



# Employment Rights Act 1996

## 1996 CHAPTER 18

### PART VI

#### TIME OFF WORK

##### *Occupational pension scheme trustees*

#### **58 Right to time off for pension scheme trustees.**

- (1) The employer in relation to a relevant occupational pension scheme shall permit an employee of his who is a trustee of the scheme to take time off during the employee's working hours for the purpose of—
  - (a) performing any of his duties as such a trustee, or
  - (b) undergoing training relevant to the performance of those duties.
- (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, in particular, to—
  - (a) how much time off is required for the performance of the duties of a trustee of the scheme and the undergoing of relevant training, and how much time off is required for performing the particular duty or for undergoing the particular training, and
  - (b) the circumstances of the employer's business and the effect of the employee's absence on the running of that business.
- [<sup>F1</sup>(2A) This section applies to an employee who is a director of a company which is a trustee of a relevant occupational pension scheme as it applies to an employee who is a trustee of such a scheme (references to such a trustee being read for this purpose as references to such a director).]
- (3) In this section—

*Status: Point in time view as at 01/08/2004.*

*Changes to legislation: Employment Rights Act 1996, Cross Heading: Occupational pension scheme trustees is up to date with all changes known to be in force on or before 19 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) “relevant occupational pension scheme” means an occupational pension scheme (as defined in section 1 of the <sup>M1</sup>Pension Schemes Act 1993) established under a trust, and
  - (b) references to the employer, in relation to such a scheme, are to an employer of persons in the description or category of employment to which the scheme relates [<sup>F2</sup>, and
  - <sup>F2</sup>(c) references to training are to training on the employer’s premises or elsewhere.]
- (4) 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** S. 58(2A) inserted (11.11.1999 for specified purposes and otherwise 25.4.2000) by 1999 c. 30, ss. 18, 89(1)(5)(a), **Sch. 2 para. 19(3)**; S.I. 2000/1047, art. 2(2), **Sch. Pt. II**
- F2** S. 58(3)(c) and preceding word “and” inserted (1.9.1999) by 1998 c. 30, s. 44(1), **Sch. 3 para. 12** (with s. 42(8)); S.I. 1999/987, **art. 2**

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

- C1** S. 58 applied (11.11.1999 for specified purposes and otherwise 8.10.2001) by 1999 c. 30, s. 6(2), (with s. 8(6)); S.I. 2000/1047, art. 2(2), **Sch. Pt. V**

#### Commencement Information

- II** S. 58 wholly in force at 6.10.1996, see Sch. 2 para. 15(1) and S.I. 1996/2514, **art. 2**

#### Marginal Citations

- M1** 1993 c. 48.

## 59 Right to payment for time off under section 58.

- (1) An employer who permits an employee to take time off under section 58 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 must 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 must be paid an amount calculated by reference to the average hourly earnings for that work.
- (4) The average hourly earnings mentioned in subsection (3) are—
  - (a) those of the employee concerned, or
  - (b) 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) A right to be paid an amount under subsection (1) does not affect any right of an employee in relation to remuneration under his contract of employment (“contractual remuneration”).

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- (6) Any contractual remuneration paid to an employee in respect of a period of time off under section 58 goes towards discharging any liability of the employer under subsection (1) in respect of that period; and, conversely, any payment 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.

#### Commencement Information

**I2** S. 59 wholly in force at 6.10.1996, see Sch. 2 para. 15(1) and [S.I. 1996/2514, art. 2](#)

## 60 Complaints to [<sup>F3</sup>employment tribunals].

- (1) An employee may present a complaint to an [<sup>F3</sup>employment tribunal] that his employer—
- has failed to permit him to take time off as required by section 58, or
  - has failed to pay him in accordance with section 59.
- (2) An [<sup>F3</sup>employment tribunal] shall not consider a complaint under this section unless it is presented—
- before the end of the period of three months beginning with 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 before the end of that period of three months.
- (3) Where an [<sup>F3</sup>employment tribunal] finds a complaint under 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.
- (4) 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
  - any loss sustained by the employee which is attributable to the matters complained of.
- (5) Where on a complaint under subsection (1)(b) an [<sup>F3</sup>employment tribunal] finds that an employer has failed to pay an employee in accordance with section 59, it shall order the employer to pay the amount which it finds to be due.

#### Textual Amendments

**F3** Words in s. 60(1)-(3)(5) and sidenote to s. 60 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](#)

#### Commencement Information

**I3** S. 60 wholly in force at 6.10.1996, see Sch. 2 para. 15(1) and [S.I. 1996/2514, art. 2](#)

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**Changes to legislation:**

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