



ADVICE

on

Non-Union Representation In the Workplace

This guide provides practical advice and guidance on non-union representation in the workplace. We have provided legal information for guidance only. This information should not be regarded as a complete or authoritative statement of the law, which can only be given by the courts. If you need more help, you can contact us (our contact details are on the back page of this guide).

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Preface

It is estimated that around half of employee representatives in the UK are non-union. Their role tends to be much more restricted than that of their union counterparts, being limited in the main to consultation. It is not unknown, in the private sector particularly, to find union representatives sharing a consultative forum with non-union representatives from the same firm, a matter discussed in this guide. In some cases, for example in dealing with collective redundancies and the transfer of undertakings in firms which do not recognise trade unions, non-union representatives have statutory rights to facilities, time off for training and facility time. For some other non-union representatives, especially members of consultative forums set up under the information and consultation regulations, and multinational companies with a European Works Council, the statutory provisions are only for time off with pay to carry out representative duties. Often consultative bodies, usually called employee forums or works councils, are set up voluntarily by employers with no reference to the law. Here there are no enforceable rights to paid time off, training or the use of facilities.

The Labour Relations Agency (Agency) issued a revised *Code of Practice on time off for trade union duties and activities* on 19th April 2012. The revised Code provides advice under the provisions of the Industrial Relations (Northern Ireland) Order 1992 as subsequently amended. Its prime focus is representatives of independent trade unions in workplaces where the union is recognised for collective bargaining purposes. A separate guide for union representatives is published to provide further advice on managing arrangements for time off for these representatives, *Trade union representation in the workplace*.

It is the purpose of this guide to cover all the circumstances where non-union representatives carry out their duties. It must be emphasised that the guide has no legal standing and is not intended to be taken into account in any tribunal hearing.

The purpose of this guide

This guide is for employers and non-union workplace representatives. It gives advice on the provision of time off, training and facilities to enable non-union representatives to carry out their duties. It covers statutory and non-statutory representatives.

The status of this guide

The guide provides advice on good practice based on the Agency's experience of working with employers and workplace representatives to build effective methods of communication and consultation between management and representatives. In order to be effective in their role representatives need the security of knowing that they can gain time off with pay, be trained and have access to communication and other facilities. Employers, in turn, need assurance that these are legitimate requests and that they will be made with due regard to business circumstances. The Agency's experience is that there is much benefit to be gained by drawing up an agreement to regulate the operation of time off arrangements and ensure there are realistic expectations held by all involved. The guide spells out the issues and factors to be taken into account in designing and operating time off provisions. This guide, as explained in the preface, has no standing in law.

The types of non-union representatives and their rights

Non-union representatives with statutory rights to time off

There are seven areas of statute or regulations where non-union representatives have statutory rights to paid time off to perform their duties and in some cases to receive training, and be provided with facilities. In these cases representatives are protected from dismissal or detriment in carrying out their duties or in standing for election¹.

Representatives in employee forums set up voluntarily by employers have no legal rights to time off to carry out their duties, to receive training or have access to facilities². It is, however, very much in employers' interests to provide these since without them it would be extremely difficult for representatives to represent the workforce and take part in consultation in any meaningful way.

The different roles played by representatives and protected by statutory provisions are listed in the following table with a brief summary of their legal rights:

Type of representative	Rights
<p>Representatives of employee safety appointed in workplaces where there is no union recognised, or where groups of workers are outside the scope of union recognition. The representatives are covered by the Health and Safety (Consultation with Employees) Regulations (Northern Ireland) 1996 - Regulation 7.</p>	<ul style="list-style-type: none"> • Paid time off to carry out their duties • Paid time off for training • The provision of facilities to help them perform their duties • Protection against dismissal and detriment. <p>The Health and Safety Executive Northern Ireland issues its own advice and Codes on health and safety representatives. They are not included in this guide.</p>
<p>Information and consultation representatives. Representatives may be elected to negotiate the set up and/or be members of a subsequent information and consultation body under the Information and Consultation of Employees</p>	<ul style="list-style-type: none"> • Paid time off to carry their duties • Protection against dismissal and detriment. <p>The statutory rights only apply to those representatives who negotiate to create an ICE body</p>

