

Facility Time

A TUC guide to defending the right to represent members

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Section one

Introduction

Union Reps represent the best of the trade union movement. Each and every day, in thousands of workplaces, our reps provide individual and collective support to their colleagues on a range of issues.

They provide advice and guidance on employment rights and other terms and conditions; they represent members in disciplinary and grievance cases; they make workplaces safer; they provide opportunities for learning and skills development; they are advocates for equality.

In any other area of public life such a contribution from people acting in a voluntary capacity would be celebrated by the Government and employers alike. However, since 2010 the ability of union reps – particularly those in the public sector – to carry out their role effectively has been put under increasing pressure.

A series of reforms and restrictions to facility time allocations in the public sector, culminated in the Trade Union Bill which passed into law in the spring of 2016.

The purpose of this briefing is to provide union reps with a comprehensive guide about facility time. As well as covering the implications of the Trade Union Bill it includes guidance on the ACAS Code of Practice on Paid Time Off, the legal status of reps, the implications of the Trade Union Act, how to make the case for facility time and how to use it effectively to build strong workplace unions.

■ A GUIDE FOR REPS

Unions have their own policies which reps are encouraged to follow. This document does not constitute formal legal guidance, it is intended to summarise some of the key issues facing reps in securing paid time off and summarising the impact of the Trade Union Act.

Section two

The legal status of paid time off for union reps

Union reps have had a right to reasonable paid time off to carry out union duties and undertake training since 1975. They have also had the right to reasonable unpaid time off to undertake union activities. There are separate regulations covering union health and safety representatives and workplace representatives. We will look at the definitions of union 'duties' and 'activities' further on in this section.

The information below is intended only as a summary and we recommend that reps read the full ACAS Code.

ACAS Code of Practice

The most recent guidance for unions and employers on facility time was published in the January 2010 edition of the ACAS Code of Practice on Time off for Trade Union Duties and Activities. The Code includes guidance on;

- Time off for duties and activities
- Time off for training
- Responsibilities of employers
- Agreements on time off
- Resolving disputes

■ POSITIVE BENEFITS

*The ACAS Code says that there are 'positive **benefits** for employers...in encouraging the efficient performance of union reps work. In order to perform effectively, union reps need to have reasonable paid time off from their normal job...'*

Duties and activities

- Perhaps the most important distinction made in the Code is the right to paid and unpaid time off depending on whether reps are undertaking union duties or activities.

In short, reps have a right to **paid** time off for duties **but not** for trade union activities. The ACAS Code provides comprehensive guidance on what constitutes trade union duties and activities however this can be summarised as follows;

Duties

The ACAS Code provides the following examples of union duties for which union reps should be given **paid time off** (you

should refer to Section 1 of the Code for a full description);

- **Terms and conditions of employment** such as pay, hours of work, holidays, sick pay, pensions, learning & training, equality issues, notice periods, working environment etc.
- **Matters relating to the engagement, suspension or termination of employment** such as recruitment procedures, redundancy and dismissal arrangements.
- **Allocation of work or employment duties** such as job evaluation and grading, job descriptions, flexible working and work-life balance
- **Disciplinary matters** such as disciplinary procedures, representing or accompanying employees at internal interviews
- **Union membership** such as any union involvement in the induction of new workers
- **Negotiation and consultation** such as collective bargaining at the employer or multi-employer level, grievance procedures, joint consultation and communicating with members, other union reps and union officers.

Health and Safety Reps

There are separate regulations for union health and safety representatives. These are the Safety Representatives and Safety Committee Regulations 1977. Unlike the situation for most other representatives, safety representatives **have functions** rather than duties.

According to regulation 4(2)(a), **employers are required to allow union health and safety reps paid time, as is necessary, during working hours to perform their functions.**

These functions include investigating potential hazards, incidents or complaints; doing inspections of the workplace; making representations to the employer on any health or safety matter; representing employees, receiving information; and attending meetings of safety committees.

There is no limit to the amount of time that can be taken and it is likely that it will vary considerably depending on the workplace. They may also need more time following an incident at work or if new safety procedures are being carried out.

Union health and safety representatives are also different from other union representatives in that they can represent all employees in the workplace, not just union members.

Further advice on the provisions for health and safety representatives is provided by the Health and Safety Executive in its approved Code and Guidance 'Consulting workers on Health and Safety'.

