

Draft Acas Code of Practice on Time Off for Trade Union Duties and Activities



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Presented to Parliament by the Advisory,
Conciliation and Arbitration Service pursuant to
section 200(2) of the Trade Union and Labour
Relations (Consolidation) Act 1992



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Draft Code of Practice on time off for trade union duties and activities

Introduction

1. The purpose of this Code of Practice is to set out guidance on good practice that will aid and improve the effectiveness of relationships between employers and trade unions. This guidance will be taken into account by employment tribunals in relevant cases.
2. Employers and unions have a joint responsibility to ensure that agreed arrangements work to mutual advantage by specifying:
 - how reasonable time off for union duties and activities, including for relevant training, will work
 - how the provision of accommodation and other facilities, as is reasonable, will work
3. What is reasonable will depend on the circumstances in each case, including where relevant, the size, resources and organisational structure of the employer. Factors influencing reasonableness, both when making a request and when deciding whether a specific request is reasonable, are set out in paragraphs 88 to 105.

Terminology

4. This section explains how different terms are used in the Code. This includes how the Code refers to different types of union representative.
5. 'Union representative' is used where the term 'trade union official' is used in the Trade Union and Labour Relations (Consolidation) Act 1992 (TULRCA). There is often confusion between an 'official' and an 'officer' of a union and the term 'representative' is commonly used in practice.
6. The full definition of trade union 'official' and 'officer' can be found in section 119 of TULRCA.

7. 'Union representative' means an employee who has been elected or appointed in accordance with the rules of the union to be a representative of all or some of the union's members. This can be in the particular organisation or workplace, or an agreed group of workplaces where the union is recognised for collective bargaining purposes.

8. 'Union learning representative' and 'union equality representative' mean an employee who is a member of an independent trade union recognised by the employer, who has been elected or appointed into these roles in accordance with the rules of the union.

9. 'Representatives' is used to refer to all of union representatives, union learning representatives and union equality representatives together.

10. 'Union full-time officer' means a trade union official who is employed by an independent trade union to represent members in workplaces, or groups of workplaces, where the union is recognised for collective bargaining purposes.

11. 'Union member' means a worker who is a member of an independent trade union recognised by their employer.

12. 'Employee' is used where rights apply specifically to those with the legal employment status of employee. 'Worker' is used as a general term where rights apply to anyone with the legal employment status of either employee or worker.

Time off for trade union duties

13. Employers must allow a representative reasonable time off for certain union duties where the relevant qualifying criteria are met.

14. Representatives undertake a broad range of duties that do not always fit neatly into a single legal category for determining the right to time off. They may also be elected or appointed to more than one role. This means a representative may qualify for time off under the rights for more than one type of representative.

15. For example, an employee who is a union equality representative can take reasonable time off for the purposes of that role. If, in fact, that employee meets the criteria of a union representative, they will also be eligible to take reasonable time off for the duties of that role.

16. Trade unions should tell the employer clearly which roles an employee has been appointed to. Employers should recognise that representatives may have overlapping roles, so they allow reasonable time off for representatives where it is due.

Union representatives

17. Employees who are union representatives of an independent trade union recognised by their employer must be allowed reasonable time off during working hours to carry out certain trade union duties.

18. Union representatives undertake a variety of demanding and complex duties including:

- collective bargaining
- working with management
- communicating with union members
- liaising with their trade union
- handling individual disciplinary and grievance matters on behalf of workers

19. There are benefits for employers, workers and union members in encouraging union representatives to work efficiently. For example, carrying out relevant duties efficiently can help to effectively and quickly resolve problems and conflicts. In order to carry out their role effectively, union representatives must have reasonable paid time off from their normal job in appropriate circumstances.