<p>Regulations (Northern Ireland) 2005 (known as ICE).</p>	<p>and/or serve on it under a 'negotiated agreement' or a 'standard agreement' under the Regulations. Representatives on ICE bodies established under a 'pre-existing agreement,' have no rights to time off but it is good practice that employers will follow the provisions established elsewhere in the Regulations.</p>
<p>European consultative bodies. Employee members, whether union or non-union, of a special negotiating body (a body established for the purposes of negotiating with central management an agreement for a European Works Council (EWC) under the Transnational Information and Consultation of Employees Regulations 1999) and the equivalent in a European Public Limited Liability Company (known as a European Company) and a European Cooperative Society (the European Cooperative Society (Involvement of Employees) Regulations 2006) all have statutory rights to enable them to set up with management appropriate consultative bodies like a EWC. Once established the rights apply to the employee representatives on these bodies irrespective of union membership.</p>	<ul style="list-style-type: none"> • Paid time off to carry out their duties • Protection against dismissal and detriment
<p>Pension representatives are those workplace representatives, whether union or non-union, elected for the purpose of consultation over changes to pension arrangements, known as 'listed' changes, under the Occupational and Personal Pension Schemes (Consultation by Employers)</p>	<ul style="list-style-type: none"> • Paid time off to carry out their duties • Protection against dismissal or detriment.

<p>Regulations (Northern Ireland) 2006 and the Information and Consultation of Employees (Amendment) Regulations (Northern Ireland) 2006.</p>	
<p>‘TUPE’ representatives. Where there are no trade unions recognised for collective bargaining purposes, non-union employee representatives must be informed and consulted over the transfer of undertakings. The Transfer of Undertakings (Protection of Employment) Regulations 2006, known as TUPE and The Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006</p>	<ul style="list-style-type: none"> • Paid time off to carry out their duties • Paid time off for training • The provision of facilities to help them perform their duties • Protection against dismissal and detriment
<p>Collective redundancy. Where there are no trade unions recognised for collective bargaining purposes non-union representatives must be informed and consulted in circumstances where the redundancy of</p> <ul style="list-style-type: none"> • 20 to 99 employees is proposed within a 30 day period or • more than 100 employees is proposed within a 90 day period <p>[Article 216 of the Employment Rights (Northern Ireland) Order 1996 as amended, known as ‘collective redundancy’]</p>	<ul style="list-style-type: none"> • Paid time off to carry out their duties • Paid time off for training • The provision of facilities to help them perform their duties • Protection against dismissal and detriment.
<p>Workforce agreement representatives. Workplace agreements may be found in circumstances where employers and employees agree the particular application of a statute to the workplace concerning working time, maternity and paternity and fixed term employment. Representatives may be union or non-union.</p>	<p>Employee representatives in these circumstances do not have rights to time off but have a right to</p> <ul style="list-style-type: none"> • Protection against dismissal and detriment.

Associated employers and group of companies

It is important to note that the duty to provide time off relates only to the representative's employer and not to any associated employer unless agreed by them. In circumstances where a number of employers share a site and agree joint consultative arrangements it is advisable to establish special arrangements to ensure that the rights of representatives are clearly established and understood.

In circumstances where collective bargaining and joint consultation take place among a group of employers or covers different sites of a company rights to time off can apply, for example in the attendance of collective bargaining meetings at a regional or national level. It is sensible for employers and representatives in these circumstances to make special arrangements as part of their agreement on time off.

The varying roles of non-union representatives

A Common Sense Approach

The different types of statutory rights to time off, training and facilities can be confusing and a cause of difficulty if applied without a wider consideration of the role of representatives and workplace circumstances. For example, a representative engaged in TUPE or collective redundancy consultation has the right to have paid time off, training and facilities. However, a representative on an ICE body (who may be the same person carrying out TUPE consultation) only has a right to time off. In practice all representatives have to seek approved time off from their work to carry out their duties and they need at least some training and access to facilities if only to communicate with management and with their constituents. A common sense approach is to determine what is sensible in the circumstances, with the aim of developing an effective system of representation while ensuring that legal rights are met. It is the aim of this guide to provide advice on how this may be done in a practical and fair way.

Different types of representatives have different needs

The role and responsibilities of representatives can vary quite considerably between types of workplaces and sectors and between the different types of representatives listed in the table on pages 3 to 5. It is important to consider what role the representative plays in working out what time off and facilities can reasonably be expected and should be granted. In practice there are four main roles that non-union representative can play. These are:

- representatives engaging in ongoing consultation – ICE and EWC
- representatives dealing with issue specific consultation – TUPE, collective redundancy and pensions
- representatives of employee safety
- representatives dealing with individual grievance and disciplinary matters.