Union Learning Reps

Employees who are members of an independent trade union recognised by the employer can take reasonable time off to undertake the duties of a Union Learning Rep (ULR). To qualify for paid time off the member must be sufficiently trained either at the time their union notifies the employer that they are a ULR or within 6 months of that date.

ULRs are allowed time off to carry out the following functions:

- Analysing learning or training needs
- Providing information and advice about learning
- 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
- Training where a change in the law might affect the conduct of industrial relations
- Training where union reps accompany members in grievance and disciplinary hearings

Time off for training

The ACAS Code emphasises that training is important for union reps to enable them to carry out their duties and that it should be available to both new and experienced reps.

Representatives of a union recognised by the employer should be allowed reasonable paid time off to undergo training in aspects of industrial relations activities **relevant to the trade union duties that they carry out**.

The Code gives the following examples of relevant training;

- Developing the skills of reps in representation, accompaniment, negotiation and consultation
- Further training for reps with special responsibilities such as collective redundancy or transfer of undertakings
- Training that updates union reps on issues reflecting the developing needs of the members that they represent
- Training to help reps negotiate on significant changes to the organisation of work

Health and safety representatives are entitled to paid time off for any training that is considered reasonable to help them carry out their functions.

The guidance on paid time off for training in the ACAS Code also covers time off for training for union learning reps.

Activities

As mentioned earlier there is no reference in the Code to paid time off for union activities and as such there is no entitlement. This doesn't mean that it's not possible to negotiate paid time off but employers are under no legal obligation to provide it. Of course recent developments in the civil service and public sector have made negotiating paid time off for union activities more difficult.

The ACAS Code provides the following examples of trade union activities (*you should refer to Section 3 of the Code for a full description*):

- Attending workplace meetings to discuss and vote on the outcome of meetings with the employer
- Meeting full-time officers to discuss issues relevant to the workplace

- Voting in union elections
- Accessing services provided by union learning reps.

Examples of activities in the Code that might specifically apply to union reps are;

- Taking part in branch, area or regional meetings to discuss union business
- Attending meetings of union policy making bodies such as executive committees and the annual conference
- Meetings with full time officers to discuss issues relevant to the workplace.

Tips for reps

It is important that reps:

- ☑ Remember that the ACAS Code sets out the MINIMUM obligations on employers **not** the maximum. Unions will, and should, always try to negotiate significantly better facilities for reps than those set out in the ACAS Code
- ☑ That employers cannot restrict the time that health and safety representatives need to undertake their functions.
- ☑ Remember the Code provides useful guidance on time off agreements and how disputes on facility time might be resolved
- ☑ Finally, reps should take into account their own union's policies on facility time, including existing agreements and best practice

▣ THE 'REASONABLE' TEST

*Whilst there are numerous references in the ACAS Code to 'reasonable' time off in relation to **PAID** time for union duties, the ACAS Code provides no guidance or what might be regarded as reasonable.*

The view of the TUC is that, particularly in relation to union duties that involve negotiating with employers on matters that they bring to the table and representing members in disciplinary and grievances, the definition of reasonable should be what is required under the circumstances to allow reps to adequately represent members.

It follows that if limits on paid time off for duties were applied the ability of reps to represent and support our members would be restricted.

For this reason the TUC believes there should be no limit on the amount of paid time off for union duties.

Section three

The Trade Union Act and facility time

The government plans to squeeze the amount of facility time union reps have to represent members by introducing new reporting requirements for all public sector employers (and some private and voluntary sector employers which perform public functions).

Ministers will also be able to cap facilities – although this power cannot be used for at least 3 years.

Reporting on facilities

The government has introduced regulations that specify when, how and what **public sector employers** will have to publish

What must be reported?

Public sector employers will be required to report on:

- The number of union reps employed during each reporting year
- The number of full-time equivalent reps employed
- The number of relevant union reps who spent 0 per cent, 1-50 per cent, 51-99

per cent or 100 per cent of their time on facility time

- The total costs of facility time.

Costings for facility time will be based on reps pay before tax, employer's pension contributions and employer National Insurance contributions.

What won't be reported on?

The regulations will not require public sector employers to:

- Provide a breakdown by types of union reps employed in their workplace, for example, health and safety reps, union learning reps, equality reps and shop stewards
- Provide a breakdown of time spent on different union duties, including health and safety, promoting skills and learning, negotiating pay conditions, consulting on redundancies or TUPE transfers or accompanying individuals to grievance and disciplinary hearings.
- Provide a breakdown on how paid time spent on union activities is used, for example time spent by union reps consulting members or consulting full-

time officers.

