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INFORMATION NOTE NO. 11

JANUARY 2011

TIME OFF WORK – RIGHTS AND RESPONSIBILITIES

This Information Note gives a brief outline of statutory rights to time off work. It includes basic information on who is entitled to the rights to time off work, links to other useful sources of further information and how people complain if they are denied a right they believe they are entitled to.

Employers and employees are free to agree better terms than those required by legislation in their contract of employment. A contract of employment is an agreement entered into by an employer and employee under which they have certain mutual obligations.

Who has these rights?

Most people are entitled to the statutory rights listed in this Information Note, although, in many cases, qualifying conditions must be fulfilled before a right may be claimed. Some rights apply to all employees as soon as they start work; others depend on factors such as length of service, continuity of employment and activities in addition to the job (e.g. union work).

For certain rights, various groups of people are excluded. Most rights apply only to employees but some apply to wider groups of workers*. Always check detailed information on qualifying conditions using the links provided.

**Some time off rights apply to workers as well as employees 'Employees' are individuals who have entered into or who work under a contract of employment which is a contract of service or apprenticeship. The term 'worker' includes employees but additionally includes individuals who have entered into or who work under any other contract whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or a customer of any profession or business undertaking carried on by the individual.*

The time off work rights covered in this Information Note are as follows:

- Adoption leave
- Annual leave
- Time off for antenatal care
- Time off for dependants (Emergency time off to deal with certain unexpected or sudden emergency involving a dependant)
- Time off to accompany a worker to a disciplinary or grievance hearing
- Time off for employee representatives (for consultation about redundancies or business transfers).
- Time off for European Works Councils
- Time off to accompany a fellow employee at a flexible working hearing
- Maternity leave (ordinary) and Maternity leave (additional)
- Parental leave
- Paternity leave
- Time off for occupational pension scheme trustees and directors of trustee companies
- Time Off for Employee Representatives under The Occupational and Personal Pensions Scheme (Consultation by Employers) Regulations (Northern Ireland) 2006
- Time Off for Activities Relating to the Information and Consultation of Employees Regulations (NI)
- Time off for public duties
- Time off for jury service
- Time off for job hunting or to arrange training when facing redundancy
- Time off for elected/appointed safety representatives
- Time off for study or training
- Time off work for trade union duties and activities
- Time off for union learning representatives
- Time off under the Working Time Regulations

ADOPTION LEAVE

To qualify for **Adoption Leave** a person must be an employee (that is to say, they must work under a contract of employment).

The employee must:

- have been continuously employed by the same employer for at least 26 weeks ending with the week in which they are notified of having been matched with the child. The week in question starts on a Sunday and ends on a Saturday. Continuous employment generally means working for the same employer without a break;
- have been matched with a child to be placed with them by a UK adoption agency;
- have notified the agency that they agree that the child should be placed with them and agree on the date of placement;
- notify their employer of when they want to take their statutory adoption leave (SAL) no more than seven days after they are notified that they've been matched with a child.

The SAL period is made up of 26 weeks' **ordinary adoption leave** followed immediately by 26 weeks' **additional adoption leave**.

Further details on adoption leave and pay can be found in the DELNI booklet-ER 35 Adoptive Parents: a guide for employers and employees

<http://www.delni.gov.uk/index/publications/pubs-employment-rights/erbooklets/er35.htm>

ANNUAL LEAVE

Most workers – whether part-time or full-time – are entitled to statutory minimum of 5.6 weeks' **paid** annual leave.

A week's leave should allow workers to be away from work for a week – i.e. it should be the same amount of time as the working week. If a worker does a five-day week, he or she is entitled to 28 days' leave. If he or she does a three-day week, the entitlement is 16.8 days' leave.

There is no statutory right to have bank holidays off as paid leave. They may be part of the 5.6 weeks' leave – some contracts deal with bank holidays separately.

Workers must give the employer notice that they want to take leave. Employers can set the times that workers take their leave, for example for a Christmas shutdown. If a worker's employment ends, he or she has a right to be paid for the leave time due and not taken.

