

Time Off for Dependants

A guide for employers and employees

URN 99/1186

dti

Department of Trade and Industry

Introduction

This booklet is a guide about time off for dependants. The right to time off is contained in section 57A of the Employment Rights Act 1996, as amended by the Employment Relations Act 1999. The section came into effect on 15 December 1999.

This booklet gives general guidance only and should not be regarded as a comprehensive or authoritative statement of the law. It describes the position which applies in England, Wales and Scotland. It addresses some of the more frequently asked questions on the right to time off for dependants.

The right to time off is available to all those who have a contract of employment with an employer, whether they work full time or part time. A contract of employment need not be in writing. Further information on contracts of employment can be found in the DTI booklet *Contracts of Employment* (PL 810).

The right does not apply to members of the police service, armed forces or masters or crew members engaged in share fishing paid solely by a share of the catch.

Further advice is available from the regional offices of the Advisory, Conciliation and Arbitration Service (ACAS). Their telephone numbers and addresses are listed in Appendix 1 of this booklet.

A list of publications on employment legislation is given in Appendix 2 of this booklet.

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Section 1: What is time off for dependants?

This is a right allowing employees to take a reasonable amount of time off work to deal with certain unexpected or sudden emergencies and to make any necessary longer term arrangements. The circumstances under which time off can be taken under this right are listed in Section 3 of this booklet. The emergency must involve a dependant of the employee. A definition of a dependant can be found in Section 4. An employee who uses this right is protected against dismissal or victimisation.

Frequently Asked Question: Is the time off paid?

The right does not include an entitlement to pay, so whether or not the employee will be paid is left to the employer's discretion, or to the contract of employment between them.

Section 2: When can an employee start using this right?

Employees do not have to complete a qualifying period in order to be able to take time off in an emergency. They are entitled to this right from day one of starting their job.

Section 3: Under what circumstances can an employee take time off?

The right enables employees to take action which is necessary to deal with an unexpected or sudden problem concerning a dependant and make any necessary longer term arrangements.

If a dependant falls ill, or has been injured or assaulted

The illness or injury need not necessarily be serious or life-threatening, and may be mental or physical. The illness or injury may be a result of a deterioration of an existing condition; for example, a dependant may be suffering from a nervous breakdown; he or she may not require full-time care, but there may be occasions when his or her condition deteriorates, and his or her partner or parent, son or daughter, needs to take time off work in consequence. The right to time off is also available where a dependant has been assaulted but is uninjured: for example, where a dependant is a victim of a mugging incident, but has not been physically hurt, the employee can take time off work if necessary to comfort or help the victim.

When a dependant is having a baby

Where necessary an employee can take time off to assist a dependant when she is having a baby. This does not include taking time off after the birth to care for the child; from 15 December 1999, an employee may be entitled to take parental leave for this purpose. The DTI leaflet *Parental Leave* (URN 99/1192) provides further information on this right.

To make longer term care arrangements for a dependant who is ill or injured

Where a dependant needs to be cared for because of an illness or injury, the employee can take time off work to make longer term care arrangements. This might mean making arrangements to employ a temporary carer or taking a sick child to stay with relatives.

To deal with a death of a dependant

When a dependant dies, an employee can take time off to make funeral arrangements, as well as to attend a funeral. If the funeral is overseas, then the employer and employee will need to agree a length of absence which is reasonable in these circumstances.

To deal with an unexpected disruption or breakdown of care arrangements for a dependant

Time off can be taken where the normal carer of the dependant is unexpectedly absent; for example, a childminder or nurse may fail to turn up as arranged, or the nursery or nursing home may close unexpectedly.

To deal with an unexpected incident involving the employee's child during school hours

An employee can take time off to deal with a serious incident involving his or her child during school hours. For example, if the child has been involved in a fight, is distressed, has been injured on a school trip or is being suspended from school.

Frequently Asked Question: Can both parents take time off work if their child falls ill?

