



# Employment Protection (Consolidation) Act 1978

## 1978 CHAPTER 44

### PART II

#### RIGHTS ARISING IN COURSE OF EMPLOYMENT

##### *Time off work*

#### **27 Time off for carrying out trade union duties.**

(1) An employer shall permit an employee of his who is an official of an independent trade union recognised by him to take time off, subject to and in accordance with subsection (2), during the employee's working hours for the purpose of enabling him

—  
[<sup>F1</sup>(a) to carry out—

(i) any duties of his, as such an official, which are concerned with negotiations with the employer that are related to or connected with any matters which fall within section 29(1) of the Trade Union and Labour Relations Act 1974 and in relation to which the trade union is recognised by the employer, or

(ii) any other duties of his, as such an official, which are concerned with the performance, on behalf of employees of the employer, of any functions that are related to or connected with any matters falling within that provision and that the employer has agreed may be so performed by the trade union; or]

(b) to undergo training in aspects of industrial relations which is—

(i) relevant to the carrying out of [<sup>F2</sup>any such duties as are mentioned in paragraph (a)]; and

(ii) approved by the Trades Union Congress or by the independent trade union of which he is an official.

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*Changes to legislation: There are currently no known outstanding effects for the Employment Protection (Consolidation) Act 1978, Cross Heading: Time off work. (See end of Document for details)*

- (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 to any relevant provisions of a Code of Practice issued by the Advisory, Conciliation and Arbitration Service under section 6 of the <sup>M1</sup>Employment Protection Act 1975.
- (3) An employer who permits an employee to take time off under this section for any purpose shall, subject to the following provisions of this section, pay him for the time taken off for that purpose in accordance with the permission—
- (a) 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, as if he had worked at that work for the whole of that time;
  - (b) where the employee's remuneration for that work varies with the amount of work done, an amount calculated by reference to the average hourly earnings for that work.
- (4) The average hourly earnings referred to in subsection (3)(b) shall be the average hourly earnings of the employee concerned or, 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) Subject to subsection (6), a right to be paid any amount under subsection (3) shall not affect any right of an employee in relation to remuneration under his contract of employment (in this section referred to as "contractual remuneration").
- (6) Any contractual remuneration paid to an employee in respect of a period of time off to which subsection (1) applies shall go towards discharging any liability of the employer under subsection (3) in respect of that period, and conversely any payment of any amount under subsection (3) in respect of a period shall go towards discharging any liability of the employer to pay contractual remuneration in respect of that period.
- (7) An employee who is an official of an independent trade union recognised by his employer may present a complaint to an industrial tribunal that his employer has failed to permit him to take time off as required by this section or to pay him the whole or part of any amount so required to be paid.

#### Textual Amendments

- F1** S. 27(1)(a) substituted (with saving) by [Employment Act 1989 \(c. 38, SIF 43:1\)](#), ss. 14, 29(6), Sch. 9 paras. 2, 4
- F2** Words substituted (with saving) by [Employment Act 1989 \(c. 38, SIF 43:1\)](#), ss. 14, 29(6), Sch. 9 paras. 2, 4

#### Marginal Citations

- M1** 1975 c. 71.

## 28 Time off for trade union activities.

- (1) An employer shall permit an employee of his who is a member of an appropriate trade union to take time off, subject to and in accordance with subsection (3), during the

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employee's working hours for the purpose of taking part in any trade union activity to which this section applies.

- (2) In this section “appropriate trade union”, in relation to an employee of any description, means an independent trade union which is recognised by his employer in respect of that description of employee, and the trade union activities to which this section applies are—
- (a) any activities of an appropriate trade union of which the employee is a member; and
  - (b) any activities, whether or not falling within paragraph (a), in relation to which the employee is acting as a representative of such a union,
- excluding 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 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 to any relevant provisions of a Code of Practice issued by the Advisory, Conciliation and Arbitration Service under section 6 of the <sup>M2</sup>Employment Protection Act 1975.
- (4) An employee who is a member of an independent trade union recognised by his employer may present a complaint to an industrial tribunal that his employer has failed to permit him to take time off as required by this section.

**Marginal Citations**

M2 1975 c. 71.

