



# Employment Act 2002

## 2002 CHAPTER 22

### PART 4

#### MISCELLANEOUS AND GENERAL

##### *Miscellaneous*

#### **43 Union learning representatives**

- (1) The Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52) is amended as follows.
- (2) After section 168 there is inserted—

##### **“168A Time off for union learning representatives**

- (1) An employer shall permit an employee of his who is—
  - (a) a member of an independent trade union recognised by the employer, and
  - (b) a learning representative of the trade union,to take time off during his working hours for any of the following purposes.
- (2) The purposes are—
  - (a) carrying on any of the following activities in relation to qualifying members of the trade union—
    - (i) analysing learning or training needs,
    - (ii) providing information and advice about learning or training matters,
    - (iii) arranging learning or training, and
    - (iv) promoting the value of learning or training,
  - (b) consulting the employer about carrying on any such activities in relation to such members of the trade union,

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*Status: Point in time view as at 27/04/2003.*

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- (c) preparing for any of the things mentioned in paragraphs (a) and (b).
- (3) Subsection (1) only applies if—
- (a) the trade union has given the employer notice in writing that the employee is a learning representative of the trade union, and
  - (b) the training condition is met in relation to him.
- (4) The training condition is met if—
- (a) the employee has undergone sufficient training to enable him to carry on the activities mentioned in subsection (2), and the trade union has given the employer notice in writing of that fact,
  - (b) the trade union has in the last six months given the employer notice in writing that the employee will be undergoing such training, or
  - (c) within six months of the trade union giving the employer notice in writing that the employee will be undergoing such training, the employee has done so, and the trade union has given the employer notice of that fact.
- (5) Only one notice under subsection (4)(b) may be given in respect of any one employee.
- (6) References in subsection (4) to sufficient training to carry out the activities mentioned in subsection (2) are to training that is sufficient for those purposes having regard to any relevant provision of a Code of Practice issued by ACAS or the Secretary of State.
- (7) If an employer is required to permit an employee to take time off under subsection (1), he shall also permit the employee to take time off during his working hours for the following purposes—
- (a) undergoing training which is relevant to his functions as a learning representative, and
  - (b) where the trade union has in the last six months given the employer notice under subsection (4)(b) in relation to the employee, undergoing such training as is mentioned in subsection (4)(a).
- (8) 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 provision of a Code of Practice issued by ACAS or the Secretary of State.
- (9) An employee may present a complaint to an employment tribunal that his employer has failed to permit him to take time off as required by this section.
- (10) In subsection (2)(a), the reference to qualifying members of the trade union is to members of the trade union—
- (a) who are employees of the employer of a description in respect of which the union is recognised by the employer, and
  - (b) in relation to whom it is the function of the union learning representative to act as such.
- (11) For the purposes of this section, a person is a learning representative of a trade union if he is appointed or elected as such in accordance with its rules.”

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- (3) In section 169(1) (duty of employer to pay employee for time off under section 168), after “168” there is inserted “ or 168A ”.
- (4) In section 170 (duty to permit time off to take part in trade union activities), after subsection (2) there is inserted—
- “(2A) The right conferred by subsection (1) does not extend to time off for the purpose of acting as, or having access to services provided by, a learning representative of a trade union.
- (2B) 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 having access to services provided by a person in his capacity as a learning representative of the trade union.
- (2C) Subsection (2B) only applies if the learning representative would be entitled to time off under subsection (1) of section 168A for the purpose of carrying on in relation to the employee activities of the kind mentioned in subsection (2) of that section.”
- (5) In that section, at the end there is inserted—
- “(5) For the purposes of this section—
- (a) a person is a learning representative of a trade union if he is appointed or elected as such in accordance with its rules, and
- (b) a person who is a learning representative of a trade union acts as such if he carries on the activities mentioned in section 168A(2) in that capacity.”
- (6) At the end of section 173 (provisions supplementary to section 168 to 170), there is inserted—
- “(3) The Secretary of State may by order made by statutory instrument amend section 168A for the purpose of changing the purposes for which an employee may take time off under that section.
- (4) No order may be made under subsection (3) unless a draft of the order has been laid before and approved by resolution of each House of Parliament.”
- (7) In sections 199(1) and 203(1) (powers of ACAS and Secretary of State to produce Codes of Practice), at the end there is inserted “or for purposes connected with trade union learning representatives”.
- (8) For section 200(3) there is substituted—
- “(3) A Code containing practical guidance—
- (a) on the time off to be permitted to a trade union learning representative in accordance with section 168A (time off for training and carrying out functions as a learning representative),
- (b) on the training that is sufficient to enable a trade union learning representative to carry on the activities mentioned in section 168A(2) (activities for which time off is to be permitted), or
- (c) on any of the matters referred to in section 199(2),

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shall not be issued unless the draft has been approved by a resolution of each House of Parliament; and if it is so approved, ACAS shall issue the Code in the form of the draft.”

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**Commencement Information**

**II** S. 43 in force at 27.4.2003 by S.I. 2003/1190, art. 2(1) (with art. 3)

**Status:**

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