There may be times when both parents want to take time off work under this right and it may be necessary for them to do so. Employers and employees will need to adopt a common-sense approach depending on the circumstances of the situation. Both parents may need to take time off if their child has had a serious accident, but it is unlikely to be necessary for both parents to be absent from work if the childminder fails to turn up.

Frequently Asked Question: Can an employee take time off if a boiler bursts?

No. Time off for emergencies which are not covered by this right is a contractual matter between an employer and employee.

Section 4: Who counts as a dependant?

A dependant is the husband, wife, child or parent of the employee. It also includes someone who lives in the same household as the employee. For example, this could be a partner or an elderly aunt or grandparent who lives in the household. It does not include tenants or boarders living in the family home, or someone who lives in the household as an employee, such as a live-in housekeeper.

In cases of illness or injury, or where care arrangements break down, a dependant may also be someone who reasonably relies on the employee for assistance. This may be where the employee is the primary carer or is the only person who can help in an emergency; for example, an aunt who lives nearby who the employee looks after outside work falls ill unexpectedly, or an elderly neighbour living alone who falls and breaks a leg, where the employee is closest on hand at the time of the fall.

Section 5: How much time off can an employee take?

The employee is entitled to take a reasonable amount of time off in the circumstances set out in Section 3. The legislation does not specify the amount of time off which is reasonable, since this will vary according to the circumstances of the emergency. For most cases, one or two days should be sufficient to deal with the problem. For example, if a child falls ill with chickenpox, the leave should be enough to help the employee cope with the crisis – to deal with the immediate care of the child, visiting the doctor if necessary, and to make longer term care arrangements. The employee is not entitled to take two weeks leave to look after a sick child. In the event of a dispute, the employer and employee should seek to resolve their differences through the normal grievance procedures. Otherwise, it will be up to an employment tribunal to determine what is reasonable.

The right is intended to cover genuine emergencies. No limit on the number of times an employee can be absent from work under this right has been set.

Frequently Asked Question: What happens if the employee needs longer time off, or knows in advance that the problem is going to arise?

The new right is generally for unforeseen matters. If employees know in advance that they are going to need time off, they should ask for leave in the usual way. This may involve someone taking annual leave or some other form of leave if the employer provides it. Or, if the reason they need leave relates to their child, from 15 December 1999 they may be entitled to take parental leave.

Frequently Asked Question: Does an employer need to keep records of time off taken under this right?

Employers are not required to keep records of time off taken under this right, although many will want to do so for their own purposes.

Section 6: Telling the employer

Employees must tell their employer, as soon as practicable, the reason for their absence and how long they expect to be away from work.

There may be exceptional circumstances where an employee returns to work before it was possible to contact the employer, but he or she should still tell the employer the reason for the absence on returning.

It is not necessary to give notice in writing.

Section 7: Abuse of the new right

Employers who think that an employee is abusing the right to time off should deal with the situation according to their normal disciplinary procedures.

Section 8: Protection from dismissal and detriment

Employees are protected from being penalised or dismissed because they have taken, or have sought to take, time off under this right. For example, someone who is moved to lower grade work because they have exercised this right would be able to make a complaint that they have suffered a detriment.

It is unfair to be dismissed or selected for redundancy for taking, or seeking to take, time off under this right.

Frequently asked Question: What is the meaning of detriment?

Detriment can cover a wide range of discriminatory actions, such as denial of promotion, facilities or training opportunities which the employer would otherwise have offered or made available.

Section 9: Grounds for complaint and resolving disputes

The grounds for making a complaint to an employment tribunal are that the employee has unreasonably been refused time off; suffers a detriment for taking, or seeking to take, time off; is dismissed for taking, or seeking to take, time off.