Consultation representatives

The meaning of consultation

These are representatives whose role is generally restricted to meetings of consultation bodies on site, or sometimes at a higher level. Some are formed under appropriate legislation but many are 'voluntary' consultative bodies set up by employers to consult with the workforce and improve communications. Some senior representatives may attend both site and higher level, company-wide, meetings and even be members of a European Works Council (EWC).

The purpose of consultation, as defined in EU statutes is the 'exchange of views and the establishment of dialogue'. This often involves the sharing of company information and consideration of options for strategic change and opportunity for representatives to voice any concerns and raise matters requiring attention. The representatives are usually directly elected by the workforce but sometimes are appointed by management. This use of appointments does, however, limit the authority of representatives in the eyes of the workforce. The Labour Relations Agency does not endorse the practice of managerial appointment of consultation representatives.

Joint union and non-union membership of employee forums

It is not unknown, especially in the private sector in workplaces where unions are recognised, for employee forums to have both union and non-union representatives. While there may initially be unease at this arrangement, in practice union and non-union representatives can work together effectively, especially where management reassures the union that its collective bargaining rights are recognised and not threatened. Joint training of both types of representative can be especially beneficial.

Special arrangements for negotiating ICE and EWC bodies

Consultation representatives are covered by the relevant provisions of the regulations, listed above, concerned with ICE, EWCs, and consultation in European companies and European Co-operative Societies. A further type of representative is linked to the negotiation of consultative forums under the ICE and EWC, European Company and European Co-operative Society regulations.

These representatives have the role of negotiating and agreeing with relevant management the design and operational rules of appropriate consultative bodies set up under the provisions of the various regulations. While many of these specially elected members of negotiating bodies may subsequently be elected to serve on the standing consultative forums there is no requirement to do so and it cannot be anticipated that they will. At the time of the operation of these negotiating bodies there are particular needs for time off to meet with management, prepare for meetings and communicate with constituents. Training on the purpose and planned operation of the consultative forum will be beneficial.

Consultation meetings

The frequency, length and location of the consultation meetings, and the range of topics discussed, will vary from one organisation to another. This will directly influence the amount of time off required by these workplace representatives to perform their duties. The size of constituencies³ and their dispersion can also vary widely and this, too, will influence the amount of time needed by representatives to communicate with their constituents, as well as with other representatives, before and after meetings. It is good practice for consultation representatives to receive initial training when they are first appointed and necessary refresher training during the course of their appointment.

Subject specific consultation – TUPE, collective redundancies and pensions

The requirement for consultation

Various statutes allow for the election of non-union representatives to deal with specific employment related issues such as business transfers and collective redundancies. Where unions are recognised these will be union representatives. Otherwise employees have the statutory right to elect representatives especially to deal with these issues. Another area of subject specific consultation relates to changes in pension arrangements. Often, but not always, once the information sharing and consultation has been concluded the representative role disappears. Consultation is limited to a single period of time, often lasting a matter of months, but in this period the consultation process can be quite intense. Some organisations have found the value of consultation over a specific

issue leads them to create a standing consultative body like an Employee Consultative Forum.

TUPE and collective redundancy representatives

The most common circumstances for representatives on specific topics are those relating to the transfer of undertakings (TUPE) or collective redundancies. The legislation requires, where there is no recognised union, that affected employees be invited by their employer to elect representatives long enough before the transfer of undertaking or potential redundancies to provide information on the planned changes and to consult. The employer is required to determine the period of office required by the representatives to enable the consultations to be completed. The number of representatives is set by the employer in TUPE legislation 'so that there are sufficient representatives to represent the interests of all affected employees having regard to the number and classes (i.e. types) of those employees'.

Short period needs for time off, training and facilities

The time off needs for these representatives can be quite intense over a relatively short period. The range of topics covered in information provision and subsequent consultation can be both broad and complex, dealing, as it must, with business decisions and changes which directly affect often a relatively large numbers of employees. This in turn requires the representatives to have close contact with their constituents, especially with regard to the implementation phase of change. There are particular training needs related both to helping understand the business issues and the information provided and learning how to engage in consultation with management and communicate effectively with constituents at all stages of the process. E-learning may be particularly valuable if appropriate material is available and representatives have access to computers at work. E-learning should complement formal training and time off needs to be given during working time for the representative to access the material.

