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TIME TO TRAIN

By Christopher Fisher

In 6 April 2010, new regulations came into force giving employees the right to request time off for training. Currently, the right applies only to businesses with 250 or more employees, but from April 2011, it is due to be extended to all employers.

The right was created in order to promote greater dialogue between employees and employers about skills and training. This was in response to evidence produced from the National Employer Skills Survey 2009 which showed that, each year, 10 million employees do not receive training and that 65% of employers do not have a training budget.

The regulations have not been well received by some, including the British Chamber of Commerce (“BCC”) which complains of an increase in red tape regulation, involving yet another bureaucratic procedure for employers to follow. Director of policy at the BCC, Adam Marshall, has called for the regulations to be scrapped in their entirety, describing them as “*inappropriate, costly and potentially confusing when combined with other legal obligations.*” It is estimated that the cost to employers of implementing the regulations will be £331m in year one. If the regulations are extended to cover all employers, this figure would increase to a projected £690m in the following year.

Government consultation

In August of this year, despite the regulations having only been in force for some four months, the new Government launched a five week consultation to review whether they should be repealed, limited to employers with 250 or more employees or extended to cover all employers. If they are retained, the consultation will also examine whether the legislation can be made less burdensome on employers who already train their employees. A response to the consultation is expected in December this year.

What is the right?

Employees (who have at least 26 weeks continuous service) are entitled to make a request to their employer for time off for training. Only one request can be made in any 12 month period. If the employee wants their request to be dealt with formally under the regulations, they must make that clear. The regulations do not, however, prevent an employee from making other, informal, requests for training or from following an employer’s existing internal procedures.

If a formal request is made, the employer must follow a strict process contained in the regulations, including various time limits. After an initial meeting with the employee to discuss the request, a written response must be made and (if the request is refused) there must be a right of appeal.



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The right is only a right to *request* time off. Employers can decline an employee's request for any one or a combination of 11 permissible reasons set out in the regulations. These include by way of example: the burden of additional costs, that granting the request will have a detrimental effect on quality, performance or ability to meet customer demand and that the employer is not able to re-organise work among existing staff. In addition, training requests should only be made and need only be granted if their purpose is to improve the employee's effectiveness in the business or the performance of the business. Office-based employees looking for time off to take pottery classes may be disappointed.

If the employer does decide to grant a request, it does not have to pay the employee for their time off and it does not have to pay for the training. If the employer does not comply with the regulations, the employee can bring a claim in the employment tribunal for a maximum of 8 weeks pay.

This right to request time off for training is in addition to an employee's existing statutory right to take time off to look for new employment or to make arrangements for training for future employment if they are given notice that they will be made redundant. This time has to be paid and is unaffected by the new regulations.

Impact of the regulations

There is no doubt that the right, if exercised formally by the employee, imposes an administrative burden on employers given the prescriptive procedure that must be followed. It also gives employees a new potential claim in the employment tribunals.

One criticism of the regulations is that they do not take into account employers who already have efficient training programmes and procedures in place. It might be hoped, however, that these employers will be less affected by the regulations as their staff will be content to rely on those existing procedures. The purpose of the regulations is to assist those employees whose employers do not offer access to training.

Administrative burden aside, the "Time to Train" regulations are unlikely to cause any significant increase in employment tribunal claims. Provided employers spot a formal request when it comes in, the process to be followed is straightforward. Moreover, the wide grounds available for refusal contained in the regulations means that time off for training will, to a large extent, remain at the employer's discretion.

Given all this, the backlash against the regulations is perhaps surprising. Whatever your view, the Government's current re-think over the future of this new law means it could be a very short-lived piece of legislation. Alternatively, it may survive but be limited to large employers who ironically are the ones more likely to have training programmes in place already.