

ADVICE

on

Trade Union Representation In the Workplace

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Preface

The Labour Relations Agency (Agency) issued a revised *Code of Practice on time off for trade union duties and activities* on the 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. This includes representative duties associated with collective redundancies and the transfer of undertakings. The Code also provides advice concerning union learning representatives. The provisions of the Code are admissible in evidence in proceedings before an industrial tribunal relating to time off for trade union duties and activities. Any provisions of the Code which appear to the tribunal to be relevant shall be taken into account. However, failure to observe any provision of the Code does not of itself render a person liable to any proceedings.

The link between the Agency's Code and the relevant legislation found in the Industrial Relations (Northern Ireland) Order 1992 necessarily limits its scope and the Code is unable to provide advice on other forms of union representatives, or different circumstances where they operate. This includes, for example, environmental and equality representatives who are not covered by statute, and information and consultation and European Works Council representatives where unions have no privileged rights to representation. It is the purpose of this guide to cover all these circumstances and, where appropriate, to elaborate on parts of the Code.

It must be emphasised that the guide has no legal standing and is not intended to be taken into account in any tribunal hearing.

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, for union representatives to share a consultative forum with non-union representatives from the same firm, a matter discussed in this guide.

A separate guide is published to provide advice to employers and non-union representatives on how to manage time off, training and facilities. In some cases, for example in dealing with collective redundancies and the transfer of

undertakings in firms which do not recognise trade unions, these non-union representatives have statutory rights to facilities and facility time while others, especially members of consultative forums set up voluntarily by employers with no reference to the law have none.

The various arrangements are considered in the guide *Non-union representation in the workplace*.

The purpose of this guide

This guide is for employers, trade unions and union workplace representatives. It gives advice on the provision of time off, training and facilities to enable 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 working with employers and union representatives to build effective methods of communication, consultation and negotiation between management and representatives. In order to be effective in carrying out their various roles 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. It is written to complement the Agency's *Code of Practice on time off for trade union duties and activities* by going into greater detail and being relevant to all types of union representative. This guide, as explained in the preface, has no standing in law. The Code should always be consulted in addition to this guide since it provides the definitive statements concerning time off for union representatives in their collective bargaining, union learning, TUPE and collective redundancy roles.

Terminology

There are a variety of different terms used to describe a union representative. In law the term most often used is 'trade union official' but this can easily be confused with an official who is an employee of the union, otherwise known as a 'trade union officer' whereas 'lay union officials' are elected or appointed to represent members in a given workplace or location. In manufacturing these are most often known as shop stewards, in printing they can be mother

or father of the chapel, among non-manual occupations the term 'staff representative' is most often used.

The term used in the guide is 'union representative'. This covers those representatives elected or appointed in accordance with the union rules to represent union members in a company, or group of companies where they also are an employee.

As explored in the guide, at times union representatives take on duties related to particular subjects where statutory rules apply, as in collective redundancy and the transfer of undertakings. Union representatives with specialist roles are referred to by the role they play i.e. union learning representative, union environmental representative and union equality representatives.

The types of union representatives and their rights

Union representatives with statutory rights to time off

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

Non-statutory union representatives

The development of particular areas of expertise among representatives, much encouraged by trade unions and NIC-ICTU, and recognised by a growing number of employers, has led to a growth in specialist roles requiring separate training. One group specialise in environmental matters in the workplace and effects on the wider environment while the other group focus on equality matters related to any form of actual or potential discrimination and its elimination. While legislation in both areas increasingly impinges on the work of these specialist representatives, they have no statutory rights to time off with pay, access to training or facilities. It is, however, good practice where appropriate, as this guide makes clear, for these to be provided by employers to enable them to perform effectively. Other specialist union representatives, for example 'disability champions' may develop on a non-statutory basis.