An employee who believes that he or she is entitled to make a complaint to an employment tribunal should first seek to resolve the dispute by mutual agreement with the employer – perhaps

through the business's own grievance or appeals procedure, where one exists. However, it should be noted that the time limit for making a complaint to an employment tribunal will still apply and will not normally be extended to allow for the fact that attempts have been made to settle the dispute in advance.

The employee and employer may also seek advice from a conciliation officer of the Advisory, Conciliation and Arbitration Service (ACAS), the addresses of which are given in Appendix 1 of this booklet.

Section 10: Making a complaint to an employment tribunal

The complaint should normally be made within three months of the refusal to allow time off, or the act of detriment or dismissal. An extension to the time limit can be granted only in exceptional circumstances, where the employment tribunal is satisfied that it was not reasonably practicable for the complaint to have been made any earlier.

An employee who wishes to make a complaint to an employment tribunal should go to a local Employment Service jobcentre which will provide her with a copy of the booklet *How to apply to an employment tribunal* containing a copy of the application form IT1 – or IT (Scot) in Scotland – which explains the procedure and gives the address of the employment tribunal office to which the completed form should be sent.

The DTI booklet *Unfairly Dismissed?* (PL 712) sets out more fully the procedures for making a complaint to an employment tribunal.

When the employment tribunal office receives the completed form, it will send a copy to a conciliation officer at ACAS who will try to get the two sides to reach a settlement of the complaint.

If conciliation is not possible or fails, the employment tribunal will hear the case, and both parties should attend the hearing. They may claim travelling expenses and other expenses within certain limits. Employment tribunal hearings are conducted informally and in a way which makes it easy for the parties to present their own case if they wish to do so. However, if either party wants to be represented – whether by a lawyer or by someone else such as a trade union, an employer’s association, a relative or a friend – this is permitted.

Section 11: Remedies

Where an employee complains that he or she has been unreasonably refused time off or subjected to a detriment for taking or seeking to take time off, and the tribunal finds the complaint well-founded, it will make a declaration to that effect and may order the payment of compensation. It is for the tribunal to decide the appropriate award, taking account of the loss suffered by the applicant.

Where a tribunal finds that a complaint of unfair dismissal is justified, it will order re-instatement or re-employment, or the payment of compensation. The DTI booklet *Limits on Payments* (PL 827) gives general information about the sums payable. For further details of remedies in cases of unfair dismissal, see *Unfairly Dismissed?* (PL 712) and *Fair and unfair dismissal: a guide for employers* (PL 714).

Appendix 1: Advisory, Conciliation and Arbitration Service

ACAS Public Enquiry Points

Birmingham	(0121) 456 5856
Bristol	(0117) 946 9500
Cardiff	(029) 20761126
Fleet	(01252) 811868
Glasgow	(0141) 204 2677
Leeds	(0113) 243 1371
Liverpool	(0151) 427 8881
London	(020) 7396 5100
Manchester	(0161) 833 8585
Newcastle upon Tyne	(0191) 261 2191
Nottingham	(0115) 969 3355

