning of the Local Government Act 1972,
- (b) a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994,
- (c) the Common Council of the City of London,
- (d) a National Park authority, or
- (e) the Broads Authority.

(6) The reference in subsection (2) to a member of a police authority is to a person appointed as such a member under Schedule 2 to the Police Act 1996.

(7) In subsection (2)(d)—

- (a) “a board of prison visitors” means a board of visitors appointed under section 6(2) of the Prison Act 1952, and
- (b) “a prison visiting committee” means a visiting committee appointed under section 19(3) of the Prisons (Scotland) Act 1989 or constituted by virtue of rules made under section 39 (as read with section 8(1)) of that Act.

(8) In subsection (2)(e) “a relevant health body” means—

- (a) a National Health Service trust established under Part I of the National Health Service and Community Care Act 1990 or the National Health Service (Scotland) Act 1978,
- (b) a Health Authority established under section 8 of the National Health Service Act 1977 or a Special Health Authority established under section 11 of that Act, or
- (c) a Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978.

(9) In subsection (2)(f) “a relevant education body” means—

- (a) a managing or governing body of an educational establishment maintained by a local education authority,
- (b) a governing body of a grant-maintained school, further education corporation or higher education corporation,
- (c) a school council appointed under section 125(1) of the Local Government (Scotland) Act 1973,
- (d) a school board within the meaning of section 1(1) of the School Boards (Scotland) Act 1988,
- (e) a board of management of a self-governing school within the meaning of section 135(1) of the Education (Scotland) Act 1980,

- (f) a board of management of a college of further education within the meaning of section 36(1) of the Further and Higher Education (Scotland) Act 1992,
 - (g) a governing body of a central institution within the meaning of section 135(1) of the Education (Scotland) Act 1980, or
 - (h) a governing body of a designated institution within the meaning of Part II of the Further and Higher Education (Scotland) Act 1992.
- (10) The Secretary of State may by order—
 - (a) modify the provisions of subsections (1) and (2) and (5) to (9) by adding any office or body, removing any office or body or altering the description of any office or body, or
 - (b) modify the provisions of subsection (3).
- (11) For the purposes of this section 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.

51 Complaints to industrial tribunals

- (1) An employee may present a complaint to an industrial tribunal that his employer has failed to permit him to take time off as required by section 50.
- (2) An industrial tribunal shall not consider a complaint under this section that an employer has failed to permit an employee to take time off unless it is presented—
 - (a) before the end of the period of three months beginning with the date on which 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 this section 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 to—
 - (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 to which the complaint relates.

Looking for work and making arrangements for training

52 Right to time off to look for work or arrange training

- (1) An employee who is given notice of dismissal by reason of redundancy is entitled to be permitted by his employer to take reasonable time off during the employee's working hours before the end of his notice in order to—
 - (a) look for new employment, or

- (b) make arrangements for training for future employment.
- (2) An employee is not entitled to take time off under this section unless, on whichever is the later of—
 - (a) the date on which the notice is due to expire, and
 - (b) the date on which it would expire were it the notice required to be given by section 86(1),he will have been (or would have been) continuously employed for a period of two years or more.
- (3) For the purposes of this section 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.

53 Right to remuneration for time off under section 52

- (1) An employee who is permitted to take time off under section 52 is entitled to be paid remuneration by his employer for the period of absence at the appropriate hourly rate.
- (2) The appropriate hourly rate, in relation to an employee, is the amount of one week's pay divided by the number of normal working hours in a week for that employee when employed under the contract of employment in force on the day when the notice of dismissal was given.
- (3) But where the number of normal working hours differs from week to week or over a longer period, the amount of one week's pay shall be divided instead by the average number of normal working hours calculated by dividing by twelve the total number of the employee's normal working hours during the period of twelve weeks ending with the last complete week before the day on which the notice was given.
- (4) If an employer unreasonably refuses to permit an employee to take time off from work as required by section 52, the employee is entitled to be paid an amount equal to the remuneration to which he would have been entitled under subsection (1) if he had been permitted to take the time off.
- (5) The amount of an employer's liability to pay remuneration under subsection (1) shall not exceed, in respect of the notice period of any employee, forty per cent. of a week's pay of that employee.
- (6) A right to any amount under subsection (1) or (4) does not affect any right of an employee in relation to remuneration under his contract of employment ("contractual remuneration").
- (7) Any contractual remuneration paid to an employee in respect of a period of time off under section 52 goes towards discharging any liability of the employer to pay remuneration under subsection (1) in respect of that period; and, conversely, any payment of remuneration under subsection (1) in respect of a period goes towards discharging any liability of the employer to pay contractual remuneration in respect of that period.

