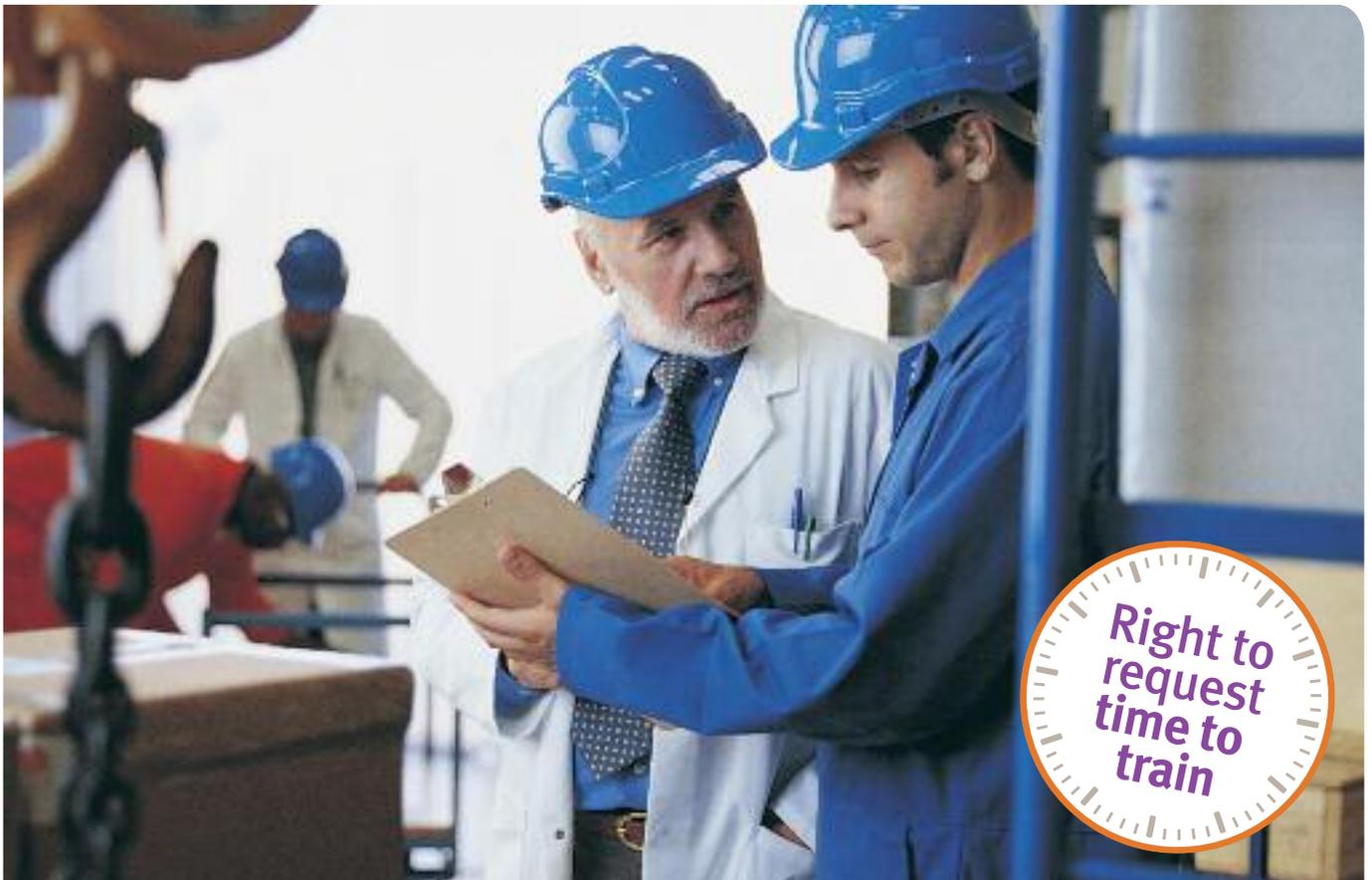


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The right to request time to train

A guide for trade union representatives

Contents

Introduction	2
Summary of the right in operation	4
Overview of this section	4
Sources of guidance and template letters	4
Key dates in the calendar	4
Eligibility to exercise the right	4
Training that can be requested	5
Payment for training during working time and payment for courses	5
Constraints and opportunities	6
Consideration of the request and arrangements for meetings	8
Right to be accompanied by a trade union representative	8
Appeals and resolving disputes	8
Checklist for employer policies that implement the right	9
How the procedure works: flowchart	11
Key issues for trade union representatives	12
Guiding members' decisions to exercise the right	12
Convincing employers	12
New opportunities for trade unions	15
Training systems and equalities issues	16

Foreword

by Brendan Barber, General Secretary

Training is a hot topic at work and rightly so. It is essential to workers' employability and prospects at work. It is key to the adaptability and productivity of the workforce. Sadly, one third of employers still don't invest in training their workers, 10 million workers have missed out on training this year and lower qualified workers are four times less likely to receive regular training at work than their highly skilled colleagues. This is despite the evidence that employers who invest in training their workers are more likely to survive stormy economic conditions.