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

Type of representative	Rights
Union representatives appointed by an independent union in workplaces where the union is recognised for collective bargaining purposes under the provisions of Part IV A of the Trade Union and Labour Relations (NI) Order 1995.	<ul style="list-style-type: none">• Paid time off to carry out their duties• Paid time off for training• Protection against dismissal and detriment. As contained in the Employment Rights (NI) Order 1996 <i>The LRA Code of Practice on Time Off for Trade Union Duties and</i>

	<i>Activities applies</i>
<p>Union learning representatives appointed by independent unions in workplaces to promote and enable training and learning where the union is recognised for collective bargaining purposes. These rights are derived from the Employment (Northern Ireland) Order 2003.</p> <p>Article 31 of the Employment (Northern Ireland) Order 2003 inserted a new Article 92A into the Employment Rights (Northern Ireland) Order 1996 giving Union Learning Representatives a right to take paid time off during working hours to undertake their duties and to undertake relevant training.</p>	<ul style="list-style-type: none"> • Paid time off to carry out their duties • Paid time off for training • Protection against dismissal and detriment. <p>The <i>LRA Code of Practice on time off for trade union duties and activities</i> applies</p>
<p>Health and safety representatives appointed by trade unions in workplaces where the union is recognised. The representatives are covered by the Safety Representatives and Safety Committees Regulations (Northern Ireland) 1979.</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 issues its own advice and Codes on health and safety representatives. They are not included in this guide.</p>
<p>Information and consultation representatives. Union representatives may be appointed or elected to negotiate the setting up of and/or be members of a subsequent information and consultation body under the Information and Consultation of Employees Regulations (Northern Ireland) 2005 (known as ICE). They may sometimes work alongside non-union representatives. ICE bodies are typically called ‘employee forums’ or ‘works councils’.</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 and/or serve on it under a ‘negotiated agreement’ or a ‘standard agreement’ under the Regulations. Union representatives on ICE bodies established under a ‘pre-existing agreement,’ where there are no provisions for time off</p>

	for non-union representatives, would have rights to time off etc if the union was recognised.
<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 duties² • 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 the 'listed' changes under the Occupational and Personal Pension Schemes (Consultation by Employers) Regulations (Northern Ireland) 2006, as amended, and the Information and Consultation of Employees (Amendment) Regulations (Northern Ireland) 2006.</p>	<ul style="list-style-type: none"> • Paid time off to carry out their duties • Protection against dismissal or detriment.
<p>'TUPE' representatives. Where an independent trade union is recognised for collective bargaining purposes, the</p>	<ul style="list-style-type: none"> • Paid time off to carry out their duties • Paid time off for training

<p>union, usually including the workplace representatives, must be informed and consulted over the transfer of undertakings.</p> <p>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"> • The provision of facilities to help them perform their duties • Protection against dismissal and detriment <p>The <i>LRA Code of Practice on time off for trade union duties and activities</i> applies.</p>
<p>Collective redundancy. Where a trade union is recognised, consultation 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>must be with the union representatives.</p> <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>The <i>LRA Code of Practice on time off for trade union duties and activities</i> applies.</p>
<p>Workforce agreement representatives. Workplace agreements may be found in circumstances where it is necessary for employers to 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 statutory rights to time off but have a right to</p> <ul style="list-style-type: none"> • Protection against dismissal and detriment. <p>Representatives from unions with recognised collective bargaining rights in these circumstances would maintain their statutory facilities described above.</p>

Associated employers

It is important to note that the duty to provide time off with pay and training only applies 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 negotiating and/or consultative arrangements it is advisable to establish special arrangements to ensure that the rights of union representatives are clearly established and understood by individual employers on the site in relation to their employees.

Multi-employer and multi-site arrangements

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 unions in these circumstances to make special arrangements as part of their agreement on time off. This can apply also where a few representatives have to cover a larger number of establishments as is sometimes the case in small professional unions where there may be only a few members in each workplace dispersed nationally involving a number of employers.

The varying roles of 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 union representatives and workplace circumstances. For example, a union representative in collective bargaining has statutory rights only to paid time off and for training, but if the same representative is involved in a TUPE or collective redundancy situation the rights are extended to the provision of facilities for duties connected with those issues. In practice all union representatives have to seek approved time off from their work to carry out their duties, which cannot be unreasonably refused, 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 union representation while ensuring that statutory 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 union representatives have different needs

The role and responsibilities of union representatives can vary quite considerably between types of workplaces and sectors and between the different types of representatives listed above. It is important to consider what role the union representative plays in working out what time off and facilities can reasonably be expected and should be granted. Nine types of workplace representative can be identified each with their own particular roles and thus different needs for time off, facilities and training. These are:

- union representatives in collective bargaining
- union learning representatives
- union environmental representatives
- union equality representatives
- union health and safety representatives
- union representatives dealing with individual grievance and disciplinary matters
- union representatives engaging in consultation – ICE and EWC
- union representatives dealing with time limited consultation and negotiation – TUPE, collective redundancy and pensions
- multiple role union representatives.

