



# Trade Union and Labour Relations (Consolidation) Act 1992

## 1992 CHAPTER 52

### PART III

#### RIGHTS IN RELATION TO UNION MEMBERSHIP AND ACTIVITIES

##### *Time off for trade union duties and activities*

#### **168 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 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 section 178(2) (collective bargaining) 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<sup>F1</sup>, or
  - (c) receipt of information from the employer and consultation by the employer under section 188 (redundancies) or under the Transfer of Undertakings (Protection of Employment) Regulations 1981.]
- (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 subsection (1), and
  - (b) approved by the Trades Union Congress 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 section and the purposes for which, the occasions on which and any conditions subject to

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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 ACAS.

- (4) An employee may present a complaint to an [<sup>F2</sup>employment tribunal] that his employer has failed to permit him to take time off as required by this section.

#### Textual Amendments

- F1** S. 168(1)(c) and preceding word inserted (28.7.1999) by [The Collective Redundancies and Transfer of Undertakings \(Protection of Employment\) \(Amendment\) Regulations 1999 \(S.I. 1999/1925\)](#), **reg. 14**
- F2** Words in s. 168(4) substituted (1.8.1998) by [1998 c. 8, s. 1\(2\)\(a\)](#) (with s. 16(2)); S.I. 1998/1658, art. 2(1), **Sch. 1**

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

- C1** S. 168(3)(4) applied (4.9.2000) by [1999 c. 26, s. 10\(7\)](#) (with s. 15); S.I. 2000/242, **art. 2(1)** (with transitional provisions in [arts. 3, 4](#))

### [<sup>F3</sup>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,
  - (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.

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- (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.]

#### Textual Amendments

**F3** S. 168A inserted (27.4.2003) by [Employment Act 2002 \(c. 22\)](#), **ss. 43(2), 55(2)**; S.I. 2003/1190, **art. 2(1)** (with [art. 3](#))

### 169 Payment for time off under section 168.

- (1) An employer who permits an employee to take time off under section 168 [<sup>F4</sup>or 168A] 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 shall 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 shall be paid an amount calculated by reference to the average hourly earnings for that work.

The average hourly earnings shall be those 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

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are no such persons, a figure of average hourly earnings which is reasonable in the circumstances.

- (4) A right to be paid an amount under this section does not affect any right of an employee in relation to remuneration under his contract of employment, but—
- (a) any contractual remuneration paid to an employee in respect of a period of time off to which this section applies shall go towards discharging any liability of the employer under this section in respect of that period, and
  - (b) any payment under this section in respect of a period shall go towards discharging any liability of the employer to pay contractual remuneration in respect of that period.
- (5) An employee may present a complaint to an [<sup>F5</sup>employment tribunal] that his employer has failed to pay him in accordance with this section.

#### Textual Amendments

- F4** Word in s. 169(1) inserted (27.4.2003) by 2002 c. 22, ss. 43(3), 55(2); S.I. 2003/1190, art. 2(1) (with art. 3)
- F5** Words in s. 169(5) substituted (1.8.1998) by 1998 c. 8, s. 1(2)(a) (with s. 16(2)); S.I. 1998/1658, art. 2(1), Sch. 1

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

- C2** S. 169 applied (4.9.2000) by 1999 c. 26, s. 10(7) (with s. 15); S.I. 2000/2424, art. 2 (with transitional provisions in arts. 3, 4)
- C3** S. 169 applied (1.10.2006) by The Employment Equality (Age) Regulations 2006 (S.I. 2006/1031), reg. 47, Sch. 6 para. 9 (with regs. 44-46, Sch. 7)

### 170 Time off for trade union activities.

- (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 subsection (1) does not extend to activities which themselves consist of industrial action, whether or not in contemplation or furtherance of a trade dispute.
- [<sup>F6</sup>(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.]

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- (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 ACAS.
- (4) An employee may present a complaint to an [<sup>F7</sup>employment tribunal] that his employer has failed to permit him to take time off as required by this section.

[<sup>F8</sup>(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.]