- Report on union facilities, other than paid time off, for example costs linked to the provision of union offices, telephone lines and access to the internet.

Who will have to report?

Reporting duties will apply to more than 2,000 public sector employers across England, Scotland and Wales with: 50 plus employees and at least one rep.

The new rules **won't** apply to most public sector employers in Wales.

The list of affected employers covered includes:

- Government departments and local authorities, including:
 - Fire and Rescue authorities
 - Transport for London
- NHS employers
- Schools, academies, FE colleges and Universities
- Police staff
- More than 140 government agencies and other named organisations, possibly including the BBC, the British Museum and the English and Scottish Sports Councils.

To date, the government has decided not to extend the reporting duties to **private and voluntary organisations** which perform public functions and receive more than half of their income from public funds.

How often must they report?

Public sector employers must report annually about spending on paid union

facility time. Reports will cover each financial year (1 April – 31 March) and must be published by 31 July:

- On the employer's website
- In any annual reports

Power to cap facility time

The Act also gives the government the power to introduce regulations capping facility time in the public sector.

As a result of TUC and union campaigns, the government made a number of concessions and the power to cap facilities may not be used in practice. If Ministers decide to act, any cap is likely to apply to specified authorities, rather than a blanket cap across the sector.

But unions will need to remain alert and be ready to run effective campaigns opposing any cuts to facility time.

NB it will be difficult, if not impossible, for the government to cap time off which is protected by EU law including time spent:

- Performing health and safety duties or on health and safety training
- On collective redundancy and TUPE regulations.

Timetable

The new reporting requirements on union facilities are due to come into effect on **1 April 2017**. The first reports should be published by 31 July 2018 covering any spending on paid facility time between 1 April 2017 to 31 March 2018.

Tips for reps

Where possible, reps should:

- ☑ Make sure agreements on facility time are in place with employers ahead of the new rules.
- ☑ Ensure that the time taken by health and safety representatives is not included in any facility time agreement, and instead there is a guarantee that they will be given such time as they require.
- ☑ Try to work with employers on facilities reports to ensure no facility time is double counted. For example:
 - Where reps perform combined roles (health and safety rep and shop steward), they are only counted once.
 - If a meeting with an employer covers lots of issues, it should still only be counted once.
- ☑ Work closely with employers to present the benefits and of facility time – see section four of this guide.

Section four

Making the case for time off for reps

There is clear evidence that union reps make a real difference in workplaces across the UK, benefitting employees, employers and the wider community:

- ✓ **Union workplaces are safer**, with union safety reps reducing workplace injuries by [50 per cent](#).
- ✓ **Union workplaces have better family friendly policies**, with [52 per cent](#) of unionised workplaces providing enhanced maternity pay compared with 35 per cent of non-unionised workplaces.
- ✓ **Unionised workplaces are more likely to offer better workplace benefits**, including enhanced sick pay, holiday entitlements and occupational pensions.
- ✓ Union reps [promote training and skills](#).
- ✓ For every £1 invested from the [Union Learning Fund](#) generates a total economic return of £9.15.

Employer support for facility time

During the passage of the Trade Union Bill a number of public employers submitted evidence to a House of Commons Select Committee saying that paid time off for union reps was an important factor in establishing stable and effective industrial

relations. These employers included the North East Regional Employers Association, The Welsh Local Government Association and the following local authorities – Barking and Dagenham, Blackpool, Croyden, Derby, Ealing, Harrow, Lancashire, Oldham and Wolverhampton.

Facility time for union reps in the NHS was supported by the British Medical Association and the Royal College of Nurses (a union not affiliated to the TUC) said;

“Facility time is beneficial to the safety of practice environments, staff welfare and consequently to patients.”

Evidence from the Workplace Employment Relations Survey

The Workplace Employment Relations Survey (WERS) is a major government funded study of employment relations. The sixth survey took place between March 2011 and June 2012.

Given the focus on facility time in the public sector, the data from the latest WERS was analysed to see if there was any basis for the claims made by the Government that the number of reps in the public sector was ‘excessive’ and ‘unnecessary’. The research found that;

- There was no evidence to support the government’s claim that the number of

union reps in the public sector was excessive. In fact, 62% of public sector workplaces didn't even have a union rep.

