

# The new right to take time-off work for study or training

## Is it as favourable as it sounds?

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### 1. What rights will employees have regarding asking to take time off for training purposes?

From 6th April 2010, employees who work in businesses of 250 employees or more will have the right to request time off from work to undertake study or training under Section 40 of the Apprenticeships, Skills, Children and Learning Act 2009. From April 2011, the right will be extended to cover all employers.

### 2. What type of training does it cover?

Employees will be able to request training which improves their effectiveness at work and the performance of their employer's business. This could be by way of accredited courses which lead to specific qualifications or unaccredited training to help them develop skills relevant to their jobs.

### 3. How much training is an employee allowed to undertake under these rules? And who pays for the training?

The legislation places no limits on the length of any study or training undertaken, nor on the way in which it is delivered.

Employers will not be obliged to pay for the training or to pay the employee for the time taken off work. However, given that their business will be benefitting from the training, some employers may wish to do so, although this will be entirely at their discretion.

### 4. Can anyone ask for time off to do training? Will employees be able to make as many requests for time off to train as they like?

The right will only apply to those employees who have worked for the employer for at least 6 months. In addition, employees are limited to making one request for time off in a 12-month period.

### 5. Is an employer bound to accept such requests for time off? In what cases does it not have to accept?

Whilst an employer must give serious consideration to requests, they can refuse to grant a request for one of the following 'business' reasons:

- that the proposed study or training would not improve the employee's effectiveness in the business or its performance
- the additional costs burden
- detrimental effect on ability to meet customer demand
- inability to re-organise work among existing staff
- inability to recruit additional staff
- detrimental impact on quality or performance
- insufficiency of work during the periods the employee proposes to work
- planned structural changes.

Employers must arrange a meeting with the employee to discuss the request within 28 days. Following the meeting, the employer must inform the employee in writing of its decision within 14 days. If the request is refused, the employer must provide reasons why.

### 6. Who decides if the training course requested is beneficial to the company? Can an employee appeal if a request is not granted?

If an employer does not grant a request, an employee can appeal against the decision within 14 days.

If the appeal is not upheld, employees have the right to bring a claim before an employment tribunal, but only on the grounds that the employer has failed to follow the correct procedure or that the employer has rejected the request on grounds other than the permissible ones.

If the employee succeeds at tribunal, the employer may be ordered to reconsider the request or to pay compensation to the employee. The amount of compensation payable will be capped at 8 week's pay, at a maximum weekly rate of £380.

### 7. What are your thoughts on the new law – what pitfalls (if any) can you foresee?

The new law is to be welcomed by employees, particularly as an estimated one-third of businesses do not train their staff, as it will provide them with an opportunity to improve their skills and gain training in an ever-competitive and changing working world.

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However, the effect of the law is limited by the fact that employers are not obliged to grant a request and that there are wide range of reasons for which a request can be refused. Furthermore, the enforceability of the right is narrow as employers face relatively weak sanctions for non-compliance. In addition, employees may be deterred from making a request if their employer does not offer to pay for the training or the time taken off and also because the right does not include training for personal development.

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From an employer's perspective, the legislation provides further regulation with which they will need to conform in a tough economic climate.