Entitlement to time off for union representatives

20. An employee is entitled to reasonable time off as a union representative if:

- they have been elected or appointed in accordance with the rules of the independent trade union to be a representative of all or some of the union's members
- the duty they are carrying out relates to one or more of the duties specified in section 168(1) of TULRCA – as set out in paragraph 21

21. Union representatives must be allowed reasonable time off where the duties are related to:

- negotiations with the employer about matters for which the union is recognised by the employer for the purposes of collective bargaining under section 178(2) of the Trade Union Labour Relations (Consolidation) Act 1992 (TULRCA)
- carrying out other functions related to collective bargaining under section 178(2) of TULRCA which the employer has agreed the union may perform
- the collective redundancy requirements to inform and consult appropriate representatives under section 188 of TULRCA
- the business transfer requirements to inform and consult appropriate representatives under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE)

- negotiations with a view to agreeing new terms and conditions for TUPE transfers where there are insolvency proceedings, under regulation 9 of TUPE
- carrying out functions related to the making of an agreement under regulation 9 of TUPE

22. The areas covered by section 178(2) of TULRCA are set out in paragraph 26.

23. Union duties must relate to matters covered by collective bargaining agreements between employers and trade unions. They must also relate to the union representative's own employer unless agreed otherwise in circumstances of multi-employer bargaining, and not, for example, to any associated employer.

24. Where an independent trade union is not recognised by an employer for the purposes of collective bargaining, employees have no statutory right to time off to undertake any duties. This is except for accompanying a worker at a disciplinary or grievance hearing (see paragraphs 30 to 32 for further information).

Examples of duties for union representatives

25. Subject to recognition, or other agreement, union representatives should be allowed to take reasonable time off to carry out duties related to:

- negotiations for collective bargaining
- carrying out other functions related to collective bargaining

26. Collective bargaining may include one or more of the following areas:

(a) terms and conditions of employment, or the physical conditions in which workers are required to work. Examples could include:

- pay
- hours of work
- holidays and holiday pay

- sick pay arrangements
- pensions
- learning and training
- equality and diversity
- notice periods
- the working environment
- operation of digital equipment and other machinery

(b) engagement or non-engagement, or termination or suspension of employment or the duties of employment, of one or more workers. Examples could include:

- recruitment and selection policies
- human resource planning
- redundancy and dismissal arrangements

(c) allocation of work or the duties of employment between workers or groups of workers. Examples could include:

- job grading
- job evaluation
- job descriptions
- flexible working practices
- work-life balance

(d) matters of discipline. Examples could include:

- disciplinary procedures
- arrangements for representing or accompanying workers at internal interviews
- arrangements for appearing on behalf of union members, or as witnesses, before agreed outside appeal bodies or employment tribunals

(e) trade union membership or non-membership. Examples could include:

- representational arrangements
- any union involvement in the induction of new workers

(f) facilities for union representatives. Examples could include any agreed arrangements for the provision of:

- accommodation
- equipment
- names of new workers to the union

(g) machinery for negotiation or consultation and other procedures. Examples could include arrangements for:

- collective bargaining at the employer or multi-employer level
- grievance procedures
- joint consultation
- communicating with members
- communicating with other union representatives concerned with collective bargaining with the employer

27. The duties of a representative of a recognised trade union must be related to negotiations or carrying out relevant functions. For example, a representative might seek to take reasonable time off to:

- prepare for negotiations, including attending relevant meetings
- inform members of progress and outcomes
- prepare to accompany a worker to a disciplinary or grievance hearing

28. Trade union duties also involve receiving information from the employer and consultation with the employer where:

- the duty to collectively consult under the Trade Union Labour Relations (Consolidation) Act 1992 (TULRCA) applies

- the Transfer of Undertakings Protection of Employment Regulations 2006 (TUPE) applies

29. This includes negotiations with a view to making an agreement during relevant insolvency proceedings under regulation 9 of TUPE.

Time off for union representatives to accompany workers at disciplinary or grievance hearings

30. A worker has the right to be accompanied to a disciplinary or grievance hearing by a union representative.

31. Where requested, a union representative must be allowed to take a reasonable amount of paid time off to accompany a worker to a disciplinary or grievance hearing. This is as long as the representative:

- has been certified by their union as being capable of acting as a worker's companion
- works for the same employer as the worker

32. An employer is not legally required to provide paid time off for a certified union representative to accompany a worker from a different employer. Employers and trade unions can make a voluntary agreement allowing for time off to accompany a worker from a different employer.

Union equality representatives

33. Employees who are union equality representatives of an independent trade union recognised by their employer must be allowed reasonable time off during working hours for certain equality-related purposes.