For further information on holidays read LRA Information Note – Holidays and holiday pay

http://www.lra.org.uk/microsoft_word_information_note_3_holidays_and_holiday_pay_april_2009-2.pdf

TIME OFF FOR ANTENATAL CARE

All pregnant employees are entitled to time off **with pay** to keep verifiable appointments for antenatal care made on the advice of a registered medical practitioner, midwife or health visitor. Antenatal care may include relaxation classes and parentcraft classes. Further details can be found in the DELNI booklet: - ER 16 Maternity Rights - A guide for employers and employees

<http://www.delni.gov.uk/index/publications/pubs-employment-rights/erbooklets/er16.htm>

TIME OFF FOR DEPENDANTS

All employees are entitled to a reasonable time off work **without pay**, to deal with certain unexpected or sudden emergency involving a dependant and to make any necessary longer term arrangements. For example:

- If a dependant falls ill, or has been injured or assaulted
- When a dependant is having a baby
- To make longer term care arrangements for a dependant who is ill or injured
- To deal with a death of a dependant.
- To deal with an unexpected disruption or breakdown of care arrangements for a dependant
- To deal with an unexpected incident involving the employee's child during school hours

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. 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. The employee is entitled to take a reasonable amount of time off in the above circumstances. The legislation does not specify the amount of time off which is reasonable, since this will vary according to the circumstances of the emergency. The time off is not for caring but for making longer term care arrangements.

Further details on circumstances when leave can be taken and the definition of a dependant can be found in the DELNI booklet - ER24 Time off for dependants

<http://www.delni.gov.uk/index/publications/pubs-employment-rights/erbooklets/er24.htm>

TIME OFF TO ACCOMPANY A WORKER TO A DISCIPLINARY OR GRIEVANCE HEARING

A worker who has agreed to accompany a colleague employed by the same employer is entitled to take a reasonable amount of **paid** time off to fulfil that responsibility. This should cover the hearing and it is also good practice to allow time for the companion to familiarise themselves with the case and confer with the worker before and after the hearing. A lay trade union official is permitted to take a reasonable amount of paid time off to accompany a worker at a hearing, as long as the worker is employed by the same employer as the lay official.

For further information on time off to accompany a worker to a disciplinary or grievance hearing see the LRA Code of practice on disciplinary and grievance procedures http://www.lra.org.uk/index/agency_publications-2/advice_and_guidance_on_employment_matters-3/codes_of_practice-2/disciplinary_and_grievance_procedures-2.htm

TIME OFF FOR EMPLOYEE REPRESENTATIVES

Employees who act as representatives of affected employees for consultation about redundancies or business transfers, or are candidates to be representatives of this kind, are entitled to reasonable time off **with pay** during working hours to perform these functions and to receive appropriate training.

Further details can be found in the DELNI booklet - ER4 - Redundancy consultation and notification

<http://www.delni.gov.uk/index/publications/pubs-employment-rights/erbooklets/er4.htm>

TIME OFF FOR EUROPEAN WORKS COUNCILS

Employees are allowed reasonable time off with pay to perform their functions as a member of a special negotiating body or a European Works Council, as an information and consultation representative or as a candidate in an election to be such a member or representative.

TIME OFF TO ACCOMPANY AN EMPLOYEE AT A FLEXIBLE WORKING HEARING

Parents of children aged sixteen or under or disabled children under the age of 18 and carers of certain adults have the right to apply to their employer to work more flexibly. The employer has a statutory duty to consider the request seriously and to refuse it only if there are clear business grounds (statutorily defined) for doing so.

If the employer and employee meet to discuss the request at a flexible working hearing then the employee can only be accompanied by a colleague (a worker or trade union representative employed by the same employer) who has the right to **paid** time off during working hours to attend.

Further details can be found in the DELNI booklet:- ER 36 Flexible working: a guide for employers and employees

<http://www.delni.gov.uk/index/publications/pubs-employment-rights/erbooklets/er36.htm>

MATERNITY LEAVE

Women whose are entitled to 52 weeks' maternity leave – made up of 26 weeks' ordinary maternity leave and 26 weeks' additional maternity leave – regardless of how long they have worked for their employer.