Trade unions have long campaigned for employment rights to training. The right to request time to train will help thousands of workers access new learning. Workers whose learning aspirations have been forgotten or ignored can now expect a proper hearing from their employer. Trade union representatives have an important role, advising and supporting members in exercising their right to request time to train. Union learning representatives already play a crucial role in engaging and supporting lower-qualified workers to access learning at work and the new right offers an opportunity to build on this.

Of course, employers can give a 'business reason for refusal'. But employers have everything to gain from investing in proper training proposals from workers under this statutory scheme, particularly if that helps a worker to do their job better or learn new skills from which the organisation benefits.

It is therefore a pleasure to recommend this guide to union reps and I hope that you find it useful.



Brendan Barber



Introduction

A big step forward

From 6 April 2010, the right to request time to train can be exercised by employees in organisations with 250 employees and over. From April 2011, the right can be exercised by employees in organisations of all sizes. The Government has legislated after many years of campaigning by trade unions for rights to training at work.

The right is based upon the same model as the right to request flexible working, which has had a big impact on employment policies and practice since its introduction. The Government has estimated that up to a million workers may get new training opportunities in the next three years as a result of introducing the right. It is therefore a big step forward for the UK to introduce the right to request time to train.

But the challenge remains!

For many years, UK governments have encouraged employers to invest in skills, with some success. But one third of employers still do not train their workers and 10 million workers continue to receive no training at all. Research also shows that there is an entrenched 'training divide' in our workplaces.

For example, lower qualified workers are four times less likely to receive regular training at work than their highly skilled colleagues. And recent polling by the TUC shows that workers already worst affected by the training divide (lower qualified and older workers) are least likely to use the right, making trade union membership and support for those workers even more crucial.

Now for the first time employers are obliged by law to give proper consideration to requests by individual workers who want to take up training opportunities during working time. But trade unions will play a key role in making sure that workers have the knowledge and confidence to exercise the right. And even though requests for training should help the worker to improve their personal prospects and employers to improve the productivity of the organisation, this

does not mean that the employer is obliged to agree all requests from workers, as there are range of 'business reasons' they can use to refuse the request. But it is 'a foot in the door' and through negotiation many workers' training needs will be met.

Workers in organisations that already offer training opportunities may not need to use the right as much, particularly if there is collective bargaining on training or a learning agreement with the unions there. But when a training review system does not meet the real training needs of many workers or when the employer doesn't offer training, there is an opportunity for individuals or groups of workers, supported by trade unions, to make sure employers meet those needs or influence changes in practice.

Some workers' particular needs may not be best addressed through the right to request process. And some workers will not meet the eligibility criteria described in the 'Summary of the Right in Operation' section. Trade unions can persuade employers to include ineligible workers in their right to request process but they can also support those workers in finding training opportunities elsewhere, perhaps through trade union education.

An important role for trade union representatives

Trade union representatives are very well placed to tackle these challenges and to guide their members. The right to request time to train is an important tool to be considered on its merits, case by case, to advance training opportunities for individual members and the organised workforce as a whole. This guidance has been written for trade union representatives to promote use of the right and to help members use it to the best effect. Whilst it is anticipated that union learning reps will play a major role in supporting take-up of the right, this guidance also recognises that in many workplaces other union reps will be involved in negotiating directly with employers.



photo: Rod Leon

A new opportunity to organise!

The introduction of the right to request time to train and the pivotal role of union representatives confirms the learning agenda as central to the trade union agenda. Learning and skills are not just ‘soft’ issues. Training will become even more of a hot topic. Bargaining for training can be crucial to the job security and future employment prospects of union membership. It challenges all representatives (not just learning representatives) to support members as they take this opportunity to get more employer investment in training, paid time off and negotiated adaptations to working patterns and responsibilities. Unions could consult with their memberships about

how training opportunities in the workplace should be improved and put new proposals to the employer. And non-members may be attracted to membership by the impact that trade unions are having and the support available to members.

Unionlearn has a webpage for the Right to Request Time to Train project at www.unionlearn.org.uk/righttorequesttraining. There you will find a number of resources to support members in making their applications and you can keep in touch with the project.



Summary of the right in operation

Overview of this section

This section provides:

- a summary of the key points in the Government's guidance
- suggested actions for trade union representatives.

The Government's guidance should be seen as the basic minimum requirement. But trade unions should be arguing for best practice arrangements, especially in:

- addressing the training needs of **all** categories of workers
- securing paid time off and support for course fees
- incorporating best practice into learning agreements, collective agreements on training and employer training systems.

