

TIME TO TRAIN

Example scenarios of
handling requests

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Introduction

These examples have been provided to support understanding of how the right to request time to train might operate in actual employment situations.

The right to request time to train has applied since 6 April 2010 in organisations with 250 or more employees. Guidance for employers has been published online at www.businesslink.gov.uk/timetotrain and guidance for employees has been published online at www.direct.gov.uk/timetotrain

Following a consultation in summer 2010, the Government announced in February 2011 that the planned extension of the right to cover employees in all organisations would not be proceeding in April 2011. However, a further announcement will be made in due course setting out future arrangements for these regulations.

During development of the guidance documents, stakeholder organisations suggested that some case study scenarios may be beneficial, particularly as employers gain familiarity with the new right. We recognise that many employers have existing good practices in operating training and development procedures within their organisations. However, as this was a new right, there were no actual case study examples that could be referenced.

Therefore, a small number of hypothetical scenarios were developed to give a broad flavour of how we anticipated the right would work in practice. They are based on the guidance published in January 2010, and do not add any new policy content.

The scenarios cover a range of different industries and job types, together with different types of training requests and outcomes. They illustrate the breadth of possibilities that employers might encounter and the type of decisions they might reach. They could also be useful to other stakeholders who might become involved in supporting employees understand and exercise the right. It is the nature of the request and how it is handled that we believe is at the core of how the scenarios are most likely to be useful.

It is not intended that the scenarios should be exhaustive, or prescribe how meetings are conducted, or limit the range of factors employers may wish to consider in reaching their decisions. To maximise their usefulness, the scenarios include more complex cases, and cases which lead to Acas intervention and Employment Tribunal activity.

Table 1: Summary of example scenarios

Scenario	Organisation	Employee	Type of learning requested	Fees	Outcome
1	Fast food outlet	Part-time catering assistant	ESOL at local FE college	Yes	Agreed – with change of work pattern and contribution to fee
2	Engineering manufacturer	Machine operator	Off-site provision	No	Amended agreement – for attendance at later date
3	Construction contractor	Heavy plant driver/operator	Day release	Yes	Refused and appealed
4	Residential nursing home	Part-time care assistant	2 hrs x 8 wks ACL	Yes	Agreed
5	Hair salon	Crew member	2 hrs x 8 wks ACL	Yes	Refused – but agreed alternative training
6	Estate agent	Part-time clerk	Full-time NVQ at local FE college	No	Agreed – with change of work pattern and written agreement for possible withdrawal of support
7	Retail chain	Sales assistant	Head office shadowing visit	No	Refused – procedure not followed and complaint taken to tribunal
8	Golf and country club	Assistant green-keeper	Private study	No	Agreed – National Minimum Wage impact
9	Cleaning company	Cleaning operative	Adult numeracy	No	Agreed – without meeting

Scenario 1

An employee in a fast food take-away outlet is an EU migrant who wishes to improve her knowledge and skills in spoken and written English. She has seen that the local further education (FE) college are offering part-time courses, called English for Speakers of Other Languages (ESOL), and wishes to apply. However, there is a fee involved and she further realises that one of the sessions conflicts with her regular working pattern and does not want to give up her job. Her current duties are mostly food preparation and cooking. She decides to approach her manager with a formal request for 'time to train'.

At home, with support from family members and referring to online guidance, the employee writes down the details of her request. She provides details of the course and college she wishes to attend and what times she will need to be there. She explains that whilst there is a cost implication she feels that by doing the course she will be able to undertake a wider range of duties at work – like helping to serve customers during busy periods and that this will make her more useful to the employer and improve the performance of the business.

During a discussion of training needs, her manager recognises that with better skills in English the employee would be able to cover additional responsibilities, including serving customers and stock control, and become a more active member of the team. As part of a subsequent regular discussion of duty rosters with shift supervisors, the manager determines that it will be possible to swap one duty session to enable the requested college attendance, and to make a contribution to the cost of the course.

The employer provides the employee with a decision notice which specifies exactly what they have agreed including details of the course and when the employee will begin working her adjusted shift pattern. After six months the manager follows up progress and feels confident to expand this employee's duties.

Scenario 2

A manager in an engineering company receives a request for 'time to train' from one of their machine operators. Ordinarily, they operate a policy of recruiting skilled and experienced people, and generally they do not feel a need to provide in-house training. The manager refers to the Business Link website for guidance on what he is required to do to comply with the law. He sees that, as he does not intend to immediately agree the request, he will need to arrange a meeting with the employee within 28 days, and that they may be accompanied by a fellow worker.