**29 Time off for public duties.**

- (1) An employer shall permit an employee of his who is—
- (a) a justice of the peace;
  - (b) a member of a local authority;
  - [<sup>F3</sup>(bb) a member of the Broads Authority;]
  - (c) a member of any statutory tribunal;
  - [<sup>F4</sup>(cc) a member of, in England and Wales, a board of visitors appointed under section 6(2) of the <sup>M3</sup>Prison Act 1952 or, in Scotland, a visiting committee appointed under section 19(3) of the Prisons (Scotland) Act <sup>M4</sup>1989 or constituted by virtue of rules made under section 39, as read with section 8(1), of that Act;]
  - (d) a member of [<sup>F5</sup>a National Health Service Trust or], in England and Wales, a Regional Health Authority [<sup>F6</sup>an Area Health Authority or a District] Health Authority [<sup>F7</sup>or a Family Practitioner Committee] or, in Scotland, a Health Board;
  - (e) a member of, in England and Wales, the managing or governing body of an educational establishment maintained by a local education authority, or, in Scotland, a school <sup>F8</sup>. . . council or the governing body of a [<sup>F9</sup>designated institution or a central institution]; <sup>F10</sup>
  - [<sup>F11</sup>(ee) a member of the governing body of a grant-maintained school;]
  - [<sup>F12</sup>(ef) a member of the governing body of a higher education corporation; or]

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- [<sup>F13</sup>(ef) a member of a school board or of the board of management of a self-governing school;]
- [<sup>F14</sup>(eg) a member of the board of management of a college of further education; or]
- (f) a member of, in England and Wales, [<sup>F15</sup>the National Rivers Authority or, in Scotland, a] river purification board,

to take time off, subject to and in accordance with subsection (4), during the employee's working hours for the purposes of performing any of the duties of his office or, as the case may be, his duties as such a member.

(2) In subsection (1)—

- (a) “local authority” in relation to England and Wales includes the Common Council of the City of London but otherwise has the same meaning as in the <sup>M5</sup>Local Government Act 1972, and in relation to Scotland has the same meaning as in the <sup>M6</sup>Local Government (Scotland) Act 1973;
- (b) “Regional Health Authority” <sup>F16</sup> “Area Health Authority” [<sup>F17</sup>and District Health Authority][<sup>F18</sup>and “Family Practitioner Committee”] have the same meaning as in the <sup>M7</sup>National Health Service Act 1977, and “Health Board” has the same meaning as in [<sup>F19</sup>the <sup>M8</sup>National Health Service (Scotland) Act 1978];
- (c) “local education authority” means the authority designated by section 192(1) of the <sup>M9</sup>Local Government Act 1972, [<sup>F20</sup>“school council” means a body appointed under section 125(1) of the Local Government (Scotland) Act 1973, “board of management”, where it appears in paragraph (ef) as inserted by the Self-Governing Schools etc. (Scotland) Act 1989, “central institution” and “self-governing school” have the same meanings as in section 135(1) of the Education (Scotland) Act 1980, “school board” has the same meaning as in section 1(1) of the School Boards (Scotland) Act 1988, “board of management”, where it appears and “college of further education” have the same meanings as in section 36(1) of the Further and Higher Education (Scotland) Act 1992 and “designated institution” has the same meaning as in Part II of that Act of 1992]; and
- (d) “river purification board” means a board established under section 135 of the Local Government (Scotland) Act 1973.

(3) For the purposes of subsection (1) the duties of a member of a body referred to in paragraphs (b) to (f) of that subsection are:—

- (a) attendance at a meeting of the body or any of its committees or sub-committees;
- (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 the following:—

- (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 27 and 28;

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- (c) the circumstances of the employer's business and the effect of the employee's absence on the running of that business.
- (5) The Secretary of State may by order—
- (a) modify the provisions of subsection (1) by adding any office or body to, or removing any office or body from, that subsection or by altering the description of any office or body in that subsection; and
  - (b) modify the provisions of subsection (3).
- (6) 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 this section.