The TUPE and collective redundancy regulations also stipulate that 'the employer shall afford to appropriate representatives such accommodation and other facilities as may be appropriate'. The question of appropriate facilities is covered later in this guide.

Representatives of employee safety

Regulation 7 of the Health and Safety (Consultation with Employees) Regulations (Northern Ireland) 1996 require that employers allow representatives of employee safety paid time off, as is necessary, during working hours, to perform their functions, the provision of training and facilities. Further advice on time off provisions for representatives of employee safety is provided by the Health and Safety Executive Northern Ireland in their approved Code and their leaflet “*Consulting workers on health and safety*”. This is not covered in this guide.

Dealing with individual grievance and disciplinary matters

In some organisations non-union representatives may take on an additional role of accompanying workers at grievance and disciplinary hearings, or advising them before hand. In taking on this role representatives should be aware that it can involve considerations of subsequent legal action in an industrial tribunal and that they act as a companion rather than a full representative. [Article 12 of the Employment Relations (Northern Ireland) Order 1999, as amended. There are, as yet, no agreed programmes for the training, nor any means of validating non-union representatives who carry out this role. This is discussed later in the section on training.

The value of early involvement and mediation

Representatives often find their role in accompanying a worker is especially valuable when it precedes a formal hearing. This can sometimes enable a matter to be resolved prior to the initiation of formal proceedings including applications to industrial tribunals. The *Labour Relations Agency Code of Practice on disciplinary and grievance procedures* and the Agency’s Advisory guide - *Advice on handling discipline and grievances at work* are relevant here.

Representatives undertaking this work may have to appear as witnesses before outside appeal bodies or industrial tribunals. Representatives should be aware of the value of mediation in handling some issues. It may be appropriate, with the employer’s agreement, for representatives often involved in individual grievance and disciplinary cases to train to become a qualified mediator. Representatives engaged in grievance and disciplinary

cases will need access to a confidential space to meet the worker involved prior to a hearing and afterwards.

Drawing up an agreement on time off, training and facilities

The need to avoid rigidity

Earlier sections of this guide have shown the variety of roles representatives can have and, for some, their statutory basis and the varying scope of their duties. This variety means that it is neither desirable nor possible for this guide to specify the minimum number of representatives that should be appointed or state the number of hours per week that representatives require to undertake their duties. This will depend on the circumstances of each case and it is up to management and the representatives to determine what is appropriate for them. What is reasonable will vary according to the type of representative and the operating requirements of the employing organisation.

Setting down time off, training and facilities requirements in an agreement

It is desirable for an agreement or protocol to be drawn up in each workplace and/or the wider organisation as this can establish legitimate expectations for time off arrangements among representatives and managers. It can also help avoid confusion and minimise disputes. This is especially helpful where a permanent employee forum is established. Where a one-off, subject specific consultative committee is created, for example in case of business transfers or collective redundancy a formal agreement may not be necessary but there needs to be clear understanding on how time off, training and facility arrangements are to be handled. Agreements should set out what time off and access to facilities is reasonable and appropriate in the particular circumstances, taking account of:

- the size of the organisation and the number of workers
- the production or operational process
- the need to maintain a service to the public
- the need for safety and security at all times
- statutory requirements
- the complexity and number of issues that are expected to have to be dealt with
- the importance of training and preparation for meetings.

A written agreement

Such agreements should be in writing with the operational date established and signed by a nominated senior manager and the representatives who were involved in drawing up the agreement. The agreement should be consistent with wider agreements which establish such matters as constituencies, the number of representatives including any specialist representatives and methods of election. The agreement should establish means for a periodic joint review of its operation. Where no agreement has been made, and in small organisations informal arrangements may be preferred, the factors listed below should be used as a check list to guide the management of time off and the provision of facilities.

Factors to consider in drawing up a time off agreement or protocol

The circumstances where it is necessary to leave normal paid work to attend meetings with management. This will include:

- regular meetings of consultative bodies and the frequency with which they are held
- the need for special time off to attend ad hoc meetings called to deal with complex issues or major changes that affect employees
- meetings associated with the handling of individual grievance and disciplinary matters. These representatives will need access to a confidential space for discussion with the employee involved.

