



# Employment Rights Act 1996

## 1996 CHAPTER 18

### PART VI

#### TIME OFF WORK

##### *Employee representatives*

#### **61 Right to time off for employee representatives.**

(1) An employee who is—

- (a) an employee representative for the <sup>M1</sup>purposes of Chapter II of Part IV of the <sup>M2</sup>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 [<sup>F1</sup>or in order to undergo training to perform such functions].

(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.

#### **Textual Amendments**

**F1** Words in s. 61(1) inserted (28.7.1999) by [S.I. 1999/1925](#), [reg. 15](#)

#### **Marginal Citations**

**M1** [S.I. 1981/1794](#).

**M2** [1992 c. 52](#).

*Status: Point in time view as at 01/02/2006.*

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## **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 [F<sup>2</sup>employment tribunals].**

- (1) An employee may present a complaint to an [F<sup>2</sup>employment 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 [F<sup>2</sup>employment 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

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- (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 [<sup>F2</sup>employment 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.

#### Textual Amendments

**F2** Words in s. 63(1)-(3) and sidenote to s. 63 substituted (1.8.1998) by 1998 c. 8, s. 1(2)(a)(b) (with s. 16(2)); S.I. 1998/1658, art. 2(1), Sch. 1

### [<sup>F3</sup>63A Right to time off for young person for study or training.

- (1) An employee who—
  - (a) is aged 16 or 17,
  - (b) is not receiving full-time secondary or further education, and
  - (c) has not attained such standard of achievement as is prescribed by regulations made by the Secretary of State,is entitled to be permitted by his employer to take time off during the employee's working hours in order to undertake study or training leading to a relevant qualification.
- (2) In this section—
  - (a) “secondary education”—
    - (i) in relation to England and Wales, has the same meaning as in the <sup>M3</sup>Education Act 1996, and
    - (ii) in relation to Scotland, has the same meaning as in section 135(2)(b) of the <sup>M4</sup>Education (Scotland) Act 1980;
  - (b) “further education”—
    - (i) in relation to England and Wales, [<sup>F4</sup>has the same meaning as in the Education Act 1996,] and
    - (ii) in relation to Scotland, has the same meaning as in section 1(3) of the <sup>M5</sup>Further and Higher Education (Scotland) Act 1992; and
  - (c) “relevant qualification” means an external qualification the attainment of which—
    - (i) would contribute to the attainment of the standard prescribed for the purposes of subsection (1)(c), and
    - (ii) would be likely to enhance the employee's employment prospects (whether with his employer or otherwise);

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and for the purposes of paragraph (c) “external qualification” means an academic or vocational qualification awarded or authenticated by such person or body as may be specified in or under regulations made by the Secretary of State.

(3) An employee who—

- (a) satisfies the requirements of paragraphs (a) to (c) of subsection (1), and
- (b) is for the time being supplied by his employer to another person (“the principal”) to perform work in accordance with a contract made between the employer and the principal,

is entitled to be permitted by the principal to take time off during the employee’s working hours in order to undertake study or training leading to a relevant qualification.

(4) Where an employee—

- (a) is aged 18,
- (b) is undertaking study or training leading to a relevant qualification, and
- (c) began such study or training before attaining that age,

subsections (1) and (3) shall apply to the employee, in relation to that study or training, as if “or 18” were inserted at the end of subsection (1)(a).

(5) 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) the requirements of the employee’s study or training, and
- (b) the circumstances of the business of the employer or the principal and the effect of the employee’s time off on the running of that business.

(6) Regulations made for the purposes of subsections (1)(c) and (2) may make different provision for different cases, and in particular may make different provision in relation to England, Wales and Scotland respectively.

(7) References in this section to study or training are references to study or training on the premises of the employer or (as the case may be) principal or elsewhere.

(8) 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.]

#### Textual Amendments

**F3** S. 63A inserted (1.9.1999) by 1998 c. 30, s. 32 (with s. 42(8)); S.I. 1999/987, art. 2

**F4** Words in s. 63A substituted (1.4.2001) by 2000 c. 21, s. 149, Sch. 9 para. 50, S.I. 2001/654, art. 2(2), Sch. Pt. II (with art. 3)

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

**C1** S. 63A(1)(c)(2): transfer of certain functions (1.7.1999) by S.I. 1999/1750, arts. 1, 2, Sch. 1 (with art. 7); S.I. 1998/3178, art. 3

**C2** S. 63A(2)(c) extended (1.9.2001) by S.I. 2001/2801, reg. 5

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#### Marginal Citations

- M3 1996 c. 56.
- M4 1980 c. 44.
- M5 1992 c. 37.

### [<sup>F5</sup>63B Right to remuneration for time off under section 63A.

- (1) An employee who is permitted to take time off under section 63A 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 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 63A 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.]

#### Textual Amendments

- F5 Ss. 63B, 63C inserted (1.9.1999) by 1998 c. 30, s. 33 (with s. 42(8)); S.I. 1999/987, art. 2

### [<sup>F6</sup>63C Complaints to employment tribunals.

- (1) An employee may present a complaint to an employment tribunal that—

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- (a) his employer, or the principal referred to in subsection (3) of section 63A, has unreasonably refused to permit him to take time off as required by that section, or
  - (b) his employer has failed to pay the whole or any part of any amount to which the employee is entitled under section 63B.
- (2) An employment 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 employment 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 or the principal has unreasonably refused to permit the employee to take time off, the tribunal shall also order the employer or the principal, as the case may be, to pay to the employee an amount equal to the remuneration to which he would have been entitled under section 63B if the employer or the principal 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 63B, the tribunal shall also order the employer to pay to the employee the amount which it finds due to him.

#### **Textual Amendments**

**F6** Ss. 63B, 63C inserted (1.9.1999) by 1998 c. 30, s. 33 (with s. 42(8)); S.I. 1999/987, art. 2

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