#### Textual Amendments

- F3** S. 29(1)(bb) inserted (E.W.) by Norfolk and Suffolk Broads Act 1988 (c. 4, SIF 81:1), s. 21, **Sch. 6 para. 19**
- F4** S. 29(1)(cc) inserted by S.I. 1990/1870, **art. 2**
- F5** Words inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 20**
- F6** Words substituted by Health Services Act 1980 (c. 53, SIF 113:2), **Sch. 1 para. 84**
- F7** Words inserted by S.I. 1985/39, **art. 8(a)(i)**
- F8** Words in s. 29(1)(e) repealed (16.5.1992) by Further and Higher Education (Scotland) Act 1992 (c. 37), s. 62(3), **Sch.10**; S.I. 1992/817, art. 3(2), **Sch.1**.
- F9** Words in s. 29(1)(e) substituted (16.5.1992) by Further and Higher Education (Scotland) Act 1992 (c. 37), s. 62(2), **Sch. 9 para. 6(a)**; S.I. 1992/817, art. 3(2), **Sch.1**.
- F10** Word repealed by Education Reform Act 1988 (c. 40, SIF 41:1), ss. 231(7), 235(6), 237(1)(2), Sch. 12 Pt. I para. 23(a), **Sch. 13 Pt. II**
- F11** S. 29(1)(ee) inserted by Education Reform Act 1988 (c. 40, SIF 41:1), ss. 231(7), 235(6), 237(1), **Sch. 12 para. 23(b)**
- F12** S. 29(1)(ef) inserted (E.W.S.) by Education Reform Act 1988 (c. 40, SIF 41:1), ss. 231(7), 235(6), 237(1), **Sch. 12 para. 80**
- F13** S. 29(1)(ef) inserted (S.) by Self-Governing Schools etc. (Scotland) Act 1989 (c. 39, SIF 41:2), s. 82(1), **Sch. 10 para. 7(a)**
- F14** S. 29(1)(eg) inserted (16.5.1992) by Further and Higher Education (Scotland) Act 1992 (c. 37), s. 62(2), **Sch. 9 para. 6(b)**; S.I. 1992/817, art. 3(2), **Sch.1**.
- F15** Words substituted by Water Act 1989 (c. 15, SIF 130), s. 190, **Sch. 25 para. 56** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), 58)
- F16** Word repealed by Health Services Act 1980 (c. 53, SIF 113:2), **Sch. 1 para. 84**
- F17** Words inserted by Health Services Act 1980 (c. 53, SIF 113:2), **Sch. 1 para. 84**
- F18** Words inserted by S.I. 1985/39, **art. 8(a)(ii)**
- F19** Words substituted by virtue of National Health Service (Scotland) Act 1978 (c. 29, SIF 113:2), **Sch. 15 para. 2**
- F20** Words in s. 29(2)(c) substituted (16.5.1992) by Further and Higher Education (Scotland) Act 1992 (c. 37), s. 62(2), **Sch. 9 para. 6(c)**; S.I. 1992/817, **art. 3(2) Sch.1**.

#### Modifications etc. (not altering text)

- C1** S. 29(3) applied by Local Government and Housing Act 1989 (c. 42, SIF 81:1,2), **s. 10(2)**
- C2** S. 29(4) excluded by Local Government and Housing Act 1989 (c. 42, SIF 81:1,2), **s. 10(1)**

#### Marginal Citations

- M3** 1952 c.52(39:1).
- M4** 1989 c.45(39:1).
- M5** 1972 c. 70.

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<b>M6</b>	1973 c. 65.
<b>M7</b>	1977 c. 49.
<b>M8</b>	1978 c. 29.
<b>M9</b>	1972 c. 70.

### **30 Provisions as to industrial tribunals.**

- (1) An industrial tribunal shall not consider—
- (a) a complaint under section 27, 28 or 29 that an employer has failed to permit an employee to take time off; or
  - (b) a complaint under section 27 that an employer has failed to pay an employee the whole or part of any amount required to be paid under that section;
- unless it is presented within three months of the date when the failure occurred or 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 within the period of three months.
- (2) Where an industrial tribunal finds any complaint mentioned in subsection (1)(a) well-founded, the tribunal shall make a declaration to that effect and may make an award of compensation to be paid by the employer to the employee which shall be of such amount as the tribunal considers just and equitable in all the circumstances having regard to the employer's default in failing to permit time off to be taken by the employee and to any loss sustained by the employee which is attributable to the matters complained of.
- (3) Where on a complaint under section 27 an industrial tribunal finds that the employer has failed to pay the employee the whole or part of the amount required to be paid under that section, the tribunal shall order the employer to pay the employee the amount which it finds due to him.