It may be helpful in some organisations where a senior representative is elected or identified to distinguish the greater amount of time off that this person, or people, will require.

The agreement should recognise that the amount of time required can vary over a period according to the demands of the topics covered in joint discussions. It is not generally desirable to establish a set number of hours per week since this can become inflexible and in some cases can come to be seen as an entitlement⁴.

The time needed by representatives to prepare for meetings with management. This can include holding preparatory pre-meetings of all or some representatives.

The time needed for representatives to communicate with their constituents both before and after meetings with management. The agreement should cover the way these activities can best be carried out whether face-to face, in special meetings, via electronic communication media such as email or intranet, and/or as part of regular team meetings held by line managers for their staff. The need for confidentiality in these meetings should be recognised and adhered to.

Special consideration needs to be given to representatives who work unusual hours, or represent workers with unusual hours. This includes part-time, shift working, weekend working, teleworking, home working and mobile workers, and workers with particular domestic commitments. Consideration needs also to be given to representatives whose place of work is different from some or all of their constituents. These 'off-site' representatives will be likely to need effective means to communicate with their constituents and from time to time to travel to meet them when necessary.

The special needs of representatives in TUPE, collective redundancy situations. This should determine the period during which consultation will take place and include dealing with the aftermath of any subsequent these business decisions. The agreement should recognise that more time off from normal work will often be required in dealing with these particular issues, and that special training may be needed. There is a requirement to provide appropriate facilities. There is a duty on employers to allow representatives to have access to any affected employees. This should be specified.

Arrangements to ensure that work cover is provided when time off is required. Employers should ensure that, where necessary, work cover and/or work load reductions are provided when time off is required. This can include the allocation of duties to other employees, rearranging work to a different time or a reduction in workloads.

The facilities provided to representatives to enable them to undertake their duties. This can include office space, notice boards, telephones, and use of electronic media. Special attention needs to be given to the use of electronic communications media to ensure it is in accordance with

company email and internet policies and does not compromise the security of the employer and ensures the privacy of representatives' communications. This, and the wider issue of what facilities should be provided, is considered in detail in the Section on facilities.

Arrangements for training. This should specify what training is to be provided to newly appointed representatives and to updating or refresher training for established representatives. The training of representatives is considered in detail in the next section.

The payment for time off needs to be specified. This is set out in detail in the various statutes and regulations for different types of workplace representatives. The general principles are that the employer must pay either the amount representatives would have earned had they been working during the time taken off including shift premia, or where earnings vary with the work done, an amount calculated by reference to the average hourly earnings for the work they are employed to do. The calculation of pay should take due regard to the type of payment system applying to the representative including, as appropriate, shift premia, performance related pay, bonuses and commission earnings. Where pay is linked to the achievement of performance targets it may be necessary to adjust such targets to take account of the reduced time the representative has to achieve the desired performance.

There is no statutory requirement to pay for time off where the duty is carried out at a time when the representative would not otherwise have been at work unless the representative works flexible hours, such as night shift, but needs to perform representative duties during normal hours. However, many employers consider it good practice, and in their interests, to ensure that representatives do not lose pay while carrying out their duties. Staff who work part time will be entitled to be paid if staff who work full time would be entitled to be paid. In all cases the amount of time off must be reasonable.

The responsibilities of management. Line managers should be familiar with the rights and duties of representatives regarding time off. They should be encouraged to take reasonable steps as necessary in the planning and management of representatives' time off and the provision of

cover or work load reduction, taking into account the legitimate needs of such representatives to discharge their functions and receive training efficiently and effectively. Employers need to consider each application for time off on its merits; they should also consider the reasonableness of the request in relation to agreed time off already taken or in prospect.

The responsibilities of the non-union representatives. Representatives requesting time off to pursue their duties or activities should provide management, especially their line manager, with as much notice as practically possible concerning:

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

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 for colleagues or managers to provide cover for them in their absence. Equally, employers should recognise the obligation to allow representatives to undertake their duties.

The resolution of disputes concerning time off. The agreement should specify how disputes and disagreements on the operation of time off arrangements should be raised and a resolution sought⁵. It is sensible for records to be kept of periods when time off is taken, and its purpose, for the avoidance of doubt in any subsequent dispute. The Labour Relations Agency assistance may be sought without the need for a formal complaint to a tribunal.

