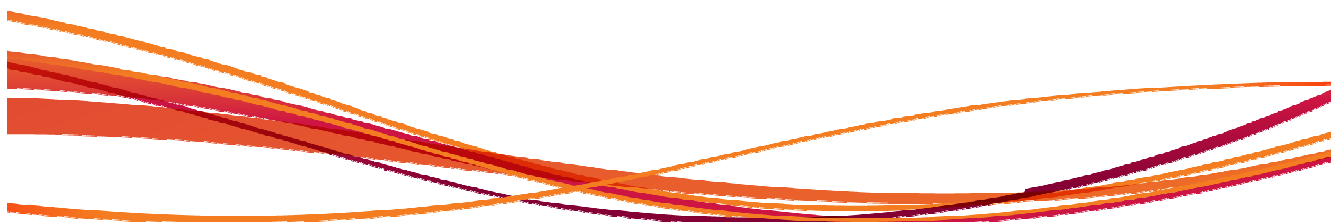


HR Rely Guidance

Guide to Time off for Public Duties

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Guide to Time off for Public Duties

Introduction

This Guide outlines the right to time off for various public duties and the protections afforded to employees taking time off in such circumstances. An example policy on time off for public duties can be found [here](#).

Voluntary public service

In the event that an employee is an official or member of the bodies listed below, or is a Justice of the Peace, they are entitled to have a reasonable amount of unpaid time off from work to enable them to carry out certain functions or duties. The relevant bodies are:

- A local authority;
- A statutory Tribunal;
- A police authority established under section 3 of the Police Act 1996 or the Metropolitan Police Authority;
- An independent monitoring board for a prison or a prison visiting committee;
- A relevant health authority;
- A relevant education body;
- The Environment Agency or the Scottish Environment Protection Agency;
- Or Scottish Water or a Water Customer Consultation Panel.

It is important to note that the employee is not entitled to time off for all public duties, the duties that the right applies to will vary depending on the particular body.

There is no set procedure that an employee needs to follow when requesting time off. An employer may wish to provide a policy on requesting time off in such circumstances.

What is meant by reasonable time off?

The question that often arises is how much time off is “reasonable”. What is “reasonable” is not defined in law. The employer should take the following into account:

- To what extent is the particular employee involved with the particular body. For example, the time spent by a local councillor on council business will increase substantially in the event that they become the chair of a committee or the Lord or Lady Mayor;
- The expectation of the body in question as to “required” attendance. For example some public bodies expect the lay member to sit for a specified number of days per year in addition to compulsory training days;
- How much time off has already been granted for the employee’s other activities or duties. For example, if the employee is a shop steward how long have they spent away from their work station to fulfil their union activities/duties;
- The circumstances of the employer’s business at the moment in time that the request is made; it is at peak time or is there an important client requirement or are there high levels of sickness absence being experienced?

Asking an employee to make up time lost is not granting time off under these provisions.

What happens if you refuse the request?

In the event that an employer refuses the employee’s request, the employee can bring an application to the Employment Tribunal requesting a declaration to the effect that the refusal was unreasonable.

A Tribunal can also award compensation of such an amount that it believes is “just and equitable” having regard to the degree of the employer’s default and any loss sustained by the employee.

It is important when defending a claim that the employer is able to provide records in support of its defence e.g. if the argument is that the employee has had a lot of time off for other duties, the employer will need to be able to show the amount of time that has been provided for those duties. Similarly if the argument is that it is a peak time within the business the employer should be able to provide evidence supporting this.

Jury Service

Jury service is not something an employee elects to do but rather something that they are required to do as a result of receiving a jury summons. As a consequence, the protection for an employee does not relate to reasonable time off but rather the right to be protected from a

detriment or dismissal for attending jury service. A breach of this right will allow an employee to bring a Tribunal claim. Dismissal for attending jury service is an automatically unfair dismissal.

The protection afforded to an employee for attending jury service is lost in the following circumstances:

- The employee's absence on jury service was likely to cause substantial injury to the employer's business and the employer brought these circumstances to the employee's attention; and
- The employee did not apply to the court for an excusal form or a deferral of the obligation to attend jury service and this refusal or failure to apply was not reasonable.

How much time is permitted?

Where the jury summons remains in force an employer must allow an employee time off to attend jury service. The amount of time off is not fixed and will depend on the Jury Summons.

Is an employee entitled to be paid whilst on Jury Service?

Although many employers will continue to pay an employee whilst they are on jury service, there is no obligation on them to do so. An employee on jury service should reclaim travel costs, food costs and loss of earnings from the Court although there is a limit on the amount of money that an employee can reclaim and this may be less than their actual daily earnings.

Reserve Forces Duties

There are four Reserve forces in the UK. They are: the Territorial Army, Royal Naval Reserve, Royal Marines Reserve or Royal Auxiliary Air Force. An employee who is a member of the Reserve forces (a Reservist) may be mobilised at any time on full time operations.

How will an employer know if an employee is mobilised?

The MoD will provide an employer with written notice if one of its employees is mobilised. If the employee's absence may cause harm to the business then the employer may ask, within 7 days of receiving the mobilisation notice, that the employee is exempt from mobilisation, or the mobilisation is revoked or deferred.

Right to return to work

Although there is no right to time off for that employee, there is an obligation on the employer to re-employ the employee if he was last employed by him in the four weeks prior to mobilisation. At the end of a period of mobilisation, the Reservist will write to the employer making an application for reinstatement of employment. The right is for the employee, within six months from the end of their military service, to return to the same job and on terms and conditions that are no less favourable than those which would have applied if there had been no call up. In the event that reinstatement is not possible, the employer must offer the most favourable terms and conditions that are reasonable and practicable in the circumstances.

The employer may refuse reinstatement if reinstatement would result in the dismissal of another employee who was employed by the employer prior to the reservist being mobilised, was as permanent as the Reservist and who, at the time of mobilisation, had longer service than the Reservist.

Assuming that the Reservist returns to work, the employee has a further protection in that he must be allowed to remain in the post for a minimum protected period. The length of that period will vary depending on their length of service prior to being mobilised.

There is no obligation on the employer to continue to pay a Reservist whilst they are mobilised but it may be possible for an employer to claim financial assistance to cover the additional costs of replacing the Reservist during mobilisation.

Time off for training

As a Reservist, an employee will be required to undergo training but the employer is not obliged to provide the employee with paid or unpaid leave to do so, instead the employee may be required to use their holiday entitlement and/or come to some other arrangement with their employer.

Employer's breach of the obligations

As well as the employee having a claim of unfair dismissal (no statutory qualifying period is required) if their employment is terminated on the grounds that they may be mobilised at a future date, the employer will also be guilty of a criminal offence.

The Reservist also has the opportunity to complain to a Reinstatement Committee if they are dissatisfied with their employer's response following demobilisation. The Reinstatement Committee has power to order reinstatement or compensation.

This guidance note has been prepared as a general guide only. It is not a substitute for professional advice which takes account of your specific circumstances and any changes in the law and practice; at the time of the preparation of this note various changes to the relevant provisions may be pending. The subjects covered constantly change and develop. No responsibility can be accepted by the firm or the author for any loss occasioned by any person acting or refraining from acting on the basis of this note. The copyright in this guidance note is owned by Weightmans LLP.