Collective bargaining role

The needs of representatives

These are representatives appointed in accordance to the rules of their trade union where the union has collective bargaining rights involving the determination of terms and conditions of employment and the procedures for negotiation and disputes resolution. They often undertake a wide range of activities and duties. To undertake this work, union representatives need to be trained and be able to communicate with their trade union, their members and with other representatives, if there is more than one on site or in the company. They need also to be able to access relevant information and have time to prepare for meetings with management. All of these activities require training and access to facilities to carry out the work, including access to external trade union officers.

The scope of collective bargaining

The range of topics covered in negotiations between union representatives and management can vary quite widely from one workplace to another. In Article 96(1) of the Industrial Relations (Northern Ireland) Order 1992, as amended by Part VIII of the Trade Union and Labour Relations (Northern Ireland) Order 1995, the matters relevant to collective bargaining are listed as those concerned with one or more of:

- terms and conditions of employment and physical conditions of work
- engagement or non-engagement, or termination or suspension of employment or the duties of employment, of one or more workers
- allocation of work or the duties of employment as between workers or groups of workers
- matters of discipline
- a worker's membership or non-membership of a trade union
- facilities for union representatives (called 'officials')
- machinery for negotiation or consultation, and other procedures (including grievance procedures) including recognition of the right of a trade union to represent workers in such negotiation or consultation.

Topics for more complex negotiations

Negotiations over terms and conditions of employment usually take place at regular intervals. In addition, there may be occasions when it is necessary to negotiate changes to payment systems, including job evaluation, or agree

procedures and arrangements for a range of employment issues like sickness, diversity, the environment, flexible working, work organisation and the design and operation of collective bargaining and consultative bodies and procedures dealing with grievances and discipline. The range of agreed topics covered in collective bargaining and the frequency with which bargaining and negotiation occurs will vary from one workplace and employing organisation to another. This will influence any definition of 'reasonable' time off which must vary according to circumstances.

Union learning representatives

The role of Union Learning Representatives

A particular category of union workplace representation in recognised unions is the Union Learning Representative (ULR). Their role is established by legislation³ where their functions for which time off are allowed are listed as:

- analysing learning or training needs
- providing information and advice about learning or training matters
- arranging learning or training
- promoting the value of learning or training
- consulting the employer about carrying on any such activities
- preparation to carry out any of the above activities
- undergoing relevant training.

The circumstances where time off is needed

Provided the union has given notice that the employee is a ULR who has been appropriately trained, or will be within six months, the representative can undertake functions related to the provision or propagation of training and learning. In some cases it may be helpful for a ULR to attend meetings concerned with agreeing and promoting learning agreements.

Employers may also see it in their interests to grant paid time off for these representatives to attend meetings with external partners concerned with the development and provision of workforce training. Union members have the right to access the services of their ULR, for example to discuss their training needs and consider making a request for time off for training. In practice the roles and responsibilities of ULRs will often vary by union and by workplace. Whatever the range of duties, ULRs need access to approved training, time off to meet employees and meet with management. This, in turn, means they need some type of access to facilities.

Environmental representatives

The role of environmental representatives and their needs

In some workplaces trade unions gain agreement from the employer to elect or appoint representatives with a specialist role. Environmental representatives focus on the climate change agenda and changes in work organisation and green workplace projects. They may serve on environmental committees if these are established. They can work to improve the impact of an organisation or workplace on the local environment, helping nearby communities and raising the reputation of the employer. Environmental representatives have no statutory rights to time off, training or facilities. Appropriate training is available from trade unions and NIC-ICTU and the government sponsored Union Learning Fund is available to support approved training programmes for these representatives. In determining what time off, training and facilities should be agreed consideration needs to be given to the relationship between these specialists and other union representatives concerned with collective bargaining and ULRs.