Sources of guidance and template letters

Specific procedures have to be followed when requesting time to train through the exercise of this employment right. The Government gives guidance on these. It is the only guidance that would be referenced if a disputed request was taken to an employment tribunal. The Government's guidance can be found on two websites:

- for employees: www.direct.gov.uk/timetotrain
- for employers: www.businesslink.gov.uk/timetotrain

There are also template letters on these websites that show the information that should be exchanged between employer and employee during the entirety of the process. The templates include:

- the employee's letter of application
- the employer's letter accepting the proposal
- the employer's letter rejecting the proposal
- the employee's letter of appeal.

Unionlearn also has a webpage for the Right to Request Time to Train project on its website (see page 3), which offers a number of resources to support representatives and members in making their applications.

Suggested actions:

- Draw your employer's attention to the new right and arrange a meeting to discuss the implementation of procedures.
- Discuss with other union reps in the workplace how the new right should be incorporated into existing collective agreements on training, learning agreements and employer training systems.
- Promote awareness of the right in your workplace and advertise support in exercising the right as a benefit of membership to potential members.
- Visit the government and unionlearn websites to gather resources to support members exercising the right.

Key dates in the calendar

Employers who have 250 employees or more are required to implement the right from April 6 2010. All other employers are required to implement the right from April 2011.

Suggested actions:

- If your employer has 250 employees or more, make sure that they have the procedures in place to observe the right from April 2010.
- If your employer has fewer than 250 employees, raise the April 2011 implementation date with them and encourage them to work with you to introduce the procedures early. You could also encourage them to receive requests to train in advance of them being required to observe this employment right.

Eligibility to exercise the right

To exercise the statutory right, the worker must be an employee with a minimum of 26 weeks' service.

The following are not eligible:

- agency workers*
- people of compulsory school age
- 16-or 17-year-olds who have an entitlement to reasonable paid time off from work to achieve

* where agency workers are contracted employees of the agency they will be entitled to request training from the agency

a qualification at NVQ Level 2 or equivalent unless they have already reached that standard of achievement

- 16- to 18-year-olds who have a duty to participate in education or training to attain at NVQ Level 3 or equivalent unless they have already reached that standard of achievement
- members of the armed forces.

Suggested actions:

- Encourage employers to hear requests from employees before they have completed 26 weeks service or identify other ways of identifying training needs in the first six months of employment.
- Encourage employers to hear requests from agency workers (who are not directly employed by an agency), or under-18s, or commit the employer to hearing the training needs of those groups through other means.

Training that can be requested

The training that can be requested should clearly help the worker develop skills that are “relevant to their job, workplace or business”. These could be skills that would help the worker do their current job better or help them undertake new tasks. In the application, the worker will have to demonstrate that it would:

- help them improve their job performance
- and it would improve the performance of the business.

The training could take place on the work premises, in an education establishment (e.g. college), at home or any other form of provision depending upon what is available.

When making the request, the individual must include the following information:

- the subject of the training or study they would like to do
- where and when the training or study would take place
- details of who would provide or supervise it (e.g. study at home, in a college etc.)

- what qualifications (if any) it would lead to
- how the training would make them more effective at work or improve performance in the organisation.

To make sure that the member includes all of the information that is required in their request to the employer, you should refer the member to the Government’s template letters on www.direct.gov.uk/timetotrain

Suggested actions:

- Union representatives can help members consider their training needs and how the employer’s support could be of benefit to the business as well as themselves: this will help increase the possibility of a successful request.
- Make sure that members use the Government’s template letter for making requests. www.direct.gov.uk/timetotrain
- Some training a worker may be interested in may not be relevant or best pursued by making a request for training under the statutory scheme. As a trade union representative, you may be able to find other ways to help people access training that does not qualify under the ‘right to request’. See the ‘Key Issues for Trade Union Representatives’ section for more information.

Payment for training during working time and payment for courses

Employers are not required by the legislation to pay for the time that the worker is training or to pay for courses. However, it is common practice for employers to pay for most job-related training and unions should negotiate with employers on this basis.

In addition, reps may need to negotiate new wording in learning agreements and collective agreements on training to support best practice on paid time off to train that results from successful requests.

When making the request, the member will be required to indicate how they suggest the cost of training should be met. Here are some suggestions.

- Where arrangements for paid time off and paying for courses are in place, union representatives should ensure that they are referenced in the application.
- Where this is not common practice, union representatives should make the argument for payment, especially as it will be an investment from which both parties will benefit.
- Note that some costs could be met by public money:
 - A worker is eligible for public funding for the training costs for Level 2 NVQ and equivalent if they have not attained that level before.
 - Train to Gain may also support repeat training costs and paid time off at Level 2 and first time Level 3 NVQ.
 - Under 25-year-olds have a right to funding for the training provision to achieve Level 3 NVQ equivalent, if they have not reached that level before.

To make sure that the member includes all of the information that is required in their request to the employer, reps should refer the member to the Government's template letters at www.direct.gov.uk/timetotrain

It may be in the worker's interest to change some of their working hours or other contractual arrangements in order to secure the employer's support for their training ambitions, so it may be helpful to have some flexibility in your negotiating stance. However, reps should make sure that members' statutory rights in terms of working time and minimum wage are protected.

