

Your entitlement to time off work for trade union training

Officials of recognised trade unions are entitled to paid time off from work for trade union training. Section 168(2) of the Trade Union and Labour Relations (Consolidation) Act 1992 states that an employer must permit trade union representatives to take time off during their working hours for the purpose of undergoing training in aspects of industrial relations. For NASUWT Representatives, courses must be approved by the NASUWT, TUC or STUC.

All employees with 26 weeks of continuous service have the statutory right to request time off for work-related study or training by virtue of s63D to 63K of the Employment Rights Act 1996. This right applies in organisations with 250 or more employees. There is no automatic right to payment in this case. For clarity, the NASUWT takes the view that all the Union's training courses are work related.

If you are in doubt about any aspect of the above, contact the NASUWT Scotland National Centre.

Rules regarding the training course

The course must be related to or connected with the carrying out of your union role (in relation to your employer) as defined in Section 178(2) of the Trade Union and Labour Relations (Consolidation) Act 1992. This means that it must be concerned with:

- a. terms and conditions of employment or the physical conditions in which any workers are required to work;
- b. engagement or non-engagement, or termination or suspension of employment, or the duties of employment, of one or more workers;
- c. allocation of work or the duties of employment between workers or groups of workers;
- d. matters of discipline;
- e. a worker's membership of a trade union;
- f. facilities for officials of trade unions; and
- g. machinery for negotiation or consultation and

other procedures relating to any of the above matters, including the recognition of the union by an employer or employers' association of the right of a trade union to represent workers in such negotiation or consultation or in the carrying out of such procedures.

NASUWT trade union courses satisfy all of these conditions.

The amount of time allowed

The law says that trade union representatives should be given 'reasonable' time off for training. The law does not define 'reasonable'. However, a TUC course for workplace representatives that lasts for ten days has been judged 'reasonable' by an Employment Tribunal. Most NASUWT trade union courses last for one or two days and would be considered 'reasonable' by this definition.

In many instances, a local agreement between unions and the employer (e.g. the local authority) will provide further details in respect of the amount of time off allowed. However, the lack of a local agreement does not, in itself, deny an individual his/her statutory entitlement to time off, nor does any agreement override this right.

Payment for time off

Union representatives must be paid for time off when undertaking trade union training. Such payment must be at the rate of pay the representative would have earned had s/he worked during that time. Where the representative is employed on a part-time basis, whose usual working day is shorter than the duration of the training, s/he should also be paid for the excess hours undertaking training. The right to payment for time off includes a right to be paid for ALL time off, including that covered by a separate contract with the same employer (e.g. during the lunch hour or after the end of school). The additional implication of this is that the directed hours that would have been worked on the days spent participating in trade union training must be credited as though they had actually been worked.

Informing the employer

The NASUWT Representative should always give the employer as much notice as possible of their wish to attend the NASUWT training course. Providing notice to the employer in good time is important and will enable the employer to make suitable alternative arrangements, such as the provision of appropriate supply cover. If the employer asks for a copy of the course programme, the Representative should provide one. The NASUWT Representative should also tell the employer where the course is being held and how much time off is required.

If time off for training is refused

An employer who unreasonably refuses time off to officials of recognised trade unions for the purpose of training as described above is ultimately answerable to an Employment Tribunal. Similarly, an employer who allows time off but withholds pay is also answerable to an Employment Tribunal.

Cover

Whilst the NASUWT Representative is on the course, it is the employer's responsibility to ensure that the Representative's job is done. It is wrong, for example, that the Representative should be asked to gain the agreement of their colleagues to cover classes as a condition of attending a trade union course. The law does not tell employers how to carry out their responsibility, but simply places the responsibility upon them. In some areas there will be an agreement between the unions and the employer that will specify what happens when a trade union representative attends a course.

It is the responsibility of the employer to ensure that there is sufficient and appropriate cover to enable the representative to participate in trade union training. The employer is responsible for paying for supply cover and trade union representatives should not be prevented from attending appropriate courses because of arguments about who pays agencies for supply cover.

An employer should expect that the NASUWT Representative may, from time to time, submit requests to undertake trade union training. Given that such requests are foreseeable, the employer should have appropriate contingency strategies in place to enable them to accede to requests for time off, in accordance with the requirements under the legislation and any local agreements. It would be unreasonable for an employer to refuse to allow a representative to attend a trade union training course on the grounds that such requests were not foreseeable.

Do not get drawn into discussions about cover. It is the responsibility of the employer, not yours, to ensure that your job is covered. If cover is not provided and used as the reason for withholding time off, inform the NASUWT Scotland National Centre. Problems with cover should not prevent you from attending your course.

Summary

The law gives the elected NASUWT Representative the right to time off with pay to receive trade union training. The law also provides protection for the Representative if such time off is unreasonably withheld by the employer.

If you wish to attend an NASUWT course, please submit your application (a telephone call will do) and give your employer/school/college as much notice as possible of your wish to attend. You should also tell them where the course is to be held and how much time off with pay you need.

The NASUWT will be able to provide information about any local agreements on time off that may be applicable.

If you are refused time off (or allowed time off but without pay), inform the NASUWT Scotland National Centre immediately.



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