Equality representatives

The role of equality representatives and their needs

Equality representatives can be concerned with a wide range of diversity issues from the promotion of diversity management to helping ensure legal compliance and conducting audits. They can help raise awareness of issues related to equality and diversity; raise the profile of equal treatment of workers on the grounds of gender, age, religion, and engage employers on a range of equality issues. Equality representatives have no statutory rights to time off, training or facilities. Appropriate training is available from trade unions and NIC-ICTU and the government sponsored Union Learning Fund is available to support approved training programmes for these representatives. In determining what time off, training and facilities should be agreed, consideration needs to be given to the relationship between these specialists and other union representatives concerned with collective bargaining and ULRs.

Union health and safety representatives

Basic description of rights

The Safety Representatives and Safety Committees Regulations (Northern Ireland) 1979 require that employers allow union health and safety

representatives paid time off, as is necessary, during working hours, to perform their functions.

Further advice on time off provisions for health and safety representatives is provided by the Health and Safety Executive Northern Ireland in their approved Code and the leaflet '*Consulting workers on health and safety*'. This is not covered in this Agency guide.

Union representatives accompanying workers in grievance and disciplinary cases

The right to accompany workers

Union representatives may advise and accompany workers before and/or during grievance or disciplinary hearings⁴ provided that the trade union has stated in writing that they are accredited i.e. they have the relevant experience or training to act as a worker's companion⁵. This is an established right in legislation and is covered both in the Agency's *Code of Practice on time off for trade union duties and activities* and in the *Code of Practice on disciplinary and grievance procedures*. The right to allow accompaniment is a duty applying to all employers and not just where a union is recognised. Trade union full time officers also have the right to accompany a worker if so requested. The union representative must be employed by the same organisation as the person to be accompanied in order to be able to claim time off with pay to undertake this role. Representatives undertaking this work may have to appear as witnesses before outside appeal bodies or industrial tribunals.

A demanding role

This can be a demanding and time consuming role and special training may be appropriate. Union 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. Union representatives engaged in grievance and disciplinary cases will need access to a confidential space to meet the worker involved.

Union representatives engaging in consultation in special bodies – ICE and EWC

Basic rights

Union representatives have no privileged right to be a member of consultative bodies established under the ICE and EWC regulations. However, employers and unions may agree to provide places for union representatives or they may stand for election in this role and be so elected. Some senior union representatives may attend both site and higher level, company-wide meetings and be members of a European Works Council (EWC). This will need to be reflected in agreements on time off to include travel arrangements and expenses. 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 union representatives to perform their consultation duties.

The purpose and meaning of consultation

The purpose of consultation, as defined in EU directives is the 'exchange of views and the establishment of dialogue'. This often involves the sharing and discussion of company information and consideration of options for strategic change. It is not unknown for union representatives to work alongside non-union representatives in these employee forums and works councils. It is important for union representatives to understand the distinction between negotiation and consultation, the latter being more an open exploration of views than the negotiation of agreed outcomes. It is helpful, too, for training to be provided to help representatives understand company business information and accounts. Joint training of both types of representative can be especially beneficial.

Non-statutory consultative 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 Cooperative Societies. There are also many employee forums set up by employers outside the legislative framework. Here there are no statutory rights to time off, although union representatives with collective bargaining roles, where unions are recognised, will retain their rights to facility time and training while engaging in consultation.

Rights when setting up a consultative body

Union representatives may also be involved in the negotiations under the regulations to establish consultative forums under the ICE and EWC, European Company and European Cooperative Society regulations.

These union representatives have the role of negotiating and agreeing, sometimes alongside non-union representatives, with relevant management the design and operational rules of appropriate consultative bodies set up under the provisions of the various regulations. 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 members and employees. Training on purpose and planned operation of the consultative forum will be beneficial.

Union representatives dealing with subject specific consultation and negotiations – TUPE, Collective Redundancy and Pensions

Basic legal requirements

Various regulations allow for the election of workplace representatives to deal with specific employment related issues such as business transfers and collective redundancies. Where unions are recognised consultation must be with the trade union which will often, in practice, include union representatives. The law provides in Articles 92-95 of The Employment Rights (Northern Ireland) Order 1996 that time off with pay be provided to carry out duties and receive training concerning:

- the receipt of information from the employer and consultation by the employer under Part XIII Article 216 of The Employment Rights (Northern Ireland) Order related to redundancy or under the Transfer of Undertakings (Protection of Employment) Regulations 2006 or the Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006 that applies to employees of the employer;
- negotiations with a view to entering into an agreement under regulation 9, concerning contract variations related to insolvency proceedings, of the Transfer of Undertakings (Protection of Employment) Regulations 2006 or the Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006 that applies to employees of the employer; or
- the performance on behalf of employees of the employer of functions related to or connected with the making of an agreement under the

Transfer of Undertakings (Protection or Employment) Regulations 2006 or the Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006. This relates to action to implement the agreement related to insolvency proceedings in regulation 9 mentioned above.