Training of non-union representatives

The value of training

It is highly desirable for representatives to receive training to enable them to carry out their duties. Such training will enable them to undertake their role with greater confidence, more efficiently and quicker and thus help them work with management, build effective employment relations and represent their constituents properly. Statutory rights to time off for training are afforded to representatives in TUPE and collective redundancy. Although representatives on ICE and EWC bodies do not directly have rights to training it is good practice for employers to facilitate this, for example concerning the meaning and practice of consultation. In the Agency's experience great benefit can be gained from joint training with line managers and representatives. It helps advance mutual understanding and the building of trust and contributes to the smooth operation of time off arrangements.

Induction training

The training of representatives should take place as soon as feasible after they have been appointed. The precise syllabus will vary according to the type of representative role and the range of activities undertaken.

There are, however, a number of basic areas which should be included:

- the role of the representative and the operation of time off agreements or procedures
- the value and means of communicating with constituents before and after meetings with management
- working with other representatives to develop an effective system of employee representation
- the methods and importance of handling confidential information, relating for example to business plans and proposed changes that are the subject of consultation
- basic skills in consultation
- skills needed to contribute effectively in meetings
- familiarisation with the presentation and understanding of company plans and information

- developing realistic expectations of their role including the desirability of compromise and the value of cooperative working with management.

Training for established representatives

It is desirable for some form of further training opportunities to be provided to experienced representatives. This is important where a representative takes on a specialist role and responsibility, for example as chair of the Employee Forum. Training may also be appropriate where there are plans for substantial business changes that impact on employment and work organisation. Here the need is to enable the representative to have the skills and confidence to understand and evaluate business proposals, financial data and their effect on the workforce and on employment relations. It may be appropriate to provide access to relevant e-learning tools, provide some training in-house or use specialist external providers. Joint training with line managers can be especially beneficial in helping to advance mutual understanding and the building of trust. Topics where further training is especially beneficial include training:

- to familiarise or update representatives on issues reflecting the developing roles and work of the workforce they represent
- where significant changes in the organisation of work are being contemplated
- where legal change may affect the conduct of employment relations at the place of work and may require the reconsideration of existing agreements.

E-learning

E-learning tools, related to the role of representatives, should be used where available and appropriate. However, their best use is as an additional learning aid rather than as a replacement for face-to-face learning activities. Time needs to be given during normal working hours for representatives to take advantage of e-learning where it is available.

TUPE and collective redundancy related training

Representatives elected to subject specific consultative bodies have particular training needs. The function of the training is to enable them to learn quickly about their representative role related to the issue in question

and the rights given to them under the various statutes at different times of the information sharing and consultative processes. A further important function of training is to provide the representative with the knowledge and skills to evaluate the employer's decision, especially the implementation plans. Without such knowledge and skills it is hard for the representative to gain the self confidence to engage in meaningful dialogue with the employer and evaluate the consequences of the decision on affected employees. Appropriate e-learning programmes, if available, may be especially relevant as an additional learning resource to formal training programmes as facilitated by the Labour Relations Agency.

Training in disciplinary and grievance handling

Non-union representatives who undertake the individual companion role as part of their role as a representative may find this especially challenging unless provided with appropriate training.

Appropriate training for this role should cover:

- a basic understanding of relevant employment law, *Agency's Code of Practice on disciplinary and grievance procedures* and internal company procedures
- understanding of where and when to go to for further advice⁶
- the role of the 'companion' in relevant hearings and limitations to it
- the role of third party assistance, for example mediation, in resolving problems.

Training for managers

Line managers who have representatives working in their area of control need to have an understanding of the role and duties of these representatives and their importance and their mutual obligations. It is desirable for the role of representatives and their needs for time off and facilities to be included in management training programmes. E-learning materials, if available, can also be beneficial. It is the Agency's experience that joint training activities for line managers and representatives can be especially beneficial in helping to enhance mutual understanding and building trust.

Access to facilities

The need for facilities

While there is no statutory right for facilities for representatives, except for those engaged in duties related to collective redundancies and the transfer of undertakings, employers should, where practicable, make available to representatives the facilities necessary for them to perform their duties efficiently and to communicate effectively with their constituents, fellow representatives and management. Where resources permit the facilities should include:

- accommodation for meetings
- access to a telephone and other communication media used or permitted in the workplace such as email, intranet and internet
- the use of notice boards
- where the volume of the representative's work justifies it, the use of dedicated office space and secure cabinets
- confidential space where an employee involved in a grievance or disciplinary matter can meet their representative or to discuss other confidential matters
- access to constituents who work at a different location
- access to e-learning tools where computer facilities are available.

