

Guidance on the Statutory Right to Request Time to Train

1. Introduction

Employees who meet certain criteria have the statutory right to request time to undertake study or training ('time to train').

This is only applicable to England, Scotland and Wales. This guidance is not relevant to Northern Ireland.

The University has established practices for identifying staff development needs. Details of these can be found in the Staff Development Policy. However, members of staff are entitled to use this statutory procedure should they wish to do so.

2. Employee's right to request time to train

Employees can request to undertake accredited programmes leading to a qualification, or unaccredited training to help them develop specific skills relevant to their job, workplace or business.

Employees can request to undertake any training which they believe will improve their effectiveness in the business, and the performance of the business, and which is delivered in whichever way they believe is most appropriate and effective.

There is no limit on the amount of time – or the amount of study or training – that an employee can request. Employees can ask to undertake more than one piece of training in a single request.

3. Eligibility to make a request

To make a statutory time to train request, the individual must:

- be an employee (agency workers do not qualify);
- have worked for the University continuously for at least 26 weeks on the date the request is made;
- not have made another statutory Time to Train request during the past 12 months.

4. Employer's obligation to consider requests

There is no automatic right to time to train, but employers have an obligation to consider any requests and to comply with the statutory regulations. Individual cases should be considered fairly and on their merits, whilst taking account of the business needs. An employer can turn down requests where there is a good business reason for doing so.

The employer is only required to consider one request from an employee in any twelve-month period unless the employee has requested they ignore an earlier request (see section 13).

5. Payment for training/time spent on training

Employees have the right to request that their employer **allows them time** to undertake training. Where the training is agreed under these statutory provisions, the employee does not have the right to be paid for the time spent on the training. However, the employer may agree to this (e.g. where they recognise the value of the investment). Alternatively, the employer may agree with the employee that they will work flexibly to make up the time spent on training, or that they will take unpaid time off to train.

Note: there could be implications in respect of the National Living Wage where time off for work-related training is unpaid. There may also be implications in respect of the Working Time Regulations as time spent on certain types of work-related training will count towards the total hours worked. Managers should discuss any queries or concerns about this with the People Hub.

The employer is not obliged to pay for the actual training, but may choose to do so. Where this is the case, staff undertaking professional or vocational training courses with an external provider are required to complete the External Training Agreement and in certain circumstances may be required to repay training costs.

6. Application process

Step 1

An application for time to train under the statutory provisions should be made to the manager and must contain the following information:

- A statement that the application is an 'application under section 63D Employment Rights Act 1996'.
- Relevant details of the proposed training or study - including the subject matter, where and when it would take place, who would provide or supervise it, and what qualification it would lead to (if any).
- How the employee thinks the proposed training or study would improve their effectiveness in and performance of the employer's business.
- The date of the application.
- The date and method (e.g. e-mail or letter) that the employee's last application under the statutory right (if any) was submitted.

Employees can submit requests in any written form (as long as the above information is included), but are encouraged to use the standard University form available on the People Services Intranet.

If a request is invalid because the employee fails to provide all of the necessary information, the manager should notify the employee of this within 28 days (stating the reason why it is considered invalid) and ask them to revise and resubmit the application.

If the manager receives a valid request but needs additional information in order to give it proper consideration, the manager should ask the employee to provide additional information. If the employee refuses, the manager may treat the request as withdrawn.

Step 2

The manager should consider the request and assess if it can be accommodated within business needs.

Consideration should also be given to how the training time may be taken (e.g. paid, unpaid, or time made up by working flexibly), and how the costs of the training will be met if the training is agreed.

Step 3

Within 28 days of receiving* a valid request the manager must either:

- Accept the request as set out in the written request on the basis of the information provided and inform the employee of the decision in writing (including the information in section 7).
- Meet with the employee to discuss the request. A member of staff has the right to be accompanied at the meeting (see section 10). The manager may decide to accept the request, accept part of the request, or reject the request. The employee must be informed of the decision in writing (including the information in section 7) within 14 days of the meeting.

Where the manager accepts the request but thinks the training need can be met in a different way (for example, it could be delivered in-house rather than by an external provider, or a different course may better meet the need), this should form part of the discussion.

The request may be refused if this is for one the following business reasons:

- Training would not improve the employee's effectiveness in the business.
- Training would not improve the performance of the business.
- Burden of additional costs.
- Detrimental effect on ability to meet customer demand.
- Inability to re-organise work among existing staff.
- Inability to recruit additional staff.
- Detrimental impact on quality.
- Detrimental impact on performance.
- Insufficiency of work during the periods the employee proposes to work.
- Planned structural changes during the proposed study or training period.