Complex consultation topics

Subject specific consultation tends to be limited to a single period of time, which can be many months, to deal with the issue, but in this period the consultation process can be quite intense. The range of topics covered in information provision and subsequent consultation and negotiation can be both broad and complex dealing, as it must, with business decisions and changes which directly affect numbers of employees. This in turn requires union representatives to have close contact with their members and the employees affected especially with regard to the implementation phase of change.

Particular training needs

There are particular training needs related both to help understand the business issues and the information provided and to learn 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 but should be used as a complement to formal training events. Representatives will need agreed time during working hours to access e-learning material.

The legal requirement to provide facilities

The TUPE or the Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006 and Collective Redundancy regulations also stipulate that 'the employer shall afford to appropriate representatives such accommodation and other facilities as may be appropriate' (Regulation 13(8) of both regulations). The question of appropriate facilities is covered later in this guide.

Union representatives with multiple roles

Why some union representatives have multiple roles

Some union representatives may take on multiple roles. This is most likely to occur where an experienced representative is considered the best person or

because an employer is reluctant to increase the number of union representatives in the workplace. In some cases there may be a lack of volunteers prepared to become a union representative. It is quite often the case that a union representative will be the only representative on site. Care needs to be exercised, by both the union and the employer, to avoid role overload. In these circumstances there is joint interest between the recognised union and the employer in seeking to share the load by encouraging union members to put their names forward and gain appointment as a union representative, especially in specialist roles which some find particularly worthwhile and different from traditional activities associated with collective bargaining.

Determining the time off requirements

In calculating what time off is reasonable in these circumstances it is not appropriate simply to add the requirement for each role into a total sum. It is sensible to agree how the multiple roles can best be undertaken in a way which regulates or predicts time off from work to certain periods. This can include agreeing priorities and allowing flexibility on the timing of time off.

Drawing up an agreement on time off, training and facilities

The avoidance of rigidity

Earlier sections of this guide have shown the variety of roles union 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 union representatives that should be appointed or state the number of hours per week that union representatives require to undertake their duties. This will depend on the circumstances of each case and it is up to management with the union and the union 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. Such 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 the appropriate authorities. These will be a nominated senior manager and a trade union officer and/or the union 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 specialist representatives and methods

of election. The agreement can usefully 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 checklist 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 negotiating and 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 related to the operation of dispute procedures
- meetings associated with the handling of individual grievance and disciplinary matters. These union representatives will need access to a confidential space for discussion with the employee involved. It may be helpful in some organisations where a senior union representative is elected to distinguish the greater amount of time off that will be required.

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 entitlement.⁶ In particular workplaces, for example in schools, agreement can be reached to release a union representative from their work duties at specified periods since it can prove very difficult to arrange a replacement teacher in the class room at short notice.

The time needed by union representatives to prepare for meetings with management. This can include holding preparatory meetings of all or some representatives and should include time to communicate with and meet external trade union officers as appropriate.

The time needed for union representatives to communicate with their members 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 and communications should be recognised. Where relevant, and with the employer's agreement, this can include allowing union members to attend workplace meetings with union representatives at the employer's neighbouring locations.

Special consideration needs to be given to union 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 union representatives whose place of work is different from some or all of their members. These 'off-site' union representatives will be likely to need effective means to communicate with their members and from time to time to travel to meet them when necessary.

The special needs of union representatives in TUPE or collective redundancy situations. This should determine the period during which consultation will take place and include dealing with the aftermath of any subsequent 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 group of 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 union representatives to enable them to undertake their duties. This can include office space, noticeboards, secure cabinets, 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 later section on facilities.