Facilities in large workplaces

In large workplaces where there are a number of representatives and where the volume of business justifies it, or where there is a senior representative who has multiple roles and spends a large proportion of his or her time on these duties, it may be appropriate to provide a dedicated and equipped office space in an appropriate location. These representatives should be entitled to make telephone calls externally to approved people or institutions, for example the Agency.

TUPE and collective redundancy representatives

Representatives dealing with TUPE and collective redundancy are sometimes required to spend considerable time over a short period in dealing with information and consultation and communicating with the employees affected. The provision of fully equipped temporary office space may be particularly beneficial in helping them discharge their duties,

especially where a large number of employees are affected directly and indirectly.

Off-site representatives

Particular arrangements will need to be made to enable representatives to communicate with, and when necessary meet, constituents who work on a different site or have working hours out of the ordinary such as shift, weekend and teleworkers.

The use of electronic means of communication

A growing volume of communication in workplaces and the wider organisation is done via electronic means such as email, the intranet and internet. The use of these raises questions of confidentiality and surveillance. When using facilities provided by the employer for the purposes of communication with their constituents and fellow representatives, and with management, representatives must comply with applicable procedures both in respect of the use of such facilities and also in respect of access to and use of company information. The applicable procedures will be either those agreed especially between the representatives and the employer as part of an agreement on time off or will comply with general rules applying to all employees in the undertaking.

In particular, representatives must respect and maintain the confidentiality of information they are given access to where the disclosure would seriously harm the functioning of, or would be prejudicial to, the employer's business interests or reputation. Representatives should understand that unauthorised publication risks damaging the employer's business, straining relations with the representative body concerned, possible breaches of individual contracts of employment and, in extreme cases such as unauthorised publication of price-sensitive information, the commission of criminal offences leading to possible dismissal.

Representatives will have legitimate expectations that they and their constituents are entitled to communicate without intrusion in the form of monitoring by their employer. Rules concerning the confidentiality of communications should be agreed between the employer and the representatives as part of an agreement on time off.

Employers must respect the confidential and sensitive nature of communications between representatives and their constituents. They should not normally carry out regular or random monitoring of representatives' emails. Only in exceptional circumstances may employers require access to communications but such access should be subject to the general rules set out in statute and the employment practices Code published by the Information Commissioner's Office. Data concerning individuals, for example communications concerned with possible or actual grievance and disciplinary issues, is especially sensitive. There are therefore very strict provisions on how such data can be used and monitored in compliance with the law. It is helpful for agreed rules to be drawn up on the use of data and the exceptional cases where monitoring may be necessary, for example in cases of suspected illegal use, specifying the circumstances where such monitoring may be undertaken and the means by which it is to be done, for example by company IT or security personnel.

Dedicated intranet and email accounts

Consideration could be given in organisations where electronic forms of communication are widely available to providing representatives with separate email accounts and password protected dedicated intranet pages. Their use can supplement, and in some cases replace, face-to-face meetings. Company rules on monitoring restricted access provision will need to be applied equally to these communications as to others.

NOTES

1. Detriment can be loosely defined as suffering a disadvantage in terms of employment that otherwise would not have applied. In the case of dismissal, whether for alleged conduct or redundancy, the action is automatically unfair and there is no minimum qualifying time period of employment.
2. This includes representatives in employee forums established by a pre-existing agreement under the ICE regulations.
3. Under the Standard Provisions of ICE in Section 19(3) the relevant number of representatives is set at one per fifty employees provided the number of representatives is at least 2 and does not exceed 25.
4. Workplace representatives with statutory rights, including union representatives, are not entitled to time off but only to ask for time off which cannot be unreasonably refused. The representative is entitled to be permitted to take the requested time and it is unlawful for the employer to unreasonably refuse to grant the request for time off. This means that where permission is refused the representative cannot simply take the time off with impunity. To do so would be a breach of contract.
5. Employee representatives with statutory rights to time off, training and facilities, as appropriate, have a right to complain to an industrial tribunal that their employer has failed to allow reasonable time off, provide facilities or provide normal pay.
6. Such as the Labour Relations Agency Helpline 028 9032 1442

Labour Relations Agency

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