

**DEPARTMENT FOR BUSINESS
ENTERPRISE & REGULATORY REFORM**

TIME OFF FOR DEPENDANTS

A guide for employers and
employees

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Time off for dependants

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Introduction

This is a guide to time off for dependants. The right to time off is contained in section 57A of the Employment Rights Act 1996, as amended by the Employment Relations Act 1999. The section came into effect on 15 December 1999.

It gives general guidance only and should not be regarded as a comprehensive or authoritative statement of the law. It describes the position which applies in England, Wales and Scotland. It addresses some of the more frequently asked questions on the right to time off for dependants.

The right to time off is available to all those who have a contract of employment with an employer, whether they work full-time or part-time. A contract of employment need not be in writing.

The right does not apply to members of the police service, armed forces or masters or crew members engaged in share fishing paid solely by a share of the catch.

Further advice is available from the Advisory, Conciliation and Arbitration Service (Acas) helpline on 08457 47 47 47.

Section 1: What is time off for dependants?

This is a right allowing employees to take a reasonable amount of time off work to deal with certain unexpected or sudden emergencies and to make any necessary longer term arrangements. An employee who uses this right is protected against dismissal or victimisation.

Frequently Asked Question: Is the time off paid?

The right does not include an entitlement to pay, so whether or not the employee will be paid is left to the employer's discretion or to the contract of employment between them.

Section 2: When can an employee start using this right?

Employees do not have to complete a qualifying period in order to be able to take time off in an emergency. They are entitled to this right from day one of starting their job.

Section 3: Under what circumstances can an employee take time off?

The right enables employees to take action which is necessary to deal with an unexpected or sudden problem concerning a dependant and make any necessary longer term arrangements.

If a dependant falls ill, or has been injured or assaulted

The illness or injury need not necessarily be serious or life-threatening, and may be mental or physical. The illness or injury may be a result of a deterioration of an existing condition; for example, a dependant may be suffering from a nervous breakdown; he or she may not require full-time care, but there may be occasions when his or her condition deteriorates, and his or her partner or parent, son or daughter, needs to take time off work in consequence. The right to time off is also available where a dependant has been assaulted but is uninjured: for example, where a dependant is a victim of a mugging incident, but has not been physically hurt, the employee can take time off work if necessary to comfort or help the victim.

When a dependant is having a baby

Where necessary an employee can take time off to assist a dependant when she is having a baby. This does not include taking time off after the birth to care for the child. An employee may be entitled to take paternity or parental leave for this purpose. More information on paternity leave can be found at

www.businesslink.gov.uk/employment (for employers) or
www.direct.gov.uk/paternityleave (for employees)

Information on parental leave can be found at
www.businesslink.gov.uk/employment (for employers) or
www.direct.gov.uk/parentalleave (for employees)

To make longer term care arrangements for a dependant who is ill or injured

Where a dependant needs to be cared for because of an illness or injury, the employee can take time off work to make longer term care arrangements. This might mean making arrangements to employ a temporary carer or taking a sick child to stay with relatives.

To deal with a death of a dependant

When a dependant dies, an employee can take time off to make funeral arrangements, as well as to attend a funeral. If the funeral is overseas, then the employer and employee will need to agree a length of absence which is reasonable in these circumstances.

To deal with an unexpected disruption or breakdown of care arrangements for a dependant

Time off can be taken where the normal carer of the dependant is unexpectedly absent; for example, a childminder or nurse may fail to turn up as arranged, or the nursery or nursing home may close unexpectedly.

To deal with an unexpected incident involving the employee's child during school hours

An employee can take time off to deal with a serious incident involving his or her child during school hours. For example, if the child has been involved in a fight, is distressed, has been injured on a school trip or is being suspended from school.

Frequently Asked Question: Can both parents take time off work if their child falls ill?

There may be times when both parents want to take time off work under this right and it may be necessary for them to do so. Employers and employees will need to adopt a common-sense approach depending on the circumstances of the situation. Both parents may need to take time off if their child has had a serious accident, but it is unlikely to be necessary for both parents to be absent from work if the childminder fails to turn up.