Arrangements for training. This should specify what training is to be provided to newly-appointed union representatives and to updating or refresher training for established representatives in accordance with the training provided by trade unions and NIC-ICTU. The training of union representatives is considered in detail in the next section. The payment provisions for time off need 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 union 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 of the type of payment system applying to the union 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 union representative would not otherwise have been at work unless the union 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 union 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 union representatives regarding time off. They should be encouraged to take reasonable steps as necessary in the planning and management of representative's time off and the provision of cover or work load reduction, taking into account the legitimate needs of such union 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 workplace representatives. Union 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, duration and occasions of time off required.

Union 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 associated obligation to allow union representatives to undertake their duties. Union representatives who request paid time off to undergo relevant training should:

- give at least a few weeks' notice to management of nominations for training courses
- provide details of the contents of the training course.

The responsibilities of recognised trade unions. Trade unions need to inform management in writing as soon as possible of the appointment or resignation of union representatives, and the type of role undertaken, eg as a union learning representative. This includes notification in writing of those accredited union representatives capable of accompanying a worker, or representing a union member, at disciplinary or grievance hearings.

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 sought⁷. 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. Where a full time union officer is asked to assist in the resolution of any dispute trade unions should ensure that they are made available on a timely basis. Assistance may be sought

from the Labour Relations Agency without the need for a formal complaint to an industrial tribunal.

Training of union representatives

The value of training

It is necessary for union representatives to receive training to enable them to carry out their duties. Such training will enable them to undertake their role with greater confidence, efficiency and speed and thus help them work with management, build effective employment relations and represent their members properly. Union representatives in collective bargaining have a statutory right to time off with pay to attend approved union training courses. Although union representatives appointed to ICE and EWC⁸ bodies do not directly have rights to training beyond that related to their collective bargaining role, it is good practice for employers to provide access to training, for example concerning the meaning and practice of consultation or the analysis of financial data. In the Agency's experience great benefit can be gained from joint training with line managers and union representatives. It helps advance mutual understanding and the building of trust and contributes to the smooth operation of time off arrangements.

Employers should, therefore, release union representatives for initial training in basic representational skills as soon as possible after their election or appointment, bearing in mind that suitable courses may be infrequent. Reasonable time off could also be considered, for example:

- for training courses to develop the union representative's skills in representation, accompaniment, negotiation and consultation
- for further training particularly where the union representative has special responsibilities, for example in collective redundancy, the transfer of undertakings and environmental and equality issues as appropriate to the role played
- for training courses to familiarise or update union representatives on issues reflecting the developing needs of the workforce they represent
- for training where there are proposals to change the structure and topics of negotiation about matters for which the union is recognised
- for training where legal change may affect the conduct of employment relations at the place of work and may require the reconsideration of existing agreements
- for training where a union representative undertakes the role of accompanying employees in grievance and disciplinary hearings.

E-learning tools, related to the role of union representatives, should be used where available and appropriate. However, their best use is as an additional

learning aid rather than as a replacement for attendance at approved trade union and NICICTU training courses. Time should be given during normal working hours for union representatives to take advantage of e-learning where it is available.

Training provided by unions and NIC-ICTU

Many trade unions and NIC-ICTU provide training programmes for union representatives both when first appointed and then at a higher level once established in the role. Specialist training is available for union learning, equality and environmental representatives. There is a requirement for the training provided to these representatives to be approved by NIC-ICTU or by the independent union that the representative belongs to. Employers will need to consider providing time off with pay to allow union representatives to attend appropriate courses provided by NIC-ICTU or individual unions. These courses need to be relevant to the range of issues and necessary skills connected to the collective bargaining or the specialist role undertaken by the representative.

Training for union learning representatives

ULRs are subject to particular statutory provisions in respect to training [Article 92(A) 4 of the Employment Relations (NI) Order 1996]. They are required to have been trained to carry out their roles or show that they will receive appropriate training within six months of appointment. Alternatively they are required to show they have the relevant expertise and experience to operate in this role. This prior experience may have been gained from extensive on-the-job training or shadowing an experienced ULR, or come from previous experience in teaching, training, counselling or human resource development. These are qualifying conditions. While undergoing this training ULRs should be allowed to perform their duties. The ULR's trade union is required to give the employer notice in writing that the representative will be undergoing the relevant training and tell the employer when it is concluded. In addition, the union must then inform the employer in writing that the representative is now competent to undertake the role. It is good practice for the union to give details of the training provided and any previous experience which should be taken into account. There may be circumstances where the six month period to undertake the training will need to be extended, for example due to unforeseen circumstances such as ill-health, pregnancy or bereavement or unavoidable delays in arranging an appropriate training course.