Suggested actions:

- Make sure that members are aware of existing agreements regarding paid working time for training and support for course fees and reference them in their requests.
- Make sure that members use the Government's template letter for making requests – see www.direct.gov.uk/timetotrain

- Support members in negotiating paid working time, course fees support and negotiating any changes to working hours or contractual arrangements: see also 'Convincing Employers' in the 'Key Issues for Trade Union Representatives' section for more information.
- Monitor for any potential breaches of working time regulations or the national minimum wage: more information can be obtained from the Government's direct.gov website and the TUC's Worksmart website at www.worksmart.co.uk

Constraints and opportunities

Number of requests per year

A worker can make only one request for training a year under the statutory process. There is no limit to the amount of training that the worker can request, and within reason the worker could request more than one training opportunity. The worker can also pursue their training needs through any other workplace procedures or mechanisms applicable to them including any collective negotiations between the union and employer.

Withdrawal and amendment

If a request is not properly completed or is withdrawn, it is up to the employer whether they hear the request in future. Reps should seek a reasonable approach to such situations from their employer, but also help members to draw up fully considered applications in the first place. For example, the member's personal circumstances or the provider's plans may change and reps might seek agreement from the employer to transfer their support for the worker's training to another course.

Suggested actions:

- Reps could advertise their services to support members in completing their requests and persuade the employer to accept reasonable adjustments to original requests as a matter of policy.



Consideration of the request and arrangements for meetings

The employer must either approve the request in writing or organise a meeting to discuss the request. At the meeting, the employer may accept the request, or they may make some alternative suggestions to meet the training need, or they may refuse the request. The decision must be given within 14 days of the meeting. However, if the employer refuses the request they must provide one of the following business reasons and explain the reasons for their decision:

“The proposed study or training to which the application, or the part in question, relates would not improve your effectiveness in our business, or the performance of our business.”

“There is a burden of additional costs.”

“This would have a detrimental effect on our ability to meet customer demand.”

“We cannot re-organise work among existing staff.”

“We cannot recruit additional staff.”

“This would have a detrimental impact on quality.”

“This would have a detrimental impact on performance.”

“There is not enough work during the periods you propose to work.”

“Planned structural changes will make this impossible.”

If an employer fails to consider the request or does not properly consider the request, there may be grounds to take the employer to a employment tribunal. For further consideration of how to respond to these business reasons for refusal, please see the ‘Appeals and Resolving Disputes’ section opposite and ‘Convincing Employers’ in the ‘Key Issues for Trade Union Representatives’ section.

Suggested actions:

- Monitor to make sure that the employer is responding to the request within the timescales above.

Right to be accompanied by a trade union representative

The worker who made the request has the right to be accompanied by a colleague or a union representative from the same employer. Representatives could assist members in considering any alternative proposals that the employer may wish to make or in making adjustments to the original proposals to the employer that take account of the employer’s concerns.

Suggested actions:

- Advertise the right to be accompanied and your availability to support members in meetings.
- Assist members to consider alternative or adjusted proposals.

Appeals and resolving disputes

The regulations require there to be an appeals procedure if the employer refuses to grant the request. There is again a right to be accompanied by a union rep or colleague. Consider the following strategies to support members:

- Present some counter-arguments to the original business reason for refusal (see ‘Convincing Employers’ in the ‘Key Issues for Trade Union Representatives’ section).
- Bring forward new information that the employer has not previously considered.
- If the request is becoming a matter of dispute that could go to a employment tribunal, act as an intermediary and broker an agreement.
- Contact full-time union officials for support in negotiating a satisfactory outcome.

Suggested actions:

- Advertise the right to be accompanied and your availability to support members in the appeals process.