In their request, the employee had said they wished to undertake a short course comprising one day each week for four weeks. This would take place at the premises of another local engineering firm. The employee had also explained that they completed an apprenticeship several years ago and were aware that recent technological advances had made some of their skills outdated. They felt that by undertaking this training it would enable them to complete certain tasks with a greater sense of confidence and consistency, which would also increase the quality of their output and benefit the business.

The manager arranges a meeting with the employee at a mutually convenient time. When the meeting takes place, the employee is accompanied by a colleague who is also their union learning representative (ULR). In discussing the request, the manager is able to see that this employee has a good grasp of developments within the sector and emerging market needs. It transpires that the course is part of a regular provision put on by the neighbouring business, and there is a spare place which they are agreeable to being filled by suitably qualified employees from other nearby engineering firms. Through their contacts, the union learning representative had identified this training opportunity and is able to provide additional helpful details about costs and alternative schedules for participation.

The manager explains that the firm has a large priority order to fulfil in the same period as the proposed course, and he is already contemplating possible overtime working. The training cannot be supported on the proposed dates because of its impact on the business. However, he accepts that the training would be beneficial to the employee and would help the business in the longer term. Following up on the ULR's suggestion that this learning opportunity may be available on additional dates, he explains that in principle the request could be supported at another time.

Through further separate discussions the manager confirms a later date would be a definite possibility for the training to go ahead, and how much it would cost. On balance, he feels the cost is worthwhile and, as he does not have a training policy or budget, ring-fences the anticipated cost elsewhere in his general budget. The manager and the ULR work together to secure a training place for later in the year, before the manager formally notifies the employee of the decision on their request. The decision is that the request is agreed as an amended agreement, including the nature of the training, when it will take place and how the costs will be met.

Scenario 3

A heavy plant driver/operator joined a large construction company three months ago. He has a wide range of certificates and experience operating several different types of heavy plant machinery – diggers, bulldozers, road rollers and more. During his induction it was explained how the company operates its system of staff reviews, including consideration of training needs. Following this induction, he has seen other workers being supported with their development and has begun enthusiastically talking with them about his own management ambition. Rather than waiting for his formal review, the plant driver completes and submits a formal request for ‘time to train’.

Not having yet been employed for six months, the plant driver/operator is not an “eligible employee” under the time to train scheme, and the site manager recognises that he is not obliged to consider this request. He could simply explain to the employee that he is not eligible so his request is not valid and would not be considered. However, in a spirit of inclusivity, the employer chooses instead to operate a more flexible policy and to formally consider training requests from all employees – so the manager arranges a meeting to discuss the request and to also reinforce key messages about the company’s policies on training and development.

As a separate exercise not long before advertising the recent vacancy for a heavy plant driver/operator, the site manager had completed the review process and a training needs analysis for his existing staff. He had organised his staffing to take account of the business’s operational plan, its substantial training commitments and his available budget. The manager has a strong idea on what level of additional requests could reasonably be supported.

The request which the driver has submitted is for paid day release for the whole of the next academic year, plus course fees, to gain accredited qualifications which include higher levels of safety certification within the construction industry. In his request he said he felt this would help his employer’s business by enabling him to take on additional tasks. The site manager considers that those tasks are already adequately covered, so an additional person with those qualifications would make no difference to overall business performance.

During the meeting, the site manager explains that the local operation would suffer if they were a plant driver short for one day each week; there is nobody qualified who is available to regularly backfill; and also, he does not now have the budget available to pay for this training. He explains that the regular review would be this company’s preferred time to hold such discussions, which enables all employees’ requests to be considered together and prioritised against business needs. Finally, he clarifies that the statutory right to request time to train does not apply until somebody has been employed for six months, but that this request is being considered under the company’s own training policy. He confirms his decision in writing – that the request is refused on the grounds that the proposed training would have a detrimental effect on ability to meet customer demand. This decision notification also includes details of the company’s appeal procedure.

Before taking any steps to pursue the company’s appeal procedures, the employee calls the Acas helpline. Acas point out that he does not appear to have the minimum length of service to qualify for the statutory right to request time to train, and that there is therefore no potential claim to an employment tribunal which they could help resolve. However, they suggest he considers raising the matter internally with his employer, at first informally, but if necessary through the company’s grievance or appeal procedures. After an informal discussion with his

line manager, he decides not to pursue his training application any further at that point. At his formal review later in the year, suitable training is agreed.

