



From 6 April 2010, employees will have a new right to request time off for study or training.

### In a nutshell...

- employees must have been employed for six months before making a request;
- employees can only make one request a year;
- employers are required to seriously consider a request;
- employers can refuse for specified business reasons;
- the time off is unpaid;
- there are penalties for non-compliance;
- the right will initially only apply to businesses with 250 or more employees but will be extended to all businesses in April 2011.



### Who has the new right?

#### Can any employee apply?

Only employees that have been employed for 26 weeks or more are entitled to make a request.

#### Does it apply to agency workers?

No, only employees.

### What type of training?

#### Can the employee do any training they want?

No, only training which would make the employee more effective at work and improve the performance of your business.

vocational qualification (for example, an NVQ or a Foundation Degree) or, conversely, it could be an unaccredited short course that will help the employee develop particular skills, like how to use new equipment or software.

#### Does it have to be accredited training?

No. The training could lead to a nationally recognised

### Time off work

#### Do I have to pay the employee when they take time off work to train?

No. The right is to request time off, not to request paid time off. It is the employer's decision as to whether the time off is to be paid.

#### employee can request?

No, but the time off is only to attend the training. If the time off is so great that it has a detrimental effect on the business this will factor into whether the request is granted. You may grant all, part or none of the time off requested by the employee.

#### Is there any limit on how much time off an

### Requests

#### Can the employee make as many requests as they want?

No, no more than one request can be made in any 12 month period.

## Once a request is received

### What is the procedure?

The procedure that you must follow once you have received a request closely follows the existing flexible working application procedure.

### How quickly do I have to react when I receive a request?

Within 28 days, you should either accept the request or meet with the employee to discuss it. The employee has the right to be accompanied and to be paid for the time taken for such a meeting. If a meeting is needed, you have to write to the employee with a decision within 14 days of the meeting.

### What information needs to be included in the letter if I agree?

If you decide to agree to the request, you must state:

- the subject of the study or training;
- where and when it will take place;
- who will provide or supervise it;
- what qualification it will lead to;
- whether the employee will be paid for the time off;
- whether any changes will be made to the employee's working hours to accommodate the training; and
- how the training costs will be met.

## Refusing a request

### What if I refuse?

If you decide to refuse the request, you must state:

- the grounds for refusal (see the business reasons specified below);
- why these grounds apply; and
- the appeal procedure to be followed if the employee wishes to appeal the decision.

### If I say no, is that the end of the matter?

No, the employee can make an internal appeal of the decision in writing within 14 days. That appeal must be considered properly and, if not accepted, an appeal meeting must be arranged within 14 days. Again, the employee has the right to be accompanied and to be paid for the time taken for this meeting. A decision must be communicated within 14 days following the meeting.

## Business reasons for refusal

### What if the business can't sustain the absence?

You can refuse a request for business reasons in the same way that a flexible working application can be refused.

### What are the specified business reasons?

- that the proposed study or training would not improve:
  - (a) the employee's effectiveness in the business, or
  - (b) the performance of the business;
- the burden of additional costs;
- detrimental effect on ability to meet customer demand;
- inability to re-organise work among existing staff;
- inability to recruit additional staff;
- detrimental impact on quality;
- detrimental impact on performance;
- insufficiency of work during the periods the employee proposes to work; or
- planned structural changes.

## What next?

### Can I just ignore all requests?

This is not advisable. The Employment Tribunal can award up to 8 weeks pay (currently capped at £380 per week) for failure to follow the procedure or properly consider a request. The Employment Tribunal can also order you to reconsider the request.

### What do I need to do?

Brief line managers and consider putting into place new procedures or updating your existing policies that deal with requests for time off work.

If you would like any further information, please email the employment, pensions and incentives unit at Burges Salmon at [epi@burges-salmon.com](mailto:epi@burges-salmon.com) or alternatively visit our website at [www.burges-salmon.co.uk/practices/employment/default.aspx](http://www.burges-salmon.co.uk/practices/employment/default.aspx).

If you would like advice on a specific instance, please contact Chris Seaton on 0117 9392000 or email [chris.seaton@burges-salmon.com](mailto:chris.seaton@burges-salmon.com) or contact the lawyer at Burges Salmon with whom you usually deal.