ACAS main offices

Midlands Region

Warwick House, 6 Highfield Road, Edgbaston, Birmingham
B15 3ED

Anderson House, Clinton Avenue, Nottingham NG5 1AW

Northern Region

Commerce House, St Alban's Place, Leeds LS2 8HH

Westgate House, Westgate Road, Newcastle upon Tyne NE1 1TJ

North West Region

Commercial Union House, 2-10 Albert Square, Manchester
M60 8AD

Cressington House, 249 St Mary's Road, Garston, Liverpool
L19 0NF

South and West Region

Regent House, 27a Regent Street, Clifton, Bristol, BS8 4HR

Westminster House, Fleet Road, Fleet, Hants GU13 8PD

London, Eastern and Southern Areas

Clifton House, 83-117 Euston Road, London NW1 2RB

39 King Street, Thetford, Norfolk, IP24 1AU

Suites 3-5, Business Centre, 1-7 Commercial Road, Paddock

Wood, Kent TN12 6EN

Scotland

Franborough House, 123-157 Bothwell Street, Glasgow, G2

7JR

Wales

3 Purbeck House, Lambourne Crescent, Llanishen, Cardiff

CF14 5GJ

Head Office

Brandon House, 180 Borough High Street, London, SE1 1LW

Appendix 2: Useful publications

ACAS Publications

Advisory Handbooks

Employing people: a handbook for small firms

Discipline at work

Employment handbook

Advisory Booklets

Job evaluation: an introduction

Introduction to payment systems

Personnel records

Absence and labour turnover

Recruitment and induction

Employee communications and consultation

The company handbook

Employment policies

Employee appraisal

Redundancy handling

Hours of work

Appraisal-related pay

Health and employment

Effective organisations: the people factor

Supervision

Teamwork: success through people

For details of how to order ACAS Publications, please write to ACAS Reader Ltd, P.O.Box 16, Earl Shilton, Leicester LE9 8ZZ; or telephone: 01455 852 225

For all other enquiries, see list of regional ACAS public enquiry points.

The following booklets on employment and trade union legislation can be obtained free of charge from Jobcentres and other offices of the Employment Service. They are also available by post from the DTI Publications Orderline (0870 1502 500).

- PL 865 (REV1) Unjustifiable discipline by a trade union
- PL 866 (REV2) Trade union executive elections
- PL 871 (REV4) Union membership and non-membership rights
- PL 867 (REV2) Trade union funds and accounting records
- PL 868 (REV2) Trade union political funds
- PL 944 (REV1) The payment of trade union subscriptions through the check-off: a guide for employers, trade unions and their members
- PL 869 (REV2) Industrial action and the law: a guide for employees, trade union members and others
- PL 870 (REV2) Industrial action and the law: a guide for employers, their customers and suppliers, and others
- PL 943 Industrial action and the law: a guide for individuals on the right to stop the unlawful organisation of industrial action
- PL 962 Statutory Code of Practice: Trade union ballots on industrial action
- PL 928 (REV1) Statutory Code of Practice: Picketing

- PL 712 (REV14) Unfairly dismissed?
- PL 707 (REV10) Rights to notice and reasons of dismissal
- PL 958 (REV4) Maternity Rights: a guide for employers and employees
- PL 714 (REV7) Fair and unfair dismissal: a guide for employers
- PL 716 (REV6) Individual rights of employees: a guide for employers and employees

- PL 699 (REV4) Employment rights on the transfer of an undertaking
- PL 700 (REV4) Written statement of employment particulars
- PL 702 (REV3) Time off for public duties
- PL 704 (REV4) Itemised pay statements
- PL 724 (REV1) Guarantee payments
- PL 718 (REV3) Your rights if your employer is insolvent
- PL 705 (REV3) Suspension from work on medical or maternity grounds under health and safety regulations
- PL 720 (REV3) Recoupment of benefit from employment tribunal awards: a guide for employers
- PL 711 (REV5) Rules governing continuous employment and a week's pay

How to apply to an employment tribunal
What to do if taken to an employment tribunal
Hearings at employment tribunals
Appeals to employment tribunals against levy assessments
Appeals to employment tribunals concerning improvement or prohibition notices under Health and Safety at Work etc. Act 1974

- PL 703 (REV4) Time off for job hunting or to arrange training when facing redundancy
- PL 808 (REV5) Redundancy payments
- PL 810 (REV5) Contracts of employment
- PL 827 (REV4) Limits on payments
- PL 833 (REV5) Redundancy consultation and notification
- RPL 1 Offsetting pensions against redundancy payments

- PL 960 Sunday Trading Act 1994 – New employment rights for shopworkers
- PL 973 Sunday Betting – New employment rights for betting workers

Time off for dependants: a short guide

Changes to maternity rights: a short guide

Maternity rights: a guide for employers and employees

Parental leave: a short guide

Parental leave: a guide for employers and employees



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