The coverage of training for union learning representatives

The content of the training relevant to ULRs is that related to one or more of the following areas of activity specified in the legislation [Article 92(A)4 of the Employment Relations (NI) Order 1996]. Examples of course content are given in the Code of Practice on time off for trade union duties and activities:

- analysing learning or training needs
- providing information and advice about learning and training matters
- arranging and supporting learning and training
- promoting the value of learning and training.

Training for managers

Line managers who have union 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 union representatives and their needs for time off and facilities to be included in management training programmes. E-learning materials, if available, can also be useful. It is Agency's experience that joint training activities for line managers and union 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 union representatives, except for representatives engaged in duties related to collective redundancies and the transfer of undertakings, employers should, where practical, make available to union representatives the facilities necessary for them to perform their duties efficiently and to communicate effectively with their members, other representatives and full time officers. Where resources permit the facilities should include:

- accommodation for meetings which could include provision for union learning representatives and a union member(s) to meet to discuss relevant training matters
- access to a telephone and other communication media used or permitted in the workplace such as email, intranet and internet
- the use of noticeboards and secure cabinets
- where the volume of the union representative's work justifies it, the use of dedicated office space
- confidential space where an employee involved in a grievance or disciplinary matter can meet their representative or to discuss other confidential matters
- access to members 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 union 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. This is most likely to be required where union representatives take on a variety of roles. Union representatives should be entitled to make telephone calls externally to full time union officers and other approved people or organisations such as the Labour Relations Agency.

TUPE and collective redundancy representatives

Union representatives dealing with TUPE and collective redundancy are often required to spend a large proportion of their working time over a short period

in dealing with information and consultation and communicating with their members and the employees affected. The provision of fully equipped temporary office space will 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 union representatives to communicate with, and when necessary meet, those trade union members 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 members or their trade union, union 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 between the union and the employer as part of an agreement on time off or comply with general rules applied to all employees in the organisation.

In particular, union 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 and reputation. The disclosure of information for collective bargaining purposes is covered by the Labour Relations Agency Code of Practice on that topic. Union 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, and the commission of criminal offences.

Union representatives will have legitimate expectations that they and their members are entitled to communicate without intrusion in the form of covert or other monitoring by their employer. Rules concerning the confidentiality of

communications involving union representatives should be agreed between the employer and the union.

Employers must respect the confidential and sensitive nature of communications between union representatives and their members and trade union. They should not normally carry out regular or random monitoring of union 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 issued by the Information Commissioner's Office. In the context of the Data Protection Act 1998 whether a person is a member of a trade union or not is defined as sensitive personal data. This also applies to data concerning individuals, for example communications concerned with possible or actual grievance and disciplinary issues. There are therefore very strict provisions on how such data can be used and monitored in compliance with the law.

It is helpful for arrangements for ensuring confidentiality of communications involving union representatives to be agreed in advance. This should include agreed rules 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. The Transnational Information and Consultation of Employees (Amendment) Regulations 2010 came into effect on 5th June 2011 and provided for rights including training (Regulation19B) and time off (Regulation16).
3. Article 31 of the Employment (Northern Ireland) Order 2003 inserted a new Article 92A into the 1996 Order giving Union Learning Representatives a right to take paid time off during working hours to undertake their duties and to undertake relevant training.
4. See Article12 of the Employment Relations (Northern Ireland) Order 1999 which sets out the right to put the case, sum up, respond to views and confer with the worker.
5. Some collective agreements go further than the basic provisions of the law in allowing a union representative to represent a union member in grievance or disciplinary hearings, for example being present in the absence of the individual affected.
6. 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.
7. Union 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.

8. See note 2.

Labour Relations Agency

Head Office

2-16 Gordon Street,
Belfast BT1 2LG
Phone: 028 9032 1442

Regional Office

1-3 Guildhall Street
Londonderry BT48 6BB
Phone: 028 7126 9639

Website: www.lra.org.uk

E-mail: info@lra.org.uk