34. For the purposes of union equality representatives' right to time off, equality in relation to a workplace means:

- eliminating discrimination, harassment, victimisation, and any other prohibited conduct as defined in the Equality Act 2010

- advancing equality of opportunity between people who share a relevant protected characteristic and people who do not share it
- fostering good relations between people who share a relevant protected characteristic and people who do not share it

35. The relevant protected characteristics, where referred to in the second and third bullet points in paragraph 34, are:

- age
- disability
- gender reassignment
- pregnancy and maternity
- race
- religion or belief
- sex
- sexual orientation

Entitlement to time off for union equality representatives

36. Union equality representatives undertake a variety of demanding and complex activities on behalf of workers. These duties can vary between unions, workplaces and recognition agreements.

37. An employee is entitled to reasonable time off as a union equality representative if they meet all the following criteria:

- they have been elected or appointed in accordance with the rules of the independent trade union to be a union equality representative
- they meet the notification and training condition requirements – set out in paragraphs 48 to 60
- the time off is for one or more of the purposes set out in section 168B(2) of TULRCA - set out in paragraph 38

38. Union equality representatives must be allowed reasonable time off for the following purposes:

- carrying out activities promoting the value of equality at work
- arranging learning or training relating to equality at work
- providing information, advice or support to qualifying union members relating to equality at work
- consulting with the employer relating to equality at work
- obtaining and analysing information relating to equality at work
- preparing to carry out any of these activities

Examples of trade union duties for union equality representatives

39. Union equality representatives can use the legal right to reasonable time off if the activity they carry out is for the purposes set out in paragraph 38. Non-exhaustive examples of activities relating to each purpose are:

(a) Promoting the value of equality at work. Examples could include:

- Understanding and raising awareness of good practice and the organisation's equality policies and initiatives
- working with employers to raise awareness of equality issues
- working to identify and remove barriers to workplace equality

(b) Arranging learning or training relating to equality at work. Examples could include:

- obtaining and providing information on learning opportunities relating to equality, including e-learning where available
- supporting and encouraging union members to access learning opportunities relating to equality

- helping to develop and improve local learning opportunities relating to equality

(c) Providing information, advice or support to qualifying union members relating to equality at work. Examples could include:

- representing union members on equality issues
- providing basic advice to members on addressing discrimination and harassment
- signposting union members to other sources of advice, guidance and support, where needed
- keeping union members informed about workplace developments relating to equality

(d) Consulting with the employer relating to equality at work. Examples could include:

- taking part in collective bargaining relating to equality
- supporting and advising on equality issues that arise during collective bargaining
- working with the employer on creating and reviewing policies relating to equality and monitoring their effectiveness
- considering the impact of policies and procedures on equality at work
- identifying equality issues and raising them with the employer

(e) Obtaining and analysing information relating to equality at work. Examples could include:

- using workforce data to monitor under-representation, recruitment practices and training development plans
- analysing information about the employer's equality performance through audits and equal pay surveys

- reviewing equality-related reports, strategies and information to input into equality action plans and equality impact assessments

Union learning representatives

40. Employees who are union learning representatives of an independent trade union recognised by their employer must be allowed reasonable time off during working hours for certain learning-related purposes.

Entitlement to time off for union learning representatives

41. Union learning representatives undertake a variety of activities related to training and development. These activities can vary between unions, workplaces and recognition agreements.

42. An employee is entitled to reasonable time off as a union learning representative if:

- they have been elected or appointed in accordance with the rules of the independent trade union to be a union learning representative
- they meet the notification and training condition requirements – set out in paragraphs 48 to 60
- the time off is for one or more of the purposes in section 168A(2) of TULRCA - set out in paragraph 43

43. The purposes for which reasonable time off as a union learning representative must be allowed are:

- analysing learning or training needs at work
- providing information and advice about learning or training
- arranging learning or training
- promoting the value of learning or training
- consulting the employer about learning or training activities
- preparing to carry out any of the above activities
- undergoing relevant training

Examples of trade union duties for union learning representatives

44. Union learning representatives can use the legal right to reasonable time off if the activity they carry out is for the purposes set out in paragraph 43. Non-exhaustive examples of activities relating to each purpose are:

(a) Analysing learning or training needs. Examples could include:

- understanding the different methods for identifying learning interests or needs
- identifying and recording individual learning needs
- drawing up a plan to meet identified learning requirements

(b) Providing information and advice about learning or training matters. Examples could include:

- developing communication and interviewing skills
- providing accurate information to union members about learning opportunities within and outside the workplace
- signposting union members to other sources of advice and guidance where additional support is needed, for example, basic skills tutors or in-depth professional career guidance

(c) Arranging and supporting learning and training. Examples could include:

- obtaining and providing information on learning opportunities, including e-learning where available
- supporting and encouraging union members to access learning opportunities
- helping to develop and improve local learning opportunities

(d) Promoting the value of learning and training. Examples could include:

- understanding current employer or other initiatives for developing learning and skills at work
- promoting the value of learning to members and within trade union networks and structures
- working with employers to meet the learning needs of both individuals and the organisation, and appreciating the value of learning agreements and how they may be developed

45. In some cases, it may be helpful if union learning representatives attend meetings about agreeing and promoting learning agreements. It is good practice for learning agreements to set out the commitments made by an employer and union on how they will work together on learning at work. It may also benefit employers to grant paid time off for union learning representatives to attend meetings with external partners about the development and provision of workforce training.

Union health and safety representatives

46. Union health and safety representatives must be allowed paid time off as is necessary during working hours to carry out their functions. This is required by the Safety Representatives and Safety Committees Regulations 1977 regulation 4(2)(a). These rights are not covered in this Acas Code.

47. The Health and Safety Executive provides further advice on time off for health and safety representatives. This is in their 'Consulting workers on health and safety' Codes of Practice and guidance.

Notification and training requirements for union learning representatives and union equality representatives

48. Union learning representatives and union equality representatives must meet certain requirements in order to qualify for the statutory right to time off for certain purposes. The requirements are the same for both union learning representatives and union equality representatives.

49. The union must give the employer notice in writing that:

- the employee is a union learning representative or union equality representative of the trade union
- the training condition is met - as set out in paragraphs 48 to 60

50. The training condition is met if the union is satisfied the employee can demonstrate they have received sufficient training. This training must enable them to competently carry out one or more of the activities set out in:

- Paragraph 38 for union equality representatives
- Paragraph 43 for union learning representatives

51. The employee must be sufficiently trained to carry out these activities either:

- at the time when their trade union gives notice to their employer in writing that they are a union learning representative or union equality representative
- within 6 months of that date

52. Where sufficient training will be carried out within 6 months of notifying the employer, the trade union must:

- give the employer notice in writing that the employee will be doing this training
- confirm to the employer when the employee has completed the training

53. During this 6-month period, the employer must allow union learning representatives and union equality representatives reasonable time off for training and to carry out their activities.

54. The union should confirm in writing that the training is sufficient to allow the union learning representative or union equality representative to carry out their role. It is good practice for the union to give details of the training that has been completed and any previous training that has been taken into account.

55. The 6-month period may be extended, with agreement, to take into account any significant unforeseen circumstances. For example, this might include:

- prolonged absence from work due to ill health
- pregnancy
- bereavement
- unavoidable delays in arranging an appropriate training course

56. For a union to be satisfied that an employee has received sufficient training to carry out relevant activities competently, the union could establish:

- what training has been completed – this could be training approved by the Trades Union Congress (TUC) or the union, although it does not have to be
- relevant expertise and experience the employee has gained through previous work or other activities – this could include activities from another union

57. Relevant previous experience and expertise could have been gained in areas such as:

- for union learning representatives: teaching, training, counselling, providing employment advice and guidance, human resource development, taking part in relevant union activities or learning

- for union equality representatives: participating in staff networks focused on equality, involvement in initiatives to address equality issues such as discrimination and harassment, taking part in relevant union activities or learning

58. Periods of extensive on-the-job training and experience gained in shadowing an experienced union learning representative or union equality representative may also be relevant.

59. There can be advantages to both the individual and the organisation if the training either:

- is of a recognised standard
- leads to a recognised qualification

60. Training can still be sufficient if it does not meet these criteria.

Payment for time off for trade union duties

61. An employer must pay representatives for reasonable time off taken to carry out statutory union duties. The employer must pay either:

- the amount that the representative would have earned if they had worked during the time off
- where earnings vary with the work done, an amount calculated using the representative's average hourly earnings for the work they are employed to do

62. When calculating pay, an employer should take into account the type of payment arrangements that apply to each representative. For example:

- shift premiums
- performance-related pay
- bonuses
- commission earnings

63. Where pay is linked to the achievement of performance targets, an employer may need to adjust targets to take account of the reduced time the representative has to achieve them.