- **Ordinary Maternity Leave**

A woman must tell her employer no later than the end of the 15th week before the expected week of childbirth:

- that she is pregnant;
- the expected week of childbirth by means of a medical certificate if requested; and/or
- the date she intends to start maternity leave. This can normally be any date which is no earlier than the beginning of the 11th week before the expected week of childbirth up to the birth.

Her employer should in turn notify her of the date on which her leave will end within 28 days of receiving her notification. If the employer fails to do this the employee may have protection against detriment or dismissal if she does not return to work on time.

An employee can change the date she wants her leave to start as long as she notifies her employer 28 days before the date she originally chose or if it is earlier 28 days before the new date she wants her leave to start. During the 26 weeks ordinary maternity leave she is entitled to benefit from all her normal terms and conditions of employment except for remuneration.

- **Additional Maternity Leave**

The 26 weeks' additional maternity leave period begins at the end of ordinary maternity leave. This means a woman is entitled to be away from her job for 52 weeks in total. She does not have to notify her employer before the start of her ordinary maternity leave that she also intends to take additional maternity leave. However when her employer notifies her of the end date of her leave they will have based their calculation on the assumption that if she is entitled to additional

maternity leave she will be taking it and if she wishes to return before she has taken her full 52 weeks' maternity leave she must give the correct notice. The contract of employment continues as it did during ordinary maternity leave with her still being entitled to benefit from any contractual terms and conditions that she normally has, except for the terms providing for her wages or salary.

Further details can be found in the DELNI booklet:- ER 16 Maternity Rights - A guide for employers and employees

<http://www.delni.gov.uk/index/publications/pubs-employment-rights/erbooklets/er16.htm>

PARENTAL LEAVE

Employees who have completed one year's service with their employer are entitled to 13 weeks' **unpaid** parental leave for each child born or adopted. The leave can start once the child is born or placed for adoption with the employee or as soon as the employee has completed a year's service, whichever is later.

It may be taken at any time up to the child's **fifth** birthday (or until five years after placement in the case of adoption). Parents of disabled children can take parental leave until the child's 18th birthday.

Employees remain employed while on parental leave and some terms of their contract, such as contractual notice and redundancy terms, still apply. At the end of parental leave they have the right to return to the same job as before or, if that is not practicable, a similar job which has the same or better status, terms and conditions as the old job. Where leave is taken for a period of four weeks or less, the employee is entitled to go back to the same job.

Further details can be found in the DELNI booklet:- ER 25 Parental leave: a guide for employers and employees

<http://www.delni.gov.uk/index/publications/pubs-employment-rights/erbooklets/er25.htm>

PATERNITY LEAVE

Employees who:

- have or expect to have responsibility for the child's upbringing
- are the biological father of the child or the mother's husband or partner and
- have worked continuously for their employer for 26 weeks ending with the 15th week before the baby is due, or the end of the week in which the child's adopter is notified of being matched with the child can choose to take either one week or two consecutive weeks' paternity leave (not odd days).

This must be completed:

- within 56 days of the actual date of birth of the child, or
- if the child is born early, within the period from the actual date of birth up to 56 days after the first day of the week in which the birth was expected.

The right to return to work is the same as for 'Parental leave' (see above).

Most employees are entitled to Statutory Paternity Pay (SPP) from their employers.

Further details can be found in the DELNI booklet:- ER 34 Rights to paternity leave and pay

<http://www.delni.gov.uk/index/publications/pubs-employment-rights/erbooklets/er34.htm>

TIME OFF FOR OCCUPATIONAL PENSION SCHEME TRUSTEES AND DIRECTORS OF TRUSTEE COMPANIES.

Employees who are trustees of an occupational pension scheme or directors of trustee companies are entitled to reasonable time off **with pay** to carry out any of their trustee's duties or to receive training relevant to those duties.

