

## Time to train consultation response form

**URN10/1108**

The Department may, in accordance with the Code of Practice on Access to Government Information, make available, on public request, individual responses.

The closing date for this consultation is 15/09/2010

Your Name: Jason Piper, Technical Officer  
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Please return completed forms to:

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Please tick the box that best describes you as a respondent. This allows views to be presented by group type

<input checked="" type="checkbox"/>	Business representative organisation/trade body
<input type="checkbox"/>	Central government
<input type="checkbox"/>	Charity or social enterprise
<input type="checkbox"/>	Individual
<input type="checkbox"/>	Large business ( over 250 staff)
<input type="checkbox"/>	Legal representative
<input type="checkbox"/>	Local Government
<input type="checkbox"/>	Medium business (50 to 250 staff)

	Micro business (up to 9 staff)
	Small business (10 to 49 staff)
	Trade union or staff association
	Other (please describe):

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**Question 1:** Should the right be retained as it exists now in organisations with 250+ employees, and extend to small and medium organisations in April 2011 as planned?

Yes

No

Not sure

Comments

Now is not the time to impose further regulatory burdens on small businesses struggling to shake off the deepest recession that most of them will ever have experienced. Investing in the skills of their employees may well be one of the most important things they can be doing for their future, but implementing a cumbersome new bureaucracy to deal with telling employees that there simply is not the money available to fund training would be counter-productive.

A further consideration must be the needs of those businesses themselves. A recent survey of small business owners indicated that only 47% of them rated growth as even an "important" measure of success (behind even "time for friends and family"). If growth is not important to the individual business, then the question must be asked whether that particular business needs to improve the skills base of its employees beyond their current level. In many cases, the answer will be "no". Unlike larger businesses which will by their very nature be in a more competitive market place and have a wider and deeper need for skills, a small local business which has evolved to fit its own niche perfectly may not need more highly skilled workers, or to upgrade the skills of existing workers. Providing them with training in such cases can only be in the interests of the individual employee, not of the business itself. Accordingly, the business should always have the ability to quite legitimately invoke the "acceptable grounds" set out in s63 (f) (7)(a)ii to deny the request. However, this decision may well be seen as subjective, and in particular dependent upon the owner's personal preference not to grow or increase profit levels. The precise wording of the statute may not provide the required defence, as it will hinge upon the interpretation of "improve the performance" of the employer's business. If performance is to "measured" by "objective" metrics, such as turnover or profit margins, then enhancing the performance of an employee may meet that requirement. In broader terms however, the "benefit" to the owner of the business may not exist. Indeed, the net result of the training may well simply be that the employee takes their new qualification elsewhere, depriving the employer of their services. Proportionality of the legislation to achieve its ends is dependent upon identifying the ends of the legislation. In this case, it could be argued that the aim of the legislation is to

improve the skills base of employees generally at the expense of their employers. Although the granting of unpaid time off may not impose a direct cost on the business, defending applications for time off that do not actually “benefit” the business will have a very direct and real cost, and one which will fall in particular on small businesses. A common complaint of business owners and trainers is that they are having to deal with a new generation of employees whose sense of “entitlement” is based upon a wholly unrealistic world view. The impact upon employers’ productivity of having to deal with appeals against decisions not to accept requests for time off to pursue spurious and unrealistic training objectives cannot be justified.

**Question 2:** Should the right only apply in organisations with 250+ employees, and not be extended to small and medium sized organisations?

Yes                       No                       Not sure

Comments

Any business is only as good as its people, so investing in them is self-evidently the right thing to do. However, those businesses who already subscribe to this point of view will have training systems in place; of those who do not, some will have made a conscious decision not to do so for the reasons discussed above. The remainder should implement proper training systems for their own benefit as much as that of the wider economy. However, although the right to request time off to train should exist, it is vital that employers have the ability to say “no” to requests without the fear that they will then be subject to a bureaucratic and time consuming process of appeals. Adaptations to the current system to make it more appropriate for smaller businesses are discussed in more detail below.

**Question 3:** Should the extension of the right to small and medium sized enterprises be delayed until the economic conditions improve?

Yes                       No                       Not sure

Comments

As stated above, the cost burden of implementing the current 250+ employee regime would be unsustainable for small and medium sized enterprises in the current economic environment. It is debatable whether the current system is sustainable in any environment; however, business must be encouraged to invest in staff where appropriate.

In the area of training, employers should be encouraged to explore those remaining training incentives available to them, and made aware of the

economic evidence of the benefits of training. Now is the time for the carrot, not the stick.

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**Question 4:** Should the right be removed altogether?

Yes                       No                       Not sure

Comments

A right to request time to train is not in and of itself a burden on employers; rather, it is a vital part of equipping individuals to improve their performance. The burden arises solely from the implementation of that right, and its incorporation into statute, rather than being simply part of the fabric of good business and employment practice.

The implementation of the right needs to ensure that it protects the interests of employees without unduly compromising the interests of their employers.

**Question 5:** Should the right be retained, but made to function better for example by:

a. Exempting employees who can already access training from being able to use the right or introducing exemptions for other employees?

Yes                       No                       Not sure

b. Adding new reasons for refusal where good training review systems already exist?

Yes                       No                       Not sure

c. Introducing different procedures for dealing with requests? (If yes, please specify what these should be and how they would operate.)

Yes                       No                       Not sure

Comments on how these changes could be made without introducing further complexity or reducing legal certainty for employees and employers

The principal cost to business will arise not in considering and responding to requests for time off to train, but in dealing with appeals where those requests have been refused. This burden will fall disproportionately on small business as it is more likely that the individual who has to deal with the appeal process will be an instrumental part of the day to day revenue creating operations of the business.

Businesses with good training programmes are unlikely to refuse any but the most unreasonable requests. It is only small businesses who have no desire to grow beyond their current size who might not see the benefit to their performance of allowing (extra) time off to train in circumstances which could otherwise be “objectively” justified. These businesses should be entitled to make their choice without the risk of the disruption that will be caused by the current appeals process.

One option would be to allow an opt out for businesses below a certain size, so that employees would know on joining that business that if they wanted to better themselves it would have to be on their own time, and with a view to moving on to another business. Examples might be a small shop or trader, for whom enhanced skills are of less interest than reliable attendance by staff. It could be argued that such a business could clearly avail itself of an “acceptable reason” in every case to not allow time off to train. However, staff may not agree and could appeal. However pointless such an appeal might appear, the legislation (and natural justice) would require that appeal be dealt with in accordance with the regulations, imposing a significant burden on the employer. If such a burden can be avoided, it should be.

Another option is to exempt businesses that meet certain standards of training for their staff – for example the Investors in People Standard. This would automatically exempt around 30% of the workforce, employed with around 40,000 employers (Cranfield University figures for 2008) from the system without any impact on their ability to access training. For those businesses who are not yet members, the prospect of avoiding the potential nightmare of Time to Train appeals might provide the impetus to sign up and enjoy all the benefits that the scheme offers – a positive outcome from the regulations rather than the negative outcomes currently forecast by many observers.

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**Do you have any other comments that might aid the consultation process as a whole?**

Please use this space for any general comments that you may have, comments on the layout of this consultation would also be welcomed.

Thank you for taking the time to let us have your views. We do not intend to acknowledge receipt of individual responses unless you tick the box below.

Please acknowledge this reply

At BIS we carry out our research on many different topics and consultations. As your views are valuable to us, would it be okay if we were to contact you again from time to time either for research or to send through consultation documents?

Yes

No