64. There is no legal requirement to pay for time off where the duty is carried out when the representative would not otherwise have been at work. This is unless the representative works flexible hours. For example, a representative who works night shifts might need to carry out trade union duties during the day. Part-time employees are entitled to pay if staff who work full time would be entitled to pay. In all cases the amount of time off must be reasonable.

Time off for training

65. Training is important for all representatives. Representatives are more likely to carry out their duties effectively if they undergo training to develop skills and knowledge relevant to their duties.

66. Both newly appointed and more established representatives must be allowed reasonable time off during working hours for training relevant to their duties. This should include reasonable time off for further training to help representatives develop their skills and expertise.

67. Where resources allow, joint training and development activities involving representatives and managers can be effective in helping parties work together.

Union representatives - time off for training

68. Union representatives must be allowed reasonable time off during working hours for training relevant to their duties.

69. The training for union representatives must be approved by the Trades Union Congress (TUC) or by the independent trade union of which the employee is a union representative.

70. The training must also be relevant to the union duties for which reasonable time off must be provided. See paragraph 21 for a list of the relevant duties. There is no one recommended syllabus for training. This is because a union representative's duties will vary according to:

- the collective bargaining arrangements at the place of work, particularly the scope of the recognition or other agreement
- the structure of the union
- the role of the union representative
- the handling of proposed collective redundancies or TUPE transfers

71. Employers should consider releasing union representatives for initial training in basic representational skills as soon as possible after their election or appointment because suitable courses may be infrequent. The employer could also consider reasonable time off for other training. Examples of training could include:

- to further develop the union representative's skills in representation, accompaniment, negotiation, consultation and resolving workplace disputes
- to prepare union representatives to carry out special responsibilities – this can be particularly important for collective redundancy situations and TUPE transfers
- to familiarise union representatives with proposals to change the structure and topics of negotiation about matters for which the union is recognised, or where significant changes in the organisation of work are being considered
- to familiarise or update union representatives on issues reflecting the developing needs of the workforce they represent

- to familiarise or update union representatives on legal changes that may affect the conduct of employment relations at the place of work and may require the reconsideration of existing agreements
- to develop a union representative's skills in the role of accompanying workers in grievance and disciplinary hearings
- to improve union representatives' understanding of the organisation – for example, this could include how the organisation is structured or how the finances of the organisation work

72. Training of representatives may be delivered in-person or online. Reasonable time off must be given during normal working hours for representatives whether the training is in-person or online, including e-learning.

Union learning representatives and union equality representatives - time off for training

73. Union equality representatives and union learning representatives must be allowed reasonable time off during working hours for training. The training must be relevant to the activities for which reasonable time must be provided. For the list of relevant activities see:

- paragraph 38 for union equality representatives
- paragraph 43 for union learning representatives

74. The training needs will vary according to the:

- activities being undertaken
- recognition agreements at the place of work, particularly the scope of the recognition or other agreement
- structure of the union
- role of the union equality representative and union learning representative

Union health and safety representatives - time off for training

75. Employers must allow union health and safety representatives to undergo training in aspects of their functions that is 'reasonable in all the circumstances'. This is required by the Safety Representatives and Safety Committees Regulations 1977 regulation 4(2)(b).

76. The Health and Safety Executive provides further advice on time off for health and safety representatives. This is in their 'Consulting workers on health and safety' Codes of Practice and guidance. These rights are not covered in this Acas Code.

Payment for time off for training

77. An employer must pay representatives for reasonable time off taken to attend relevant training. The employer must pay either:

- the amount that the representative would have earned if they had worked during the time off
- where earnings vary with the work done, an amount calculated using the representative's average hourly earnings for the work they are employed to do

78. When calculating pay for time off for trade union duties, an employer should take into account the type of payment systems that apply to each representative. For example, payments such as:

- shift premiums
- performance-related pay
- bonuses
- commission earnings

79. Where pay is linked to the achievement of performance targets, an employer may need to adjust targets to take account of the reduced time the representative has to achieve them.

80. There is no legal requirement to pay for time off where training is carried out when the representative would not otherwise have been at work. This is unless the representative works flexible hours. For example, a representative who works night shifts might need to carry out trade union duties during the day. Part-time employees are entitled to pay if employees who work full time would be entitled to be paid. In all cases, the amount of time off must be reasonable.