Scenario 4

A care assistant in a nursing home submits a request for 'time to train' in order to study Indian head massage as part of the local adult community learning provision. The course will last eight weeks and is held on Thursday afternoons in a local authority community venue. As part of her request, the employee sets out that the course will cost £140 and she is seeking for this to be paid by the nursing home. Her request sets out her belief that this will benefit her employer's business by responding to residents' needs and will lift their morale and sense of well-being – which is one of the home's quality indicators. This employee does not always work on Thursday afternoons, as the home uses a weekly shift rota pattern.

The care home manager can see certain benefits of the employee gaining the skill, but has some uncertainty about agreeing to the request and paying for the training. She arranges a meeting to discuss the request, and training generally, to take place within the next 28 days. The employee chooses her union learning representative (ULR) as a companion to accompany her to the meeting.

During the meeting the care assistant explains that several elderly residents had recently been requesting Indian head massage. The manager acknowledges that the home is always keen to explore new ways of improving their residents' well-being. The discussion moves into detail about what the technique is, what equipment and facilities it requires, how long treatments take, and to what extent it could be used within the home (i.e. whether the course is accredited; and whether the care assistant anticipates giving treatments as part of her duties, or of charging a fee).

As the course will take place after the main holiday period has finished, the manager can see that it would be possible to arrange the duty rota to enable her employee to attend all of the eight weekly sessions and still cover her full hours at work. By doing this, the employee will not need to reduce her hours or see her pay reduced. After further consideration, the manager agrees that the nursing home will reimburse the course fees, and proposes that after the course has been completed they can hold another discussion to establish arrangements for treating residents. Within 14 days after their original meeting to discuss the request, the manager provides the care assistant with a formal notification accepting the request, which sets out what the training will be, where and when it will take place, and that the course fee will be reimbursed by the care home.

Although the training has been scheduled to take place outside of work time, this still counts as a valid application and the employer is not required to consider another application until twelve months have elapsed.

Scenario 5

A crew member in a hairdressing salon approaches her manager with a request for 'time to train', seeking to study Indian head massage on Thursday afternoons (with her friend). The course will last eight weeks and she'll want paid time and has asked for the salon to pay the £140 fee.

In her application, the employee has set out how she believes the new skill would enable the salon to provide an additional service and gain new customers.

The manager arranges a meeting within the next 28 days to discuss the request, and training needs generally. During this meeting she explains that she does not envisage Indian head massage becoming part of that particular salon's service to its customers – there just isn't enough space and they have a good flow of customers for hairdressing appointments, so there is no need to diversify and it is not likely to become part of their business strategy.

However, through discussion, they identify that – although qualified – the crew member lacks confidence in giving foil treatments, and so they agree an action plan for enhancing those skills through on-the-job refresher training during the next three months. The employee is willing to have this alternative training, but not happy at her original request being turned down.

As the employee is unwilling to accept an amended agreement, the manager notifies her that her original request has been refused on the grounds that it will not improve business performance. The foil treatment refresher training goes ahead, because the salon manager had identified this as beneficial to the business.

Scenario 6

A part-time clerk in an estate agent submits a 'time to train' request to attend the local further education (FE) college. Her work includes handling the petty cash and helping with other financial tasks.

Her request explains that she wishes to work towards gaining an NVQ book-keeping qualification now that her children have finished school. Based on her existing level of qualifications, the college have told her there would be no fees involved. She says the course involves a commitment of more than 20 hours supervised study a week for a year. The employee believes she can manage this and her job, but only if her work attendance pattern can be changed to fit in with the college timetable.

The request is passed to the senior partner, who recognises that learning this skill would be beneficial to the business and is keen to support his employee. However, he is concerned that a year is a long commitment and worried that levels of performance may drop off if the business cannot maintain flows of work at the new working times the employee has proposed. He refers to guidance available on Business Link and arranges a meeting to take place within 28 days after receiving the request.

In discussion, the senior partner raises his concern and investigates alternative ways of meeting the employee's development aims. The employee demonstrates that she has thought through how she could combine the training with work, and acknowledges she could be more flexible about her hours during non-term time. Hearing details of her longer-term ambition after completing her course, the senior partner is somewhat reassured. He proposes an agreement that the request will be supported and the employee's hours temporarily changed – but only on the understanding that this support can later be withdrawn if the business's flow of work dips substantially due to market conditions. He is clear that without accepting this agreement the request would need to be turned down on the grounds of there being an insufficiency of work during the times the employee proposes to work.

Within 14 days after their meeting this agreement is put in writing. The employee submits her application to college; after her college place is confirmed she begins her new attendance pattern at work.