* the date on which the application is received is the day on which it is transmitted electronically or the day on which it would be delivered in the ordinary course of post.

Step 4

If the request is accepted (in part or full) and involves any change to working hours or unpaid time off, the manager should put in place the necessary arrangements in line with usual University procedures.

7. Communicating decisions on time to train requests

When confirming the decision in writing, the following information must be included:

Acceptance of the request

The subject of the study or training, where and when it will take place and over what period, who will provide or supervise it, what qualification (if any) the training will lead to, how the training time will be taken and how the costs of the training will be met.

Refusal of the request

Include which of the business reasons (see section 6) the request has been turned down for, why the business reason or reasons apply, the appeal procedure and the date of the notice.

Acceptance of part of the request

Make clear which part of the application has been agreed and which part has been refused. In respect of the part that has been agreed, include the information under 'Acceptance of the request'. In respect of the part that has been refused, include the information under 'Refusal of the request'.

Additional information where all or part of the request is accepted

If agreement has been reached to meet the training need in a different way, the written notice should confirm the details of this, including written evidence of the member of staff's agreement to it.

If the manager foresees circumstances in which they may need to later withdraw their agreement to a particular request, they should agree these circumstances with the member of staff and confirm this in writing as part of the written acceptance.

8. Right of appeal

A member of staff can challenge a decision to refuse all or part of their request by making an appeal in writing within 14 days of the date on which the written decision notice is given. The appeal must be dated and must set out the grounds of the appeal. There are no restrictions on the grounds for this appeal. An employee might appeal, for example, because they want to challenge a fact given by the manager to explain why the business reason applies, or to bring to the manager's attention something they were not aware of when they rejected the application.

The manager must act within 14 days of receiving the appeal notice.

If the decision is to uphold the appeal outright, the manager must write to the member of staff within 14 days of receiving the appeal notice, setting out the same information as is required when accepting an initial request (see section 7).

If not, an appeal meeting must be held within 14 days of receiving the appeal notice. If it is practical, the appeal should be heard by a different manager to the person who considered the initial request.

A member of staff has the right to be accompanied at an appeal meeting by a union representative or colleague who also works for the University (see Section 10).

Where a meeting is held to discuss the appeal, the manager must notify the member of staff in writing of their decision within 14 days of the date of the meeting. If the appeal is upheld, the decision notice should include the relevant information under Section 7. If the appeal is not upheld, the decision notice should be dated and should state the grounds for the decision and explain why those grounds apply.

9. Extension of timescales

Where the person who would normally deal with the training request is absent from work (on annual leave or sick leave) on the day the application is received, the period within which a meeting must be held is automatically extended. A 28 day extension period will begin on the day that person comes back to work, and can last no longer than 28 days.

Where the manager and member of staff agree, there may be extensions to the timescales for holding meetings and issuing notices of decisions on applications and appeals. Any extension must be recorded by the manager and details sent to the member of staff. The record should specify the period of the extension, the date on which it ends, and be dated.

10. Accompaniment at meetings to discuss a request

A member of staff has the right to be accompanied at meetings (including appeal meetings) by a union representative or colleague of their choosing who also works for the University. The companion can address the meeting or confer with the employee but not answer questions independently of the member of staff.

If the chosen companion is unable to attend the meeting, the member of staff can ask that the manager rearranges the meeting. The time proposed must be convenient for all parties and be within 7 days of the date originally proposed.

11. Employee failure to attend meetings to discuss a request

If a member of staff fails to attend a meeting to discuss a request (or appeal) more than once without reasonable cause, the request may be treated as withdrawn, and the manager should confirm this in writing.

12. Withdrawal of a request

A member of staff may withdraw a request at any point before the employer has given notification of their decision. This withdrawal can be made orally (in which case the employer must confirm withdrawal of the application to the employee in writing) or in writing. A withdrawn request still counts as a request for the purposes of the regulations.

13. Ignoring earlier requests

There are three circumstances in which the employee, having submitted a further request, may ask for an earlier request (submitted in the last 12 months) to be ignored:

- Where the employee notifies the employer that they mistakenly submitted a request too early (i.e. within 12 months of a previous application) and they wish to withdraw it and submit a further one.
- Where the employee did not undertake training that was agreed following a request because the training was cancelled (unless this was due to their own conduct in relation to the study or training).
- Where the employee failed to start training that was agreed as part of a request because of some unforeseen circumstance beyond their control.

In these circumstances the employer must ignore the earlier application and consider the present request.

14. Useful references

Time to Train Application Form and Decision Notice
External Training Agreement