Time off for trade union activities

81. To operate effectively and democratically, trade unions need the active participation of union members. It is in employers' interests to:

- enable such participation
- help to promote effective communication between union representatives and union members.

Entitlement to time off for trade union activities

82. An employee who is a member of an independent trade union recognised by the employer must be allowed reasonable time off during working hours to take part in any trade union activity. They must also be allowed to take reasonable time off during working hours to access the services of a union learning representative or union equality representative. This is provided they are services for which the union learning representative or equality representative is entitled to time off.

Examples of trade union activities

83. Examples of trade union activities that union members may take part in include:

- attending workplace meetings to discuss and vote on the outcome of negotiations with the employer - where relevant, and with the employer's agreement, this can include attending meetings at the employer's other locations
- meeting full-time officers to discuss issues relevant to the workplace

- voting in union elections
- accessing services provided by a union learning representative or union equality representative

84. Where the union member is acting as a representative of a recognised trade union, examples of activities could include taking part in:

- branch, area or regional meetings of the union where the business of the union is under discussion
- meetings of official policy-making bodies such as the executive committee or annual conference
- meetings with union full-time officers to discuss issues relevant to the workplace

85. There is no right to time off for trade union activities which themselves consist of industrial action.

Payment for time off for trade union activities

86. There is no legal requirement that union members or representatives be paid for time off for trade union activities. But employers may want to consider payment in certain circumstances, for example to ensure that:

- workplace meetings are fully representative
- employees can use services provided by union learning representatives and union equality representatives

87. Paragraphs 61 to 64 set out the statutory entitlement to payment for time off to carry out trade union duties.

Responsibilities of employers, representatives and trade unions for time off requests

88. Having an agreement in place can provide a clear structure for determining requests for time off. The agreement should set out the responsibilities of each party along with the relevant factors to consider when a request for time off is made. Further detail on agreements can be found at paragraphs 119 to 126.

89. Employers, trade unions, representatives and managers should work together to ensure that time off provisions, including training, operate effectively and for mutual benefit. Representatives need to be able to communicate with management, each other, their trade union and workers. To do so they need to be able to access and use appropriate communication media, accommodation and other facilities.

Amount and frequency of time off

90. The amount and frequency of time off that is reasonable will depend on all the circumstances. All employers must follow the law on time off for trade union duties and activities, without exception.

91. When seeking or agreeing arrangements for time off, trade unions should take into account any relevant difficulties and operational requirements of an employer. For example, this could include:

- the size of the organisation and the number of workers
- the organisation's work processes
- the need to maintain a service to customers
- the safety and security of workers and customers

92. Employers should also have in mind the difficulties for representatives and members in ensuring effective representation and communications with, for example:

- non-standard contracts – for example, shift workers, zero-hours workers or annualised hours
- part-time workers
- those who work remotely, including working from home
- those not working in a fixed location
- those employed at dispersed locations
- workers with particular domestic commitments, including those on a type of family leave or carer's leave

- disabled workers
- workers facing language barriers

93. For time off arrangements to work satisfactorily, trade unions should:

- ensure that representatives are aware of their role, rights, responsibilities and functions
- inform management, in writing, as soon as possible of appointments or resignations of representatives
- ensure that representatives receive written confirmation of sufficient training promptly

94. Union learning representatives and union equality representatives should co-ordinate with each other on equality training to minimise duplication of work.

95. Many employers have well-established ways of engaging their workers on equality issues – for example, equality initiatives, staff networks, and training and development programmes. Employers, union learning representatives and union equality representatives should work together to ensure that:

- their activities complement one another to minimise duplication and maximise coverage of work
- all parties are kept informed of equality, training and workforce needs
- the full range of worker equality issues are covered

96. Where it is feasible, employers should provide work cover and workload reductions when reasonable time off is needed. This can include:

- allocating duties to other workers
- rearranging work to a different time
- reducing workloads

97. An employer should acknowledge the varying roles of representatives who hold more than one role. For example, where someone is both a union learning representative and a union equality representative, that should be taken into account to ensure reasonable time off is provided for both roles.