Scenario 7

The local branch manager of a national retail chain received a letter from one of his sales assistants, setting out a request for time to train. In her request, the employee stated her belief she could become more effective in her job and improve the performance of her employer's business by shadowing some head office staff and functions, such as buying, product design, and marketing.

The store chain has an established and highly successful programme for new entrants and also a clear and popular management progression route, both of which would sometimes include this type of visit to head office. However, this request falls outside of those arrangements as this member of staff is neither a recent recruit, nor on the management pathway programme.

The local branch manager contacts his district manager – who is responsible for training and development – to discuss the request. The district manager agrees to schedule a meeting with the employee, to take place on her next visit to the store. Before making that visit, the district manager checks policy with head office and their capacity to host visits.

On her visit to the local branch, the district manager explains to the branch manager what she has learnt about the chain's overall policy on head office visits. The district manager then holds her scheduled appointment with the employee to discuss training and development.

During the meeting, the district manager explains the importance of ensuring that training will lead to an overall improvement in business performance. After exploring the employee's levels of interest in other aspects of development, she sets out the chain's policy on head office visits and explains that, on balance, having given the matter careful consideration, it is her decision that this request will be refused – on the business reason that the proposed training will not improve business performance.

Following the meeting with her district manager, the employee does not receive a written notification of the outcome of her request within 14 days. She contacts the local branch manager, who explains that this is a district office matter, but that he has passed on previous requests. Despite further requests by the employee a written decision notification is not forthcoming.

Having lost patience with her employer's failure to follow the correct procedure, the employee calls the Acas helpline to ask for advice about making a formal complaint to an employment tribunal. The Acas adviser confirms that she appears to be eligible to make a tribunal claim; but invites her to consider pre-claim conciliation as a speedier and more effective alternative. The Helpline adviser explains that the employer would also have to agree to take part. The employee speaks with an Acas conciliator and agrees to Acas contacting her employer to explore the possibility of resolving her potential claim. However, when the conciliator speaks with the employer they refuse to take part.

The employee finally decides to submit a formal claim to the Employment Tribunal Service. This details the reasons why she feels aggrieved – including the non-notification of a written decision and her not being allocated a training place.

As well as responding formally to the Tribunal, the employer also sends the employee a notification explaining that her request had been refused, what the business reason was, and why the business reason for refusal applies. It says that as this employee works in one of the chain's larger branch stores where other staff had already had the benefit of head office visits, the skills being sought were already available locally and there would be no improvement to business performance by an additional employee duplicating what was known. The notification added that the employer considers it important that all stores have a complement of staff with a range of skills, but that meeting this training request would not achieve any overall improvement to the existing position.

The employee is frustrated that her request was turned down and that she needed to seek intervention in order to receive her formal notification of the outcome. When the late notification was received, she had no apology or explanation for its lateness. She decides that this was not sufficient response to persuade her to withdraw her complaint to the Employment Tribunal Service. Despite a further invitation from Acas to enter into conciliation, the employer is adamant that they will not settle the claim, which then proceeds to a full hearing of the Tribunal some six months later.

Having heard evidence from the employee, the district manager, and the local branch manager, the Employment Tribunal Service decides that the employee's request was given proper consideration by the employer, and that the employer's reason for refusing it – that there would be no improvement to business performance – was one of the potentially valid business reasons specified in the legislation. However, the Tribunal finds that the employer failed to meet the requirements of the law in relation to their continued failure to provide a written notification of the outcome of the request and their grounds for refusing it, and the employee is duly awarded compensation in the sum of two week's wages.

Scenario 8

An assistant green-keeper aged 25, working at a golf and country club, has submitted a request for time to train. He wishes to attend another professional sports club, based in a neighbouring town, which is scheduled to have a new drainage system installed under its pitch during the close season. He estimates it will involve two whole days away from his normal duties, but details are somewhat sketchy.

In his time to train request the employee explains that he spends a sizeable proportion of his duties working on drainage issues. He acknowledges that his employer previously supported his college attendance to gain City & Guilds qualifications which included elements of groundwork. He believes that by observing a reconstruction project on a major sports pitch he would gain supplementary knowledge, which could enable him to recommend ways of prolonging the life and reducing maintenance on his employer's golf course.

During a meeting to discuss his request, the employee is able to clarify that he has an established relationship with staff at the sports club concerned and that their management would be open to his attendance during the project in an observational capacity. The employee's management are open to his attendance and can see the benefits to be gained.