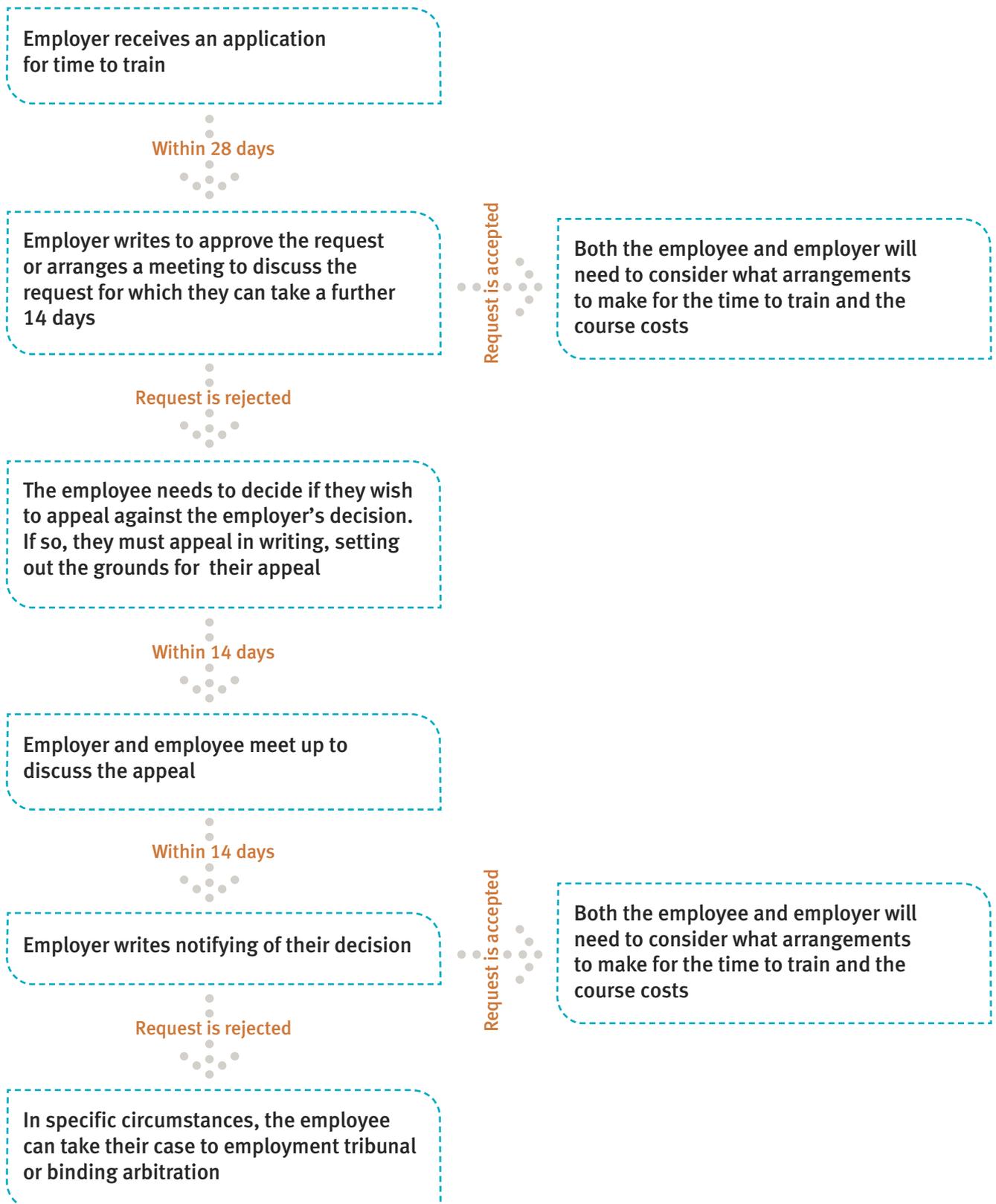
Checklist for employer policies that implement the right

Number	Check	Yes/No	Action
1	Does your employer have 250 or more employees?	Yes	Inform your employer of their duty to respond to requests for time to train under the statutory scheme from April 6 2010 (<i>see number 2</i>)
		No	Inform your employer of their duty to respond to requests for time to train under the statutory scheme from April 2011 (<i>see number 2</i>)
2	Has the employer negotiated a policy and procedure on the right to request time to train?	Yes	<i>See number 3 and 4</i>
		No	Raise with your employer, <i>see number 3 and 4</i>
3	Is the employer's policy clear on:		
	■ who can make an application?	Yes	Check that all eligible workers are included in the policy (<i>see page 4</i>)
		No	Propose that this is clearly stated in employer policy (<i>see page 4</i>)
	■ who should receive and respond to the application?	Yes	No further action
		No	Propose clear procedures for making the application
	■ the forms or templates that must be completed and the information that must be provided?	Yes	Make sure that the form or template is inclusive of the information that should be provided by statute (<i>see pages 4 to 8</i>)
		No	Propose a form or template design based upon the direct.gov website template

Continued overleaf

Number	Check	Yes/No	Action
	<ul style="list-style-type: none"> how often the employer will receive a request for training from an individual and how it will treat incomplete requests? 	<p>Yes</p> <p>No</p>	<p>Make sure it's at least once a year as required by statute, and if possible make it twice a year. Advise the employer to be prepared to offer feedback on incomplete requests.</p> <p>Advise the employer that this should be made clear in the policy to be consistent with the statutory guidance. Advise that the content should be as above.</p> <p><i>See number 4</i></p>
4	<p>Does the employer's policy comply with:</p> <ul style="list-style-type: none"> responding to the request within 28 days right of accompaniment by union representatives right of appeal 	<p>Yes</p> <p>No</p> <p>Yes</p> <p>No</p> <p>Yes</p> <p>No</p>	<p>Press for an improvement (e.g. 14 days)</p> <p>Inform employer of their legal duty</p> <p>No further action</p> <p>Inform employer of their legal duty</p> <p>No further action</p> <p>Inform employer of their legal duty</p> <p><i>See number 5</i></p>
5	<p>Do you have an existing agreement or arrangements with the employer on:</p> <ul style="list-style-type: none"> assessing workforce training needs paid time off, support for course fees, flexible working and family friendly policies (perhaps in the form of a learning agreement) 	<p>Yes</p> <p>No</p> <p>Yes</p> <p>No</p>	<p>Check its inclusive of all workers and if not propose a review</p> <p>Consult membership and request discussion with employer regarding how training needs of ineligible workers will be met</p> <p>Propose annual reviews of the policy to the employer (to assess the impact of the right to request time to train in operation)</p> <p>Propose introducing policies in these areas</p>

