

## STATUTORY INSTRUMENTS

# 1996 No. 1919

## The Employment Rights (Northern Ireland) Order 1996

### PART VII

#### TIME OFF WORK

##### *Employee representatives*

#### **Right to time off for employee representatives**

**89.**—(1) An employee who is—

- (a) an employee representative for the purposes of Part XIII of this Order or [<sup>F1</sup>regulations 9, 13 and 15 of the Transfer of Undertakings (Protection of Employment) Regulations 2006][<sup>F2</sup>or regulations 9, 13 and 15 of the Service Provision Change (Protection of Employment) Regulations 2006], or
- (b) a candidate in an election in which any person elected will, on being elected, be such an employee representative,

is entitled to be permitted by his employer to take reasonable time off during the employee's working hours in order to perform his functions as such an employee representative or candidate<sup>F3</sup> or in order to undergo training to perform such functions].

(2) For the purposes of this Article the working hours of an employee shall be taken to be any time when, in accordance with his contract of employment, the employee is required to be at work.

**F1** Words in art. 89(1)(a) substituted (6.4.2006) by [Transfer of Undertakings \(Protection of Employment\) Regulations 2006 \(S.I. 2006/246\)](#), reg. 20(3), **Sch. 2 para. 11(b)** (with reg. 21(1), Sch. 1 para. 3)

**F2** Words in art. 89(1)(a) inserted (6.4.2006) by [Service Provision Change \(Protection of Employment\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/177\)](#), reg. 20(1), **Sch. 1 para. 2(b)**

**F3** SR 1999/432

#### **Right to remuneration for time off under Article 89**

**90.**—(1) An employee who is permitted to take time off under Article 89 is entitled to be paid remuneration by his employer for the time taken off at the appropriate hourly rate.

(2) The appropriate hourly rate, in relation to an employee, is the amount of one week's pay divided by the number of normal working hours in a week for that employee when employed under the contract of employment in force on the day when the time off is taken.

(3) But where the number of normal working hours differs from week to week or over a longer period, the amount of one week's pay shall be divided instead by—

- (a) the average number of normal working hours calculated by dividing by twelve the total number of the employee's normal working hours during the period of twelve weeks ending with the last complete week before the day on which the time off is taken, or

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- (b) where the employee has not been employed for a sufficient period to enable the calculation to be made under sub-paragraph (a), a number which fairly represents the number of normal working hours in a week having regard to such of the considerations specified in paragraph (4) as are appropriate in the circumstances.
- (4) The considerations referred to in paragraph (3)(b) are—
  - (a) the average number of normal working hours in a week which the employee could expect in accordance with the terms of his contract, and
  - (b) the average number of normal working hours of other employees engaged in relevant comparable employment with the same employer.
- (5) A right to any amount under paragraph (1) does not affect any right of an employee in relation to remuneration under his contract of employment ( “contractual remuneration”).
- (6) Any contractual remuneration paid to an employee in respect of a period of time off under Article 89 goes towards discharging any liability of the employer to pay remuneration under paragraph (1) in respect of that period; and, conversely, any payment of remuneration under paragraph (1) in respect of a period goes towards discharging any liability of the employer to pay contractual remuneration in respect of that period.

### Complaints to industrial tribunals

- 91.**—(1) An employee may present a complaint to an industrial tribunal that his employer—
- (a) has unreasonably refused to permit him to take time off as required by Article 89, or
  - (b) has failed to pay the whole or any part of any amount to which the employee is entitled under Article 90.
- (2) An industrial tribunal shall not consider a complaint under this Article unless it is presented—
- (a) before the end of the period of three months beginning with the day on which the time off was taken or on which it is alleged the time off should have been permitted, or
  - (b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

[<sup>F4</sup>(2A) Article 249B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of paragraph (2)(a).]

(3) Where an industrial tribunal finds a complaint under this Article well-founded, the tribunal shall make a declaration to that effect.

(4) If the complaint is that the employer has unreasonably refused to permit the employee to take time off, the tribunal shall also order the employer to pay to the employee an amount equal to the remuneration to which he would have been entitled under Article 90 if the employer had not refused.

(5) If the complaint is that the employer has failed to pay the employee the whole or part of any amount to which he is entitled under Article 90, the tribunal shall also order the employer to pay to the employee the amount which it finds due to him.

<p><b>F4</b> <a href="#">Art. 91(2A)</a> inserted (27.1.2020) by <a href="#">Employment Act (Northern Ireland) 2016 (c. 15)</a>, s. 29(2), <a href="#">Sch. 2 para. 29</a>; <a href="#">S.R. 2020/1</a>, art. 2(n)</p>
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**Changes and effects yet to be applied to the whole Order associated Parts and Chapters:**

- [Act applied with modifications by S.R. 2023/156 reg. 15](#)

**Whole provisions yet to be inserted into this Order (including any effects on those provisions):**

- [Pt. 7A inserted by 2011 c. 13 \(N.I.\) Sch. 3 Pt. 1](#)
- [Ch. 5 inserted by 2022 c. 27 \(N.I.\) s. 1\(1\)](#)
- [art. 21\(4B\) inserted by 2011 c. 13 \(N.I.\) Sch. 3 Pt. 2 para. 2](#)
- [art. 23\(1\)\(zza\) inserted by 2011 c. 13 \(N.I.\) Sch. 3 Pt. 2 para. 3](#)
- [art. 70F inserted by 2011 c. 13 \(N.I.\) Sch. 3 Pt. 2 para. 4](#)
- [art. 70G inserted by 2020 c. 7 Sch. 7 para. 20](#)
- [art. 71\(1C\) inserted by 2020 c. 7 Sch. 7 para. 21\(a\)](#)
- [art. 72\(8\) inserted by 2020 c. 7 Sch. 7 para. 22\(b\)](#)
- [art. 85ZS\(3\)\(a\)-\(c\) substituted for words by 2022 c. 18 \(N.I.\) Sch. 3 para. 47\(4\)](#)
- [art. 95F\(5A\) inserted by 2016 c. 15 \(N.I.\) Sch. 2 para. 32](#)
- [art. 135E inserted by 2011 c. 13 \(N.I.\) Sch. 3 Pt. 2 para. 6](#)
- [art. 135G inserted by 2020 c. 7 Sch. 7 para. 25](#)
- [art. 137\(6D\) inserted by 2011 c. 13 \(N.I.\) Sch. 3 Pt. 2 para. 7](#)
- [art. 137\(7N\) inserted by 2020 c. 7 Sch. 7 para. 26\(b\)](#)
- [art. 140\(3\)\(fj\) inserted by 2011 c. 13 \(N.I.\) Sch. 3 Pt. 2 para. 8](#)
- [art. 140\(3\)\(fl\) inserted by 2020 c. 7 Sch. 7 para. 27](#)
- [art. 143\(2\)\(ddd\) inserted by 2011 c. 13 \(N.I.\) Sch. 3 Pt. 2 para. 9](#)
- [art. 144\(2\)\(ddd\) inserted by 2011 c. 13 \(N.I.\) Sch. 3 Pt. 2 para. 10](#)