Frequently Asked Question: Can an employee take time off if a boiler bursts?

No. Time off for emergencies which are not covered by this right is a contractual matter between an employer and employee.

Section 4: Who counts as a dependant?

A dependant is the husband, wife, child or parent of the employee. It also includes someone who lives in the same household as the employee. For example, this could be a partner or an elderly aunt or grandparent who lives in the household. It does not include tenants or boarders living in the family home, or someone who lives in the household as an employee, such as a live-in housekeeper.

In cases of illness or injury, or where care arrangements break down, a dependant may also be someone who reasonably relies on the employee for assistance. This may be where the employee is the primary carer or is the only person who can help in an emergency; for example, an aunt who lives nearby who the employee looks after outside work falls ill unexpectedly, or an elderly neighbour living alone who falls and breaks a leg, where the employee is closest on hand at the time of the fall.

Section 5: How much time off can an employee take?

The employee is entitled to take a reasonable amount of time off in the circumstances set out in Section 3. The legislation does not specify the amount of time off which is reasonable, since this will vary according to the circumstances of the emergency. For most cases, one or two days should be sufficient to deal with the problem. For example, if a child falls ill with chickenpox, the leave should be enough to help the employee cope with the crisis – to deal with the immediate care of the child, visiting the doctor if necessary, and to make longer term care arrangements. The employee is not entitled to take two weeks' leave to look after a sick child. In the event of a dispute, the employer and employee should seek to resolve their differences through the normal grievance procedures. Otherwise, it will be up to an employment tribunal to determine what is reasonable.

The right is intended to cover genuine emergencies. No limit on the number of times an employee can be absent from work under this right has been set.

Frequently Asked Question: What happens if the employee needs longer time off, or knows in advance that the problem is going to arise?

This right is generally for unforeseen matters. If employees know in advance that they are going to need time off, they should ask for leave in the usual way. This may involve someone taking annual leave or some other form of leave if the employer provides it. Or, if the reason they need leave relates to their child, they may be entitled to take parental leave.

Frequently Asked Question: Does an employer need to keep records of time off taken under this right?

Employers are not required to keep records of time off taken under this right, although many will want to do so for their own purposes.

Section 6: Telling the employer

Employees must tell their employer, as soon as practicable, the reason for their absence and how long they expect to be away from work. There may be exceptional circumstances where an employee returns to work before it was possible to contact the employer, but he or she should still tell the employer the reason for the absence on returning.

It is not necessary to give notice in writing.

Section 7: Abuse of the right

Employers who think that an employee is abusing the right to time off should deal with the situation according to their normal disciplinary procedures.

Section 8: Protection from dismissal and detriment

Employees are protected from being penalised or dismissed because they have taken, or have sought to take, time off under this right. For example, someone who is moved to lower grade work because they have exercised this right would be able to make a complaint that they have suffered a detriment.

It is unfair to be dismissed or selected for redundancy for taking, or seeking to take, time off under this right.

Frequently asked Question: What is the meaning of detriment?

Detriment can cover a wide range of discriminatory actions, such as denial of promotion, facilities or training opportunities which the employer would otherwise have offered or made available.

Section 9: Resolving disputes

If an employee has

- unreasonably been refused time off;
- suffers a detriment for taking, or seeking to take, time off;
- is dismissed for taking, or seeking to take, time off;

the two parties should first seek to resolve the dispute internally through the company's grievance procedure where this exists.

Where this is not possible a complaint can be made to an Employment Tribunal. If successful the tribunal can make an order for compensation or re-employment or reinstatement.

Further assistance is available from the Acas helpline on 08457 47 47 47.

Further Information

Further information is available for employees on the Directgov website:

www.direct.gov.uk/WorkAndFamilies

Further information is available for employers on the Business Link website:

www.businesslink.gov.uk/employment

Further information on resolving disputes at work and making a complaint to an employment tribunal is available on the Directgov website:

www.direct.gov.uk/resolvingdisputes