How the procedure works: flowchart



Key issues for trade union representatives

Guiding members' decisions to exercise the right

Reps may receive a number of enquiries about the right to request time to train from members who simply want more information. Some may feel that they want to exercise the right and have clear ideas what training they want and why they want to raise their training needs with the employer via the right to request. Others may have training needs and not heard of or considered using the right.

In any given situation, the union representative is well placed to judge whether the right to request time to train is the best way for that individual to pursue their training needs. Here are some guidelines for union representatives in giving that advice.

One tool amongst many

The right to request time to train will provide representatives with another tool to help employees access learning at work. Union representatives should continue to use the relationships that they have with managers, providers and trade union networks and their knowledge of public funding, employer policies, collective agreements on training and learning agreements to create learning opportunities for members. However, there will be times when the right to request time to train will help advance the case of an individual member or a group of members and trade union representatives will need to guide them with judgement and skill depending upon individual circumstances and workplace conditions.

The employer's attitude to training

Some employers do not discuss training needs with their workers. There are managers who do not do enough to support their workers' learning. Many employers only really invest in training for workers who are already well qualified. This is where the right to request time to train could help an excluded member to advance their training needs. However, the employer could have a good record on training which may mean that it is necessary to exercise the right only in exceptional circumstances.

The right, when exercised, will:

- compel employers to seriously consider the training needs of workers
- help make some important advances in the workplace.

However, exercising the right could be time-consuming and less effective than informally raising it with a sympathetic manager or asking a union learning representative to make the case to the employer, especially where there is a good relationship between the employer and trade unions. Training needs can come about as a result of changing technology or working practices. The needs could be shared by a number of people in the organisation and that may therefore make a collective approach more appropriate for both employer and trade union.

Members' aspirations

Members will have differing feelings about formalising their training needs or possibly airing their grievances about their lack of training opportunities. Some union learning representatives have suggested that exercising the right when an individual member is feeling insecure in their job may not be an option and it would be better to find a more discrete way of meeting that training need. But equally, some members may feel that making requests for personal development may be helpful to their personal prospects.

Convincing employers

Convincing employers to invest in training can be difficult. The new right to request time to train is a 'foot in the door'. It requires the employer to give proper documented consideration to a request, but they do not have to agree to the request as long as they can refuse the training on the basis of the statutory business reasons for refusal (see the list on page 8).

The right provides a framework through which a discussion about training can take place for individuals, but an agreement to support an individual could be the basis on which new

collective agreements on training with the employer are reached.

The framework also provides a structure by which productive discussions can be held with an employee and a trade union representative. The request for training must:

- be related to the “job, workplace or business”
- contribute to the performance of the business, and
- improve the worker’s capacity to perform tasks in the workplace.

It could therefore be a matter of gathering information and deploying convincing arguments. Here are some potential scenarios:

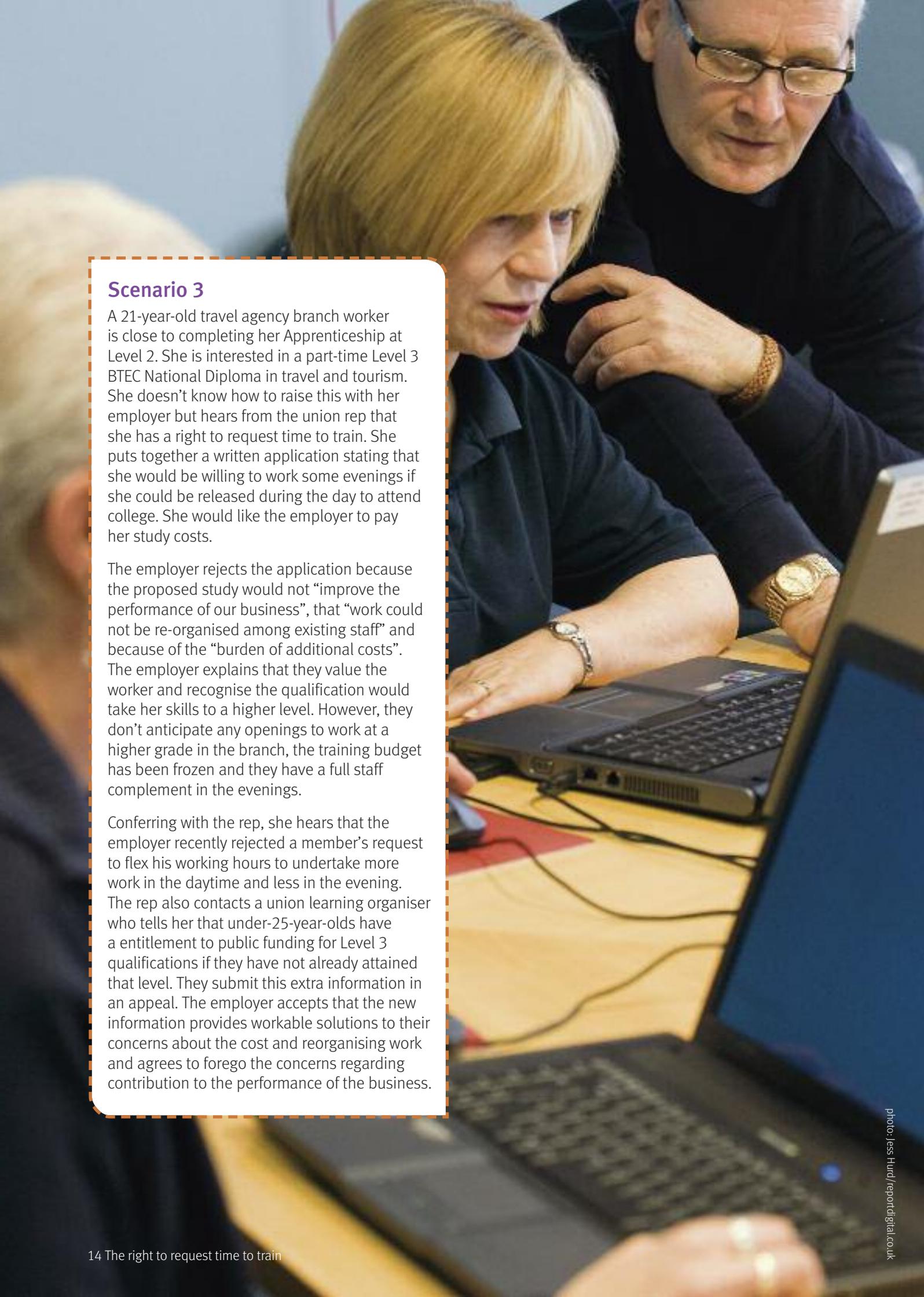
Scenario 1

An office worker would like to develop some ‘green skills’ and has particular interest in a business resource efficiency qualification that she could do online, but wouldn’t have enough time at home to do it as she has caring responsibilities. As there is no culture of training in the office, she makes a request using the statutory procedure to the employer and approaches her union rep when her employer requests a meeting. The union rep contacts the TUC’s GreenWorkplaces project for information. At the meeting, the office worker is accompanied by the union rep and is able to provide evidence that the employer will more than get their investment back once she starts using and sharing their new skills in the workplace. The employer is happy because the new skills will help to save resources as well as meeting regulatory obligations to reduce carbon usage. The employer agrees that her office duties will be adjusted so that she has time to work on the qualification and agrees to pick up the cost of the training.

Scenario 2

A stock room assistant working in a DIY superstore would like to improve his English through an ESOL qualification, but his manager is unsympathetic when he raises it in his annual training review. He asks his union learning representative to help him. The union representative advises him to try using his right to request time to train. With the help of the union representative, the member makes the request to the HR department in accordance with the employer’s policies. The union rep finds a course at a local college that meets one morning every week. And in the proposal, the worker and ULR construct an argument that with his new language skills he could spend more time working on the shop floor, using his knowledge of the stock to the benefit of the company and the customer. The HR department consults with his manager about changing shift patterns and writes back to the worker confirming they will release him one morning a week on full pay and cover the course costs. One year later the manager is delighted to have a worker who is proving a valuable link between the shop floor and the stock room and approaches the HR department about repeating the exercise with some other team members.

The appeals process is at least an opportunity to test the information that the employer has given in its business reason for refusal and find ways to solve the problem or make compromises. For example, where the ‘inability to re-organise work among existing staff’ is cited as a reason, this is at least an opportunity to provide evidence to the contrary, perhaps by conferring with other colleagues. Alternatively the member might show a willingness to alter their working patterns to meet the employer’s concern, and that could be enough to obtain agreement. Here is another scenario.



Scenario 3

A 21-year-old travel agency branch worker is close to completing her Apprenticeship at Level 2. She is interested in a part-time Level 3 BTEC National Diploma in travel and tourism. She doesn't know how to raise this with her employer but hears from the union rep that she has a right to request time to train. She puts together a written application stating that she would be willing to work some evenings if she could be released during the day to attend college. She would like the employer to pay her study costs.

The employer rejects the application because the proposed study would not "improve the performance of our business", that "work could not be re-organised among existing staff" and because of the "burden of additional costs". The employer explains that they value the worker and recognise the qualification would take her skills to a higher level. However, they don't anticipate any openings to work at a higher grade in the branch, the training budget has been frozen and they have a full staff complement in the evenings.