54 Complaints to industrial tribunals

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

- (a) has unreasonably refused to permit him to take time off as required by section 52, or
 - (b) has failed to pay the whole or any part of any amount to which the employee is entitled under section 53(1) or (4).
- (2) An industrial tribunal shall not consider a complaint under this section unless it is presented—
 - (a) before the end of the period of three months beginning with the date on which it is alleged that the time off should have been permitted, 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 this section well-founded, the tribunal shall—
 - (a) make a declaration to that effect, and
 - (b) order the employer to pay to the employee the amount which it finds due to him.
- (4) The amount which may be ordered by a tribunal to be paid by an employer under subsection (3) (or, where the employer is liable to pay remuneration under section 53, the aggregate of that amount and the amount of that liability) shall not exceed, in respect of the notice period of any employee, forty per cent. of a week's pay of that employee.

Ante-natal care

55 Right to time off for ante-natal care

- (1) An employee who—
 - (a) is pregnant, and
 - (b) has, on the advice of a registered medical practitioner, registered midwife or registered health visitor, made an appointment to attend at any place for the purpose of receiving ante-natal care,is entitled to be permitted by her employer to take time off during the employee's working hours in order to enable her to keep the appointment.
- (2) An employee is not entitled to take time off under this section to keep an appointment unless, if her employer requests her to do so, she produces for his inspection—
 - (a) a certificate from a registered medical practitioner, registered midwife or registered health visitor stating that the employee is pregnant, and
 - (b) an appointment card or some other document showing that the appointment has been made.
- (3) Subsection (2) does not apply where the employee's appointment is the first appointment during her pregnancy for which she seeks permission to take time off in accordance with subsection (1).
- (4) For the purposes of this section the working hours of an employee shall be taken to be any time when, in accordance with her contract of employment, the employee is required to be at work.

56 Right to remuneration for time off under section 55

- (1) An employee who is permitted to take time off under section 55 is entitled to be paid remuneration by her employer for the period of absence at the appropriate hourly rate.
- (2) The appropriate hourly rate, in relation to an employee, is the amount of one week's pay divided by the number of normal working hours in a week for that employee when employed under the contract of employment in force on the day when the time off is taken.
- (3) But where the number of normal working hours differs from week to week or over a longer period, the amount of one week's pay shall be divided instead by—
 - (a) the average number of normal working hours calculated by dividing by twelve the total number of the employee's normal working hours during the period of twelve weeks ending with the last complete week before the day on which the time off is taken, or
 - (b) where the employee has not been employed for a sufficient period to enable the calculation to be made under paragraph (a), a number which fairly represents the number of normal working hours in a week having regard to such of the considerations specified in subsection (4) as are appropriate in the circumstances.
- (4) The considerations referred to in subsection (3)(b) are—
 - (a) the average number of normal working hours in a week which the employee could expect in accordance with the terms of her contract, and
 - (b) the average number of normal working hours of other employees engaged in relevant comparable employment with the same employer.
- (5) A right to any amount under subsection (1) does not affect any right of an employee in relation to remuneration under her contract of employment ("contractual remuneration").
- (6) Any contractual remuneration paid to an employee in respect of a period of time off under section 55 goes towards discharging any liability of the employer to pay remuneration under subsection (1) in respect of that period; and, conversely, any payment of remuneration under subsection (1) in respect of a period goes towards discharging any liability of the employer to pay contractual remuneration in respect of that period.

57 Complaints to industrial tribunals

- (1) An employee may present a complaint to an industrial tribunal that her employer—
 - (a) has unreasonably refused to permit her to take time off as required by section 55, or
 - (b) has failed to pay the whole or any part of any amount to which the employee is entitled under section 56.
- (2) An industrial tribunal shall not consider a complaint under this section unless it is presented—
 - (a) before the end of the period of three months beginning with the date of the appointment concerned, 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 this section well-founded, the tribunal shall make a declaration to that effect.
- (4) If the complaint is that the employer has unreasonably refused to permit the employee to take time off, the tribunal shall also order the employer to pay to the employee an amount equal to the remuneration to which she would have been entitled under section 56 if the employer had not refused.
- (5) If the complaint is that the employer has failed to pay the employee the whole or part of any amount to which she is entitled under section 56, the tribunal shall also order the employer to pay to the employee the amount which it finds due to her.