Requesting time off

98. Anyone making a request for time off relating to trade union duties or activities should provide management, especially their line manager, with as much notice as practically possible about:

- the reason for the time off, while preserving personal confidential information relating to individuals in grievance or disciplinary matters
- the intended location
- the timing and duration of the time off

99. Representatives should minimise business disruption by being prepared to be as flexible as possible in seeking time off in circumstances where the immediate or unexpected needs of the business make it difficult to provide cover for them. Employers should also recognise the mutual obligation to allow representatives to carry out their duties.

100. Providing information on upcoming training to the employer can help maintain a good working relationship between the representative and the employer. Representatives who request paid time off to undergo relevant training should:

- give reasonable notice to the employer – this can help an employer organise work cover
- provide details of the training course – for example, the contents and duration of the training

101. When deciding whether requests for paid time off should be granted, employers should consider if the request is reasonable. For example, employers should consider whether adequate cover can be provided. Employers may need to consider:

- whether legal obligations can be met
- relevant safety requirements
- safeguarding the production process
- whether they can continue to provide a service

102. Managers and unions should seek to agree a mutually convenient time which minimises the effect on production or services. Where meetings are requested, consideration should be given to:

- how to hold them - for example, in-person or online
- when to hold them - for example, before or after a break or towards the end of a shift or the working week

103. Managers should be familiar with the rights and duties of representatives regarding time off. They should be encouraged to take reasonable steps in:

- planning for and managing representatives' time off
- providing cover or reducing workload
- taking into account the legitimate needs of union representatives to carry out their duties and receive training efficiently and effectively

104. Employers should consider each application for time off on its own merit. They should also consider how reasonable the request is, in relation to:

- agreed time off already taken
- further time off likely to be requested in future

105. If an employer rejects a request for time off, it is good practice to keep a clear record of their reasons for doing so.

Accommodation and other facilities

106. Employers must provide accommodation and other facilities for representatives to carry out their union duties, or undergo relevant training, as is reasonable in all the circumstances. This right applies where the representative:

- is entitled to take such time off
- has made a request to the employer to provide accommodation and facilities for those purposes

107. Employers and unions should consider reaching an agreement about providing accommodation and other facilities. This could include factors to consider and processes to follow. An agreement can help set expectations and take account of any specific circumstances. For further detail on agreements see paragraphs 119 to 126.

108. What it is reasonable to provide may be different depending on all the circumstances. Non-exhaustive examples of factors that could be relevant include the:

- size and available resources of the organisation
- operational requirements and organisational structure
- details of any agreement between the employer and union
- nature and scale of the work the representative is undertaking
- needs of individuals, including disabled representatives who need reasonable adjustments

109. Where practical, accommodation and other facilities should include:

- secure access to a telephone, other forms of communication and digital tools used or allowed in the workplace - for example, email, digital platforms, intranet and internet along with a private space to use them
- the use of noticeboards or an online equivalent

- somewhere private in the workplace for in-person or online meetings so representatives can meet with union members - for example, to discuss sensitive issues privately
- confidential space to meet a worker involved in a grievance or disciplinary matter, or to discuss other confidential matters
- the use of dedicated office space, where the volume of the union representative's work justifies it
- access to members who work at different locations
- access to computers and other technology to do online training or take part in online meetings

110. When using accommodation and other facilities provided by the employer, representatives must comply with any agreed procedures around:

- the use of accommodation and other facilities
- accessing and using company information

111. The agreed procedures will be either:

- procedures agreed between the union and the employer as part of an agreement on time off
- procedures that comply with general rules applied to all workers in the organisation

112. Union representatives engaged in duties related to collective redundancies and TUPE transfers have separate rights that entitle them to accommodation and other facilities as appropriate. These rights are not covered in this Acas Code. The disclosure of information for collective bargaining purposes is covered by the Acas Code of Practice on that topic.

Confidentiality

113. Representatives and employers must comply with data protection and privacy law. This particularly applies around the accessing and processing of company and personal information.

114. The employer and the union should agree arrangements concerning the confidentiality of communications involving union.

115. In particular, representatives must respect and maintain the confidentiality of information they are given access to where the disclosure would either:

- seriously harm the functioning of the employer's business interests
- be prejudicial to the employer's business interests

116. Employers must respect the confidential and sensitive nature of communications between union representatives and their members and trade union. Representatives and members are entitled to communicate without being monitored by their employer, except in exceptional circumstances.