- In public sector workplaces with union recognition, less than 3 per cent had a rep that spent either the majority or all of their time on union rep duties. A similar level of representation to the private sector.

Another claim made by the government has been that paid time off for union reps in the public sector is essentially public funding for reps to organise strikes and industrial action and to oppose management and take part in political campaigning.

However data from the WERS survey found **that over 80% of managers in the public sector agreed that full time union reps could be trusted to act with honesty and integrity.** It is highly unlikely that so many managers would hold this view if reps were using facility time inappropriately.

Facility Time – cost or added value?

Much of the narrative from the government on facility time focused on the cost to the taxpayer with little if any consideration given to the benefits that the work carried out by union reps brings to employers and members.

Research undertaken by the University of Leeds for the TUC, attempted to quantify the contribution that union reps make to workplaces and the economy as a whole.

Using the results of previous research by the DTI and the latest Workplace Employment Relations Survey (WERS) the study found that there were five which areas that benefit from the activity of workplace union reps; skills and training; exit rates, labour turnover and dispute resolution; worker safety; and productivity.

- The independent evaluation of the latest round of the Union Learning Fund (ULF) suggests that the total benefits that will accrue from the work of ULRs and associated ULF projects carried out in 2015/16 will be **£1,452 million (£653 million benefit to the public sector).**
- The research found that in workplaces with union representatives, the dismissal rate was lower, 1.04 dismissals per 100 employees compared to 1.55 for workplaces without union representation. This suggests there are between 8000 and 16,000 fewer dismissals a year as a result of the activities of union representatives, which saves employers **£32m–£64m per year.**
- There are estimated to be in the region of 5,400-8,000 fewer injuries in workplaces where there is direct trade union Health and Safety representation. The estimated benefits to employers are between **£38.2m–£67.2m (£7.5m–£13.2m in the public sector).**

So much for what union reps actually do and the benefits that this work brings to employers and society, but what does all this cost?

The total number of hours spent on rep duties and paid for by employers, e.g. around 910,000 hours per week, constituted around 0.1 per cent of weekly hours worked in the whole economy in 2011.

The report estimates the total cost to employers of paid time off to be approximately £637m (£481 million in the public sector) which equates to just 0.07 per cent of the economy's annual wage bill.

The report also found that union reps spend over 250,000 hours per week on duties and activities for which employers don't pay them. Despite this, the work they carry out, particularly that which relates to union duties still has the potential to benefit

employers. Using the methodology used to calculate the wage costs to employers, the

report estimates the value of this paid work to be in the region of £3.84m per week.

Section five

Using facility time effectively

Despite government attempts to restrict the amount of facility time available and what it can be used for, many union branches in the public and private sector have used the strength of the union's membership and its expertise at the bargaining table to negotiate facility agreements that allow reps to represent members and continue to build the union.

In this final section of the guide we will look at how to ensure that facility agreements are fit for purpose and the steps that can be taken to improve them.

A key resource

Each year at every union conference the Treasurer presents the union's accounts. Included in the report is a balance sheet that shows all of the union's resources; how much money it has, the buildings it owns, its income from investments, its staff etc.

However what is missing from this inventory is the one resource that enables the union to be effective where it matters most, in the workplace.

Because we negotiate facility time from employers it's easy to forget that it is just as much a union resource as the income from subs, the buildings we own and the staff that we employ.

Treating facility time as a key union resource – albeit an 'off-balance sheet' one

– can help reps to make sure we have enough and to use what we have strategically.

How much time do you need?

There will be a number of things to consider when thinking about how much time you will need. Some of the most obvious are;

- The size of the workplace/company
- The number of employees/members
- The organisation of the workplace – departments/shift patterns
- The physical environment
- The number of reps you have or need.

In addition to these you might also think about:

- The level and regularity of negotiations that take place between reps and employers at the workplace
- The range of representative duties and activities that need to be covered by the reps team – such as, skills, equality etc.
- The range of issues raised by members
- The training needs of reps
- Current or potential issues that might make particularly heavy demands on the time of reps.

Reviewing existing agreements

Up until recently many facility agreements, particularly in the public sector, were longstanding and hadn't been reviewed or updated for some time.

But it's always advisable to check if your agreement is fit for purpose and is allowing the union to do its job.