TIME OFF FOR EMPLOYEE REPRESENTATIVES UNDER THE OCCUPATIONAL AND PERSONAL PENSIONS SCHEME (CONSULTATION BY EMPLOYERS) REGULATIONS (NORTHERN IRELAND) 2006

Employees who act as employee representatives for consultation about significant changes to their work-based pension schemes under the above Regulations are entitled to reasonable time off **with pay** during working hours to perform these functions. Initially the Regulations applied to undertakings with 100 or more employees and from April 2008 they applied to undertakings with 50 or more employees.

TIME OFF FOR ACTIVITIES RELATING TO THE INFORMATION AND CONSULTATION OF EMPLOYEES REGULATIONS (NI)

Employees who act as negotiating representatives or Information and Consultation representatives are entitled to take reasonable time off during working hours to perform their functions as representatives, and to be paid for this time.

Further details can be found in the DELNI booklet Information and Consultation in the Workplace – A Guide

http://www.delni.gov.uk/information_and_consultation_april30_2008.pdf

TIME OFF WORK FOR PUBLIC DUTIES

Under certain circumstances employers must give employees who hold certain public positions reasonable time off to perform the duties associated with them.

This provision covers such offices among others as justice of the peace, prison visitor, members of a local authority, members of district policing partnerships, a statutory tribunal and certain health and education authorities.

Employers **do not have to pay** employees for the time taken off for public duties.

Further details can be found in the DELNI booklet: - ER 7 Time off for public duties

<http://www.delni.gov.uk/index/publications/pubs-employment-rights/erbooklets/er7.htm>

TIME OFF FOR JURY SERVICE

An employer must not dismiss an employee or subject them to a detriment for having been summoned to participate in jury service.

Any such dismissal would be seen to be automatically unfair by an industrial tribunal. The employee would not need a year's continuous employment to lodge an unfair dismissal claim.

Employees are not protected against unfair dismissal if, after the employer has told them that they believe their business will be seriously harmed by their absence, they unreasonably refuse or fail to apply to have their jury service deferred or to be excused from it.

Employers **do not have to pay employees** while they are doing jury service, unless the employee's contract permits this.

Further details can be found on the Northern Ireland Court Service website

<http://www.courtsni.gov.uk/en-GB/Services/Jury+Service>

TIME OFF FOR JOB HUNTING OR TO ARRANGE TRAINING WHEN FACING REDUNDANCY

An employee who is being made redundant is entitled to take **reasonable** time off **with pay** (but only 2/5ths of a week's pay in total, regardless of the length of time off allowed) to look for another job, or to make arrangements for training for future employment. The employee, who must have at least two years' continuous service, can take the time off within working hours while under notice. Further details can be found in the DELNI booklet - ER3 Redundancy Entitlement Statutory Rights

<http://www.delni.gov.uk/index/publications/pubs-employment-rights/erbooklets/er3.htm>

TIME OFF FOR SAFETY REPRESENTATIVES

Employees who are:

- safety representatives appointed under the Safety Representatives and Safety Committee Regulations (Northern Ireland) 1979 by a trade union recognised by their employer;
- representatives of employee safety elected under the Health and Safety (Consultation with Employees) Regulations 1996 to represent employees not covered by the 1977 Regulations; or
- safety representatives elected under the Offshore Installations (Safety Representatives and Safety Committee) Regulations 1989

are entitled to time off **with pay** to carry out their functions and to undergo training. Further details of these provisions may be found in the Health and Safety Executive for Northern Ireland's (HSENI) booklet: 'Safety Representatives and Safety Committees' containing the Regulations and the Code of Practice on this subject – Contact - HSENI, 83 Ladas Drive, Belfast BT6 9FR **Freephone Helpline 0800 0320 121**; **Telephone:** 028 9024 3249; **Textphone:** 028 9054 6896; **Fax:** 028 9023 5383 **Email:** hseini@detini.gov.uk

TIME OFF FOR STUDY OR TRAINING

Employees aged 16 or 17 who have not achieved a certain standard in their education or training have the right to reasonable time off **with pay** to study or train for a relevant qualification which will help them towards that standard.

Certain employees aged 18 have the right to complete study or training already begun. The study or training can be in the workplace, at college, with another employer or a training provider or elsewhere.

There is no qualifying period of employment for the employee.