### **31 Time off to look for work or make arrangements for training.**

- (1) An employee who is given notice of dismissal by reason of redundancy shall, subject to the following provisions of this section, be entitled before the expiration of his notice to be allowed by his employer reasonable time off during the employee's working hours in order to look for new employment or make arrangements for training for future employment.
- (2) An employee shall not be entitled to time off under this section unless, on whichever is the later of the following dates, that is to say,—
- (a) the date on which the notice is due to expire; or
  - (b) the date on which it would expire were it the notice required to be given by section 49(1),
- he will have been or, as the case may be, would have been continuously employed for a period of two years or more.
- (3) An employee who is allowed time off during his working hours under subsection (1) shall, subject to the following provisions of this section, be entitled to be paid remuneration by his employer for the period of absence at the appropriate hourly rate.
- (4) The appropriate hourly rate in relation to an employee shall be the amount of one week's pay divided by—

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- (a) 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 notice was given; or
  - (b) where the number of such normal working hours differs from week to week or over a longer period, the average number of such 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 notice was given.
- (5) If an employer unreasonably refuses to allow an employee time off from work under this section, the employee shall, subject to subsection (9), be entitled to be paid an amount equal to the remuneration to which he would have been entitled under subsection (3) if he had been allowed the time off.
- (6) An employee may present a complaint to an industrial tribunal on the ground that his employer has unreasonably refused to allow him time off under this section or has failed to pay the whole or any part of any amount to which the employee is entitled under subsection (3) or (5).
- (7) An industrial tribunal shall not entertain a complaint under subsection (6) unless it is presented to the tribunal within the period of three months beginning with the day on which it is alleged that the time off should have been allowed, or 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 within the period of three months.
- (8) If on a complaint under subsection (6) the tribunal finds the grounds of the complaint well-founded it shall make a declaration to that effect and shall order the employer to pay to the employee the amount which it finds due to him.
- (9) The amount—
- (a) of an employer's liability to pay remuneration under subsection (3); or
  - (b) which may be ordered by a tribunal to be paid by an employer under subsection (8),
- or, where both paragraphs (a) and (b) are applicable, the aggregate amount of the liabilities referred to in those paragraphs, shall not exceed, in respect of the notice period of any employee, two-fifths of week's pay of that employee.
- (10) Subject to subsection (11), a right to any amount under subsection (3) or (5) shall not affect any right of an employee in relation to remuneration under the contract of employment (in this section referred to as "contractual remuneration").
- (11) Any contractual remuneration paid to an employee in respect of a period when he takes time off for the purposes referred to in subsection (1) shall go towards discharging any liability of the employer to pay remuneration under subsection (3) in respect of that period, and conversely any payment of remuneration under subsection (3) in respect of a period shall go towards discharging any liability of the employer to pay contractual remuneration in respect of that period.

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**Modifications etc. (not altering text)**

C3 S. 31(2) modified (1.4.1996) by S.I. 1996/1023, arts. 3, 4

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### [<sup>F21</sup>31A Time off for ante-natal care.

- (1) An employee who is pregnant and who 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 shall, subject to the following provisions of this section, have the right not to be unreasonably refused time off during her working hours to enable her to keep the appointment.
- (2) Subject to subsection (3), an employer shall not be required by virtue of this section to permit an employee to take time off to keep an appointment unless, if he 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) shall 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) An employee who is permitted to take time off during her working hours in accordance with subsection (1) shall be entitled to be paid remuneration by her employer for the period of absence at the appropriate hourly rate.
- (5) The appropriate hourly rate in relation to an employee shall be the amount of one week's pay divided by—
  - (a) 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 time off is taken; or
  - (b) where the number of such normal working hours differs from week to week or over a longer period, the average number of such 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
  - (c) in a case falling within paragraph (b) but where the employee has not been employed for a sufficient period to enable the calculation to be made under that paragraph, a number which fairly represents the number of normal working hours in a week having regard to such of the following considerations as are appropriate in the circumstances, that is to say,—
    - (i) the average number of normal working hours in a week which the employee could expect in accordance with the terms of her contract;
    - (ii) the average number of such hours of other employees engaged in relevant comparable employment with the same employer.
- (6) An employee may present a complaint to an industrial tribunal that her employer has unreasonably refused her time off as required by this section or that he has failed to pay her the whole or part of any amount to which she is entitled under subsection (4).
- (7) An industrial tribunal shall not entertain a complaint under subsection (6) unless it is presented within the period of three months beginning with the day of the appointment concerned, or 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 within the period of three months.