Conferring with the rep, she hears that the employer recently rejected a member's request to flex his working hours to undertake more work in the daytime and less in the evening. The rep also contacts a union learning organiser who tells her that under-25-year-olds have a entitlement to public funding for Level 3 qualifications if they have not already attained that level. They submit this extra information in an appeal. The employer accepts that the new information provides workable solutions to their concerns about the cost and reorganising work and agrees to forego the concerns regarding contribution to the performance of the business.

New opportunities for trade unions

Although the legislation grants a new right to request time to train to individuals, collective approaches are not prohibited and trade unions may be able to leverage new opportunities for collective approaches to skills. This section has some suggestions as to how trade unions may achieve this in the workplace.

Push for collective requests

It may be possible to agree with the employer to accept multiple or collective requests. For example, a number of employees may all wish to attend courses with the same local training provider that all begin around the same time. It may be practical to agree a policy on receiving collective requests and where applicable, a simple, fair and consistent process for deciding which requests to support and which to refuse. This could help the employer in meeting a volume of requests for time to train.

Similarly, it may be practical to agree with an employer that requests could be actively co-ordinated by employer and union representatives so that they can be considered in good time for college registration purposes, especially when approaching summer recesses. This could help the employer in meeting its obligations to respond to the employee within 28 days and for the employee to be more likely to secure their training place.

Explore collective agreements on training

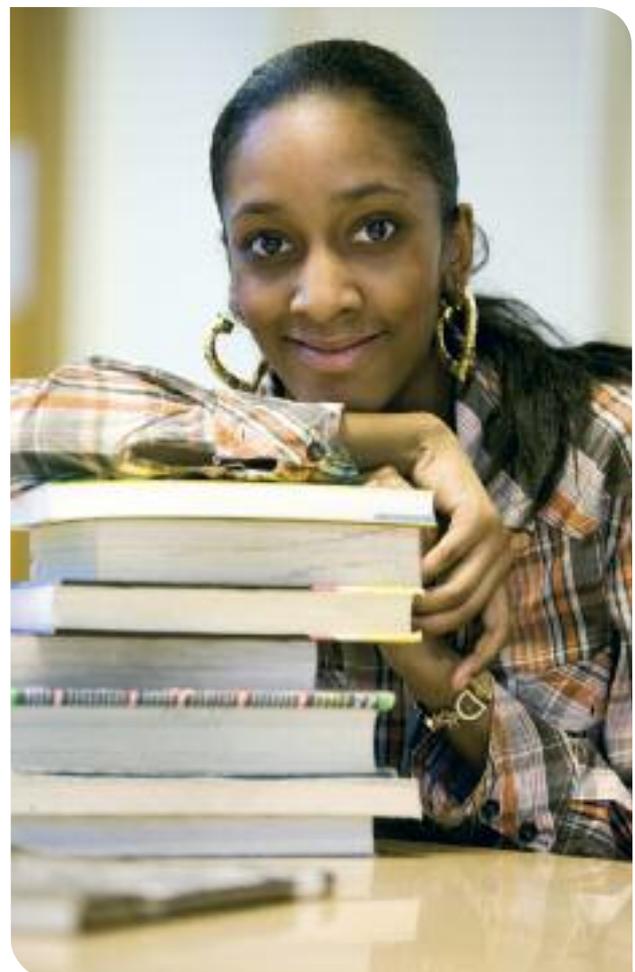
The pattern of requests for time to train may reveal common training needs in the workplace. It could therefore be more efficient for the employer to come to a collective agreement on training rather than continue to field individual requests. This may be a better way of organising requests for training in English for Speakers of Other Languages (ESOL), for example.

Consult members and attract new ones

The right to request time to train could be an opportunity to survey or consult members. You could gather support for improvements on the statutory scheme, such as:

- the employer voluntarily receiving requests to train from day one of employment (instead of from week 26) or;
- the employer being prepared to receive requests to train twice a year rather than once.

New members should be encouraged to join a trade union by the prospect of influencing training provision at work and the offer of support in advancing their prospects at work.



Training systems and equalities issues

The pattern of requests for time to train may reveal that the employer's system of training may need a review or an improvement in its implementation. In such circumstances, the employer and trade union could agree jointly to monitor requests for training and make appropriate changes to the employer's training review system where this reveals significant issues.

This could be particularly important with regard to equalities issues. If, for example, the pattern of requests is concentrated in lower grades in a public service organisation, this may reveal that

managers are not adequately addressing their training needs. If in that same organisation, most of the people working in those lower grades are women, this could reveal an equalities issue.

Employers should also be encouraged to consider equality points when considering individual requests. If for example, a member who is black or a woman requests professional development, it may be important that the employer recognises meeting their request could help tackle their under-representation in senior grades.





**Right to
request
time to
train**



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