The following checklist will help you to do a quick review of your existing agreement:

- Are the current arrangements in writing or based on verbal understandings with managers?
- How much time does the union currently have?
- Is the allocation given to individual reps based on their position/role or does the branch allocate the time?

Is the time taken by health and safety representatives to perform their functions separate from facility time and are all health and safety representatives able to take as much time as they require, when they require it?

- Does the employer set a ratio of reps to members?
- What trade union duties are covered?
- Is there any paid time off allowed for activities?
- Are members easily allowed to access the services and support provided by their union reps?
- Are reps able to take their facility time or is workload or lack of cover preventing them?
- Does the union have access to office space and office equipment?
- What procedures are in place to deal with disputes?

Improving agreements

Once you've reviewed your agreement you may well decide that some changes are required.

When you're developing your proposals for a revised agreement you might want to consider the following:

- Keep in mind that the agreement should have two aims; to enable you to represent members (individually and collectively) and to build and strengthen the union.
- Consider the current organizational strength of the union – members, density, reps.
- Ensure that the proposals reflect the best practice in the ACAS Code. But remember that they are legal minimums.

Section Six

Support for Reps from the TUC

What's on offer?

The TUC provides support to union reps across the following areas;

- Education and training
- Health and Safety
- Equality
- Organising and campaigning

This support is available via TUC Education (see below), the TUC website - www.tuc.org.uk - which contains specific activist resources, and through a comprehensive range of publications available both on-line and in hard copy.

TUC Education

TUC Education provides a range of **classroom based, blended and online courses** for union reps.

The core courses delivering the skills reps need to be effective in the workplace include:

- Union Reps Stage 1
- Employment Law (Stage 2)
- Health & Safety Stage 1
- Next Steps for Safety Reps (Stage 2)
- Union Learning Reps Stage 1
- Union Learning Reps Stage 2

Information about the TUC course programme is available from the TUC Education website – www.tuceducation.org.uk – which includes a full directory of courses for reps to apply for.

eNotes

eNotes are a set of resources developed by the TUC to help reps stay up to date on key workplace issues. Each eNote lasts between 20 and 45 minutes and contains a mixture of text, video and quizzes. There are currently 30 eNotes available from the website including:

- Apprenticeships – Know your rights
- Health and Safety and Organising
- Language support for workers
- Working with figures
- Mental health in the workplace
- Cancer in the workplace
- A Living Wage
- Building a stronger workplace union
- Facility time
- Bargaining for skills

TUC Education also publishes a range of workbooks which can be downloaded from the unionlearn website – www.unionlearn.org.uk – and ordered in hard copy from TUC Publications.

The current range of workbooks includes the following:

- Work and well-being
- Disabled workers
- Working women
- Tackling racism
- Mental health and the workplace
- Out at work
- Cancer in the workplace

Health and Safety

In addition to a comprehensive training programme for union Health and Safety Reps, the TUC provides a range of other support for union reps.

It produces the **Hazards at Work manual**, which is the main handbook used by trade union health and safety activists. This is updated every two years and much of the content is put online. It also produces a weekly newsletter "Risks" which has 12,000 subscribers.

There **are over 50 guides available** for activists covering a range of health and safety subjects ranging from how to negotiate the removal of asbestos to drug testing or behavioural safety.

Equality and Organising

The TUC's Equality and Strategy department provides information to workplace reps on a range of equalities topics. This includes work on disability, LGBT, race, women's and age equality.

Activists' Guides, Bargaining toolkits and printed publications (e.g. Guide to Equality Law), and "Know Your Rights" are published for reps supporting members who may be experiencing discrimination or harassment

or on collective bargaining around equality issues in the workplace.

Unionreps.org.uk is a free interactive discussion forum that allows union reps to discuss and share ideas. With over 20,000 users, this website has for the last 10 years provided a platform for union representative to share and help each other with workplace concerns.

The unionreps forum features bulletin boards focusing on health and safety, education, equality, employment law, organising, environment, pensions and more.

Last year the TUC launched a mobile app for the TUC's UNIONREPS community. With the growth of mobile technology and the need for reps to access information away from a desktop computer the app provides a perfect solution to allow reps to access help and support straight to their mobile devices. The app is available for both Apple and Android smartphones.

Find out more

For more information about the TUC:

- www.tuc.org.uk
- www.tuceducation.org.uk
- www.unionlearn.org.uk
- www.unionreps.org.uk

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