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- (8) Where on a complaint under subsection (6) the tribunal finds the complaint well-founded it shall make a declaration to that effect; and—
- (a) if the complaint is that the employer has unreasonably refused the employee time off, the tribunal shall order the employer to pay to the employee an amount equal to the remuneration to which she would have been entitled under subsection (4) if the time off had not been refused; and
  - (b) 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 subsection (4), the tribunal shall order the employer to pay to the employee the amount which it finds due to her.
- (9) Subject to subsection (10), a right to any amount under subsection (4) shall not affect any right of an employee in relation to remuneration under her contract of employment (in this section referred to as “contractual remuneration”).
- (10) Any contractual remuneration paid to an employee in respect of a period of time off under this section shall go towards discharging any liability of the employer to pay remuneration under subsection (4) in respect of that period, and conversely any payment of remuneration under subsection (4) in respect of a period shall go towards discharging any liability of the employer to pay contractual remuneration in respect of that period.
- (11) Until the coming into operation of section 10 of the <sup>M10</sup>Nurses, Midwives and Health Visitors Act 1979, this section shall have effect as if for any reference to a registered midwife or registered health visitor there substituted a reference to a certified midwife.]

**Textual Amendments**

**F21** S. 31A inserted by [Employment Act 1980 \(c. 42, SIF 43:5\)](#), **s. 13**

**Modifications etc. (not altering text)**

**C4** 1.7.1983 appointed for coming into operation of [Nurses, Midwives and Health Visitors Act 1979 \(c. 36, SIF 83:1\)](#), **s. 10: S.I. 1983/668**

**Marginal Citations**

**M10** 1979 c. 36.

VALID FROM 22/08/1996

<sup>F22</sup>**31AA**.....

**Textual Amendments**

**F22** S. 31AA repealed (22.8.1996) by [1996 c. 18, ss. 242, 243](#), **Sch. 3 Pt. I** (with ss. 191-195, 202)

[<sup>F24</sup>**31AA**Time off for employee representatives. **E+W+S**

- (1) An employee who is—

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- (a) an employee representative for the purposes of Chapter II of Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 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,

shall be entitled to be allowed by his employer reasonable time off during the employee's working hours in order to perform his functions as such an employee representative or candidate.

- (2) Subject to subsection (3), subsections (4) to (10) of section 31A shall apply to an employee who is allowed time off in accordance with this section as they apply to an employee who is permitted to take time off in accordance with subsection (1) of that section.
- (3) In its application by virtue of subsection (2)—
  - (a) subsection (4) of section 31A shall have effect as if for the reference to the period of absence there were substituted a reference to the time taken off, and
  - (b) subsection (7) of that section shall have effect as if for the reference to the day of the appointment concerned there were substituted a reference to the day on which it is alleged that the time off should have been allowed or the day on which the time off was taken.]

#### Textual Amendments

**F24** S. 31AA inserted (26.10.1995) by S.I. 1995/2587, reg. 13(1)

#### [<sup>F23</sup>32 Provisions supplementary to ss. 27 to 31A.

- (1) For the purposes of sections 27 to 31A the working hours of an employee shall be taken to be any time when, in accordance with his contract of employment, he is required to be at work.
- (2) For the purposes of sections 27 and 28 a trade union shall be taken to be recognised by an employer if it is recognised by him, to any extent, for the purpose of collective bargaining, that is to say, negotiations related to or connected with one or more of the matters specified in section 29(1) of the Trade Union and Labour Relations Act 1974.]

#### Textual Amendments

**F23** S. 32 substituted by Employment Act 1989 (c. 38, SIF 43:1), s. 29(3)(b), Sch. 6 para. 19, Sch. 9 para. 4(1)

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