117. Information about someone's union membership is defined as sensitive personal data in the Data Protection Act 2018. It is also considered special category data under the UK General Data Protection Regulation (UK GDPR).

118. The UK General Data Protection Regulation (UK GDPR) also applies to data concerning individuals, for example communications concerned with grievance and disciplinary issues. There are strict provisions on how such data can be used and monitored in compliance with the law. Further advice on data protection and confidentiality is provided by the Information Commissioner's Office in their 'employment information' guidance.

Agreements on time off, accommodation and other facilities

119. There can be advantages for both employers and trade unions in establishing agreements on time off, accommodation and other facilities. For example, agreements can:

- reflect each party's specific circumstances
- provide an agreed structure for making and determining individual requests

- set out the agreed relevant factors to consider when a request is made

120. This can help take account of the wide variety of circumstances and problems that can arise within an organisation. However, the absence of a formal agreement on time off, accommodation and other facilities does not in itself deny an individual any statutory entitlement. An agreement cannot supersede any legal entitlement to time off or to accommodation and other facilities.

121. A formal agreement can help to:

- provide clear guidelines against which applications for time off can be determined
- establish realistic expectations for representatives and managers
- avoid misunderstanding
- facilitate better planning
- ensure fair and reasonable treatment

122. Agreements should specify:

- the amount of time off allowed for representatives to carry out activities, recognising that this will vary according to fluctuations in demand
- purposes for which time off can be taken – for example, meetings with management or other representatives, time needed to prepare for meetings, communicating with members and their trade union, time off for training including online training
- in what circumstances time off will be paid
- arrangements for taking time off at short notice
- how pay will be calculated
- who will be paid for time off

- accommodation and other facilities that will be provided, and any limits to their use
- in what circumstances agreed time off may be cancelled or changed at short notice by either party
- how representatives' data will be used and how communications will be kept confidential - including rules for sharing data in exceptional circumstances, for example if needed to investigate suspected illegal activity
- the role of managers in granting permission for time off and, where appropriate and practical, ensuring that adequate cover or workload reductions are provided
- the procedure for requesting time off
- the procedure for resolving grievances about time off

123. It is good practice for agreements to make clear:

- any agreement on numbers or ratios of representatives
- pay arrangements when time off relates in part to union duties and in part to union activities
- pay arrangements when employees who work shifts or part time carry out trade union duties outside their normal working hours

124. Agreements for time off, accommodation and other facilities should be consistent with wider agreements related to constituencies, number of representatives and the election of officials.

125. Employers and unions should, from time to time, jointly review the operation of agreements or arrangements covering time off.

126. In smaller organisations, when creating an agreement, it might be more practical for employers and unions to:

- reach a mutual understanding on how requests for time off, accommodation and other facilities are made and the relevant factors to consider when requests are made

- agree flexible arrangements that can be adapted to their specific circumstances

Industrial action

127. Employers and unions have a responsibility to use agreed procedures to settle problems and avoid industrial action. Time off may therefore be allowed for this purpose, particularly where there is a dispute.

128. There is no right to time off to take part in industrial action. However, where a representative is not taking part in industrial action but represents members involved in industrial action, normal arrangements for time off with pay for representatives should apply.

Resolving disputes

129. There are advantages for employers and trade unions in agreeing ways to settle disputes that involve time off arrangements, training, or access to accommodation and other facilities. Any appropriate procedures to resolve disputes should be followed.

130. Employers and unions should make every effort to resolve any dispute or grievance in relation to time off work for union duties or activities. If a grievance remains unresolved, representatives and union members have a right to complain to an employment tribunal.

131. For representatives, an employment tribunal complaint can be made on the basis that their employer has failed to:

- allow reasonable time off to carry out their statutory union duties or purposes - it is for the employer to show that the amount of time off was not reasonable in these claims
- provide the employee with reasonable accommodation and other facilities
- to pay appropriately for all or part of the reasonable time off taken

132. Union members can make a claim to an employment tribunal if their employer fails to allow reasonable time off to carry out relevant trade union duties.

133. Such complaints may be resolved by conciliation by Acas or through a settlement agreement. If this is successful, an employment tribunal will not be necessary. Employers and unions can also ask Acas for help without making a formal complaint to a tribunal.

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