#### Textual Amendments

- F6** S. 170(2A)-(2C) inserted (27.4.2003) by 2002 c. 22, ss. 43(4), 55(2); S.I. 2003/1190, art. 2(1) (with art. 3)
- F7** Words in s. 170(4) substituted (1.8.1998) by 1998 c. 8, s. 1(2)(a) (with s. 16(2)); S.I. 1998/1658, art. 2(1), Sch. 1
- F8** S. 170(5) inserted (27.4.2003) by 2002 c. 22, ss. 43(5), 55(2); S.I. 2003/1190, art. 2(1) (with art. 3)

## 171 Time limit for proceedings.

An [<sup>F9</sup>employment tribunal] shall not consider a complaint under section 168, [<sup>F10</sup>168A,] 169 or 170 unless it is presented to the tribunal—

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

#### Textual Amendments

- F9** Words in s. 171 substituted (1.8.1998) by 1998 c. 8, s. 1(2)(a) (with s. 16(2)); S.I. 1998/1658, art. 2(1), Sch. 1
- F10** Word in s. 171 inserted (27.4.2003) by 2002 c. 22, ss. 53, 55(2), Sch. 7 para. 19; S.I. 2003/1190, art. 2(2)

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

- C4** S. 171 applied (4.9.2000) by 1999 c. 26, s. 10(7), (with s. 15); S.I. 2000/2242, art. 2 (with transitional provisions in arts. 3, 4)
- C5** S. 171 applied (1.10.2006) by The Employment Equality (Age) Regulations 2006 (S.I. 2006/1031), reg. 47, Sch. 6 para. 9 (with regs. 44-46, Sch. 7)

## 172 Remedies.

- (1) Where the tribunal finds a complaint under section 168 [<sup>F11</sup>, 168A] or 170 is well-founded, it shall make a declaration to that effect and may make an award of compensation to be paid by the employer to the employee.

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- (2) The amount of the compensation shall be such 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 169 the tribunal finds that the employer has failed to pay the employee in accordance with that section, it shall order him to pay the amount which it finds to be due.

#### Textual Amendments

**F11** Word in s. 172(1) inserted (27.4.2003) by 2002 c. 22, ss. 53, 55(2), Sch. 7 para. 20; S.I. 2003/1190, art. 2(2)

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

- C6** S. 172 applied (4.9.2000) by 1999 c. 26 s. 10(7) (with s. 15); S.I. 2000/2242, art. 2 (with transitional provisions in arts. 3, 4)
- C7** S. 172 applied (1.10.2006) by The Employment Equality (Age) Regulations 2006 (S.I. 2006/1031), reg. 47, Sch. 6 para. 9 (with regs. 44-46, Sch. 7)

### 173 Interpretation and other supplementary provisions.

- (1) For the purposes of sections 168 [<sup>F12</sup>, 168A] and 170 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) The remedy of an employee for infringement of the rights conferred on him by section 168, [<sup>F13</sup>168A,] 169 or 170 is by way of complaint to an [<sup>F14</sup>employment tribunal] in accordance with this Part, and not otherwise.
- [<sup>F15</sup>(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.
- <sup>F15</sup>(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.]

#### Textual Amendments

- F12** Word in s. 173(1) inserted (27.4.2003) by 2002 c. 22, ss. 53, 55(2), Sch. 7 para. 21(a); S.I. 2003/1190, art. 2(2)
- F13** Word in s. 173(1) inserted (27.4.2003) by 2002 c. 22, ss. 53, 55(2), Sch. 7 para. 21(a); S.I. 2003/1190, art. 2(2)
- F14** Words in s. 173(2) substituted (1.8.1998) by 1998 c. 8, s. 1(2)(a) (with s. 16(2)); S.I. 1998/1658, art. 2(1), Sch. 1
- F15** S. 173(3)(4) inserted (27.4.2003) by 2002 c. 22, ss. 43(6), 55(2); S.I. 2003/1190, art. 2(1) (with art. 3)

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

- C8** S. 173 applied (4.9.2000) by 1999 c. 26, s. 10(7), (with s. 15); S.I. 2000/2242, art. 2 (with transitional provisions in arts. 3, 4)

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**C9** S. 173 applied (1.10.2006) by The Employment Equality (Age) Regulations 2006 (S.I. 2006/1031), **reg. 47, Sch. 6 para. 9** (with regs. 44-46, Sch. 7)

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