The employer is unsure whether they would be required to pay their employee's wages during the training, and so they check the online guidance for the right to request time to train. The employer establishes that he can agree to the request but is not obliged to pay the employee for the time spent training. He would prefer not to, as he would have to arrange and pay for cover during the green-keeper's absence. However, the employer also sees that there are National Minimum Wage (NMW) considerations and they follow the online links to read more.

As the training is work-related, then time spent training counts towards the hours on the basis of which the employee's pay is calculated for NMW purposes. (Time spent travelling from his normal workplace to where he trains would also have counted. However, he will actually be travelling from home to where he trains – which doesn't count). The assistant green-keeper works 40 hours a week and earns £8.50 per hour. He is paid weekly and the legal requirement is to top up pay to at least the NMW on average over the pay reference period.

Recognising the NMW implications, the employer undertakes some calculations. If the employee undertook 16 hours unpaid training in that week, his wages would be £204 (24 hours x £8.50). The hourly rate for the week would be £5.10 (£204/40). As the NMW for workers aged 22 and over is £5.80 per hour, had the employer taken no further action, the employee would have received less than the NMW for the week. As this would be illegal, the employer considers what their options are:

- a) They could top up the employee's wages for that week, but only to the extent that his pay does not fall below NMW levels. (In this case he would need to pay another £28 so that total pay for the week was £232 (40 hours x £5.80); or
- b) They could be more generous, so that it does not result in a drop in pay to a level which the worker will find unattractive.

On balance the employer wants the training to go ahead and recognises the low probability that the green-keeper would be willing to take such a big pay cut for the week from his usual wage of £340 only to help his employer's business. He suggests paying for the hours spent training at a rate of £5.80 per hour, so that the employee receives £296.80 for the week ((24 hours x £8.50) + (16 hours x £5.80)).

The employer talks this through with the green-keeper before including details of the calculation in a formal dated letter notifying acceptance of the training request. The employee is disappointed that his wage for the week will be reduced if he chooses to go ahead with the training now his request has been accepted, but understands his employer's argument that they will need to arrange cover while he is absent.

Scenario 9

A cleaning company in the West Midlands has changed its supplier of cleaning agents and the dilution ratios of the new chemicals are different. The union learning representative (ULR) is aware that one of this company's employees has particular difficulties with numeracy, and that they have concerns about the health and safety (H&S) implications of the wrong dilution ratio. The ULR is also aware that in England adult numeracy training in the workplace is fully funded, which employers can access through regular provision.

The employee completes a formal request for time to train with support from their ULR, who is willing to accompany them to a meeting to discuss the application. When the HR manager of the cleaning company receives the application, he recognises that the issues will go beyond H&S as stated in the request. Although that will be a key consideration, it will also be down to the potential cost implications of an employee getting it wrong:

- a) Using too much cleaning agent would make the process more costly in terms of materials usage and may require removal from the surface;
- b) Using too little cleaning agent could mean the cleaning isn't carried out effectively, so there would be costs associated with re-doing the work (time and materials) plus it can also be dangerous to over dilute some types of disinfectant;
- c) Getting the ratios wrong could have serious implications in terms of damaging surfaces and being required to make reparations and potential impact on insurance premiums if a claim were made.

Whilst it could be a relatively straightforward decision for him to commit to the training, the HR manager recognises there are still indirect cost implications even with free provision:

- a) This employee would need time away from work to attend the course;
- b) There would be a need to arrange for another employee to cover their duties whilst the employee is attending the course.

In terms of the training, he knows the free provision is for courses leading to a nationally recognised qualification, whilst what might be required is a short bite-sized intervention based on the specific skills required, i.e. ratios, measurement, etc. The full qualification and the associated time might not be the best route from an employer's perspective, especially in the cleaning industry where margins are tight and staff turnover can be high.

Weighing up all these considerations, and taking into account his knowledge of his employees, the HR manager concludes that the requested course is the right one for this particular employee, and that suitable cover can be arranged for their duties while they undertake training. Consequently he feels able to make a decision from the information provided in the request letter. Rather than arranging a formal meeting to discuss the application, he instead writes to the employee agreeing to the training as requested, and instructs the appropriate supervisor to arrange cover. The HR manager approaches the ULR separately to set out his strategy for training other employees.

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Any enquiries regarding this publication should be sent to:

Department for Business, Innovation and Skills
1 Victoria Street
London SW1H 0ET
Tel: 020 7215 5000

If you require this publication in an alternative format, email enquiries@bis.gsi.gov.uk, or call 020 7215 5000.

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