Occupational pension scheme trustees

58 Right to time off for pension scheme trustees

- (1) The employer in relation to a relevant occupational pension scheme shall permit an employee of his who is a trustee of the scheme to take time off during the employee's working hours for the purpose of—
 - (a) performing any of his duties as such a trustee, or
 - (b) undergoing training relevant to the performance of those duties.
- (2) The amount of time off which an employee is to be permitted to take under this section 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, in particular, to—
 - (a) how much time off is required for the performance of the duties of a trustee of the scheme and the undergoing of relevant training, and how much time off is required for performing the particular duty or for undergoing the particular training, and
 - (b) the circumstances of the employer's business and the effect of the employee's absence on the running of that business.
- (3) In this section—
 - (a) “relevant occupational pension scheme” means an occupational pension scheme (as defined in section 1 of the Pension Schemes Act 1993) established under a trust, and
 - (b) references to the employer, in relation to such a scheme, are to an employer of persons in the description or category of employment to which the scheme relates.
- (4) For the purposes of this section 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.

59 Right to payment for time off under section 58

- (1) An employer who permits an employee to take time off under section 58 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 subsection (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 subsection (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 section 58 goes towards discharging any liability of the employer under subsection (1) in respect of that period; and, conversely, any payment under subsection (1) in respect of a period goes towards discharging any liability of the employer to pay contractual remuneration in respect of that period.

60 Complaints to industrial tribunals

- (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 section 58, or
 - (b) has failed to pay him in accordance with section 59.
- (2) An industrial tribunal shall not consider a complaint under this section 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 subsection (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 to—
 - (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 subsection (1)(b) an industrial tribunal finds that an employer has failed to pay an employee in accordance with section 59, it shall order the employer to pay the amount which it finds to be due.

Employee representatives

61 Right to time off for employee representatives

- (1) An employee who is—
- (a) an employee representative for the purposes of Chapter II of Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 (redundancies) or Regulations 10 and 11 of the Transfer of Undertakings (Protection of Employment) Regulations 1981, or
 - (b) a candidate in an election in which any person elected will, on being elected, be such an employee representative,
- is entitled to be permitted by his employer to take reasonable time off during the employee's working hours in order to perform his functions as such an employee representative or candidate.
- (2) For the purposes of this section 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.

62 Right to remuneration for time off under section 61

- (1) An employee who is permitted to take time off under section 61 is entitled to be paid remuneration by his employer for the time taken off at the appropriate hourly rate.
- (2) The appropriate hourly rate, in relation to an employee, is the amount of one week's pay divided by the number of normal working hours in a week for that employee when employed under the contract of employment in force on the day when the time off is taken.
- (3) But where the number of normal working hours differs from week to week or over a longer period, the amount of one week's pay shall be divided instead by—
- (a) the average number of normal working hours calculated by dividing by twelve the total number of the employee's normal working hours during the period of twelve weeks ending with the last complete week before the day on which the time off is taken, or
 - (b) where the employee has not been employed for a sufficient period to enable the calculation to be made under paragraph (a), a number which fairly represents the number of normal working hours in a week having regard to such of the considerations specified in subsection (4) as are appropriate in the circumstances.
- (4) The considerations referred to in subsection (3)(b) are—
- (a) the average number of normal working hours in a week which the employee could expect in accordance with the terms of his contract, and
 - (b) the average number of normal working hours of other employees engaged in relevant comparable employment with the same employer.

- (5) A right to any amount under subsection (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 section 61 goes towards discharging any liability of the employer to pay remuneration under subsection (1) in respect of that period; and, conversely, any payment of remuneration under subsection (1) in respect of a period goes towards discharging any liability of the employer to pay contractual remuneration in respect of that period.

63 Complaints to industrial tribunals

- (1) An employee may present a complaint to an industrial tribunal that his employer—
 - (a) has unreasonably refused to permit him to take time off as required by section 61, or
 - (b) has failed to pay the whole or any part of any amount to which the employee is entitled under section 62.
- (2) An industrial tribunal shall not consider a complaint under this section unless it is presented—
 - (a) before the end of the period of three months beginning with the day on which the time off was taken or on which it is alleged the time off should have been permitted, 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 this section well-founded, the tribunal shall make a declaration to that effect.
- (4) If the complaint is that the employer has unreasonably refused to permit the employee to take time off, the tribunal shall also order the employer to pay to the employee an amount equal to the remuneration to which he would have been entitled under section 62 if the employer had not refused.
- (5) If the complaint is that the employer has failed to pay the employee the whole or part of any amount to which he is entitled under section 62, the tribunal shall also order the employer to pay to the employee the amount which it finds due to him.