Further details can be found in the DELNI booklet:- ER 26 Time off for study or training

<http://www.delni.gov.uk/index/publications/pubs-employment-rights/erbooklets/er26.htm>

TIME OFF WORK FOR TRADE UNION DUTIES AND ACTIVITIES

An employee who is an **official** of an independent trade union which is recognised by the employer must be allowed reasonable time off **with pay** during working hours to:

- carry out those duties as an official which relate to matters for which the employer has recognised the union or any other functions which the employer has agreed the union may perform;

- consult with the employer or receive information from the employer about mass redundancies or business transfers; or
- undergo training relevant to those duties and which is approved by the Trades Union Congress, or the Irish Congress of Trade Unions or the independent union of which he is a member.

An employee who is a **member** of an independent trade union which is recognised by the employer is entitled to reasonable time off for certain trade union activities. The employer is **not obliged to pay** the member employee for time off for these activities.

The LRA Code of Practice - Time Off for Trade Union Duties and Activities provides guidance on the time off to be permitted by an employer.

http://www.lra.org.uk/index/agency_publications-2/advice_and_guidance_on_employment_matters-3/codes_of_practice-2/time_off_for_trade_union_duties_and_activities-2.htm

TIME OFF FOR UNION LEARNING REPRESENTATIVES

An employee who is a member of an independent trade union which is recognised by the employer and who is a Union Learning Representative must be allowed reasonable time off **with pay** during working hours to:

- carry out those duties that relate to Union Learning Representatives; or
- undergo training relevant to the duties of a Union Learning Representative.

The LRA Code of Practice - Time Off for Trade Union Duties and Activities provides guidance on the time off to be permitted by an employer for Union Learning Representatives.

http://www.lra.org.uk/index/agency_publications-2/advice_and_guidance_on_employment_matters-3/codes_of_practice-2/time_off_for_trade_union_duties_and_activities-2.htm

TIME OFF UNDER THE WORKING TIME REGULATIONS

As well as the right to paid annual leave and a limit on the average hours a worker can be required to work (48 hours), the Working Time Regulations give other rights to time off including:

- 11 consecutive hours' rest in any 24-hour period
- an in-work rest break if the working day is longer than six hours
- one day off each week
- a limit on the normal working hours of night workers to an average eight hours in any 24-hour period, and an entitlement for night workers to receive regular health assessments.

The Regulations apply to all workers, including the majority of agency workers and freelancers.

The rights of young workers – those over the minimum school leaving age but under 18 – differ in the following ways:

- a limit of eight hours working time a day and 40 hours a week
- not to work between 10pm and 6am or between 11pm and 7am (except in certain circumstances)
- 12 hours' rest between each working day
- two days' weekly rest and
- a 30-minute in-work rest break when working longer than four and a half hours.

Further details can be found in the DELNI - Guide to the Working Time Regulations.

<http://www.delni.gov.uk/index/publications/pubs-employment-rights/other-employment-rights-publications/working-time-regs-detailed-guide.htm>

WHAT HAPPENS IF THERE IS A DISPUTE ABOUT THESE RIGHTS AT WORK?

If employers and employees have a dispute about any of the rights listed in this leaflet they have the following options:

1. **Settle the dispute.** Employees should always try to resolve a problem or dispute with their manager or employer first. This might be through the organisation's own grievance procedure. Both sides can also come to the Labour Relations Agency (LRA) for advice, either from the helpline or an LRA adviser.
2. An employee may be able to make a **complaint to an industrial tribunal** if he or she believes an employment right has been denied or infringed. In most cases, people who suffer disadvantage for exercising their rights may also complain to a tribunal.
3. Complaints normally must be made within three months of the date of the alleged infringement – although there are exceptions (follow the links on this leaflet for details). For nearly all types of complaint, once an application is received a **LRA conciliator** will contact both parties to see if a settlement can be reached before the case reaches an industrial tribunal hearing.
4. An **Industrial tribunal hearing** has various remedies and awards it can make, depending on the type of case. A tribunal hearing is normally public.

For further information or assistance contact the LRA Helpline

Tel: 028 9032 1442