

**SENATE EMPLOYMENT, WORKPLACE RELATIONS AND EDUCATION  
LEGISLATION COMMITTEE**

**2006-2007 BUDGET SENATE ESTIMATES HEARING  
29<sup>TH</sup> AND 30<sup>TH</sup> MAY 2006  
EMPLOYMENT AND WORKPLACE RELATIONS PORTFOLIO**

**QUESTIONS ON NOTICE**

**Outcome 2: Higher productivity, higher pay workplace**

**Output Group 2.2: Workplace relations implementation**

**Output 2.2.3: Workplace relations services**

**Question Number: W103-07**

**Question:**

Senator Wong asked at *Hansard* page 108:

Can the Department provide a copy of any standard scripts used by operators to assist them when responding to a call about leave to attend trade union organised occupational health and safety training?

**Answer:**

A script in regard to OH&S and Union Training Leave is at Attachment A.



**Australian Government**  
**Department of Employment and  
Workplace Relations**

# OHS and Union Training Leave Script

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## **Background:**

Recent media reports have highlighted the fact that a workplace agreement, made after the commencement of the amended *Workplace Relations Act 1996* (WR Act) on 27 March 2006, cannot provide for an employee to receive leave to attend training (however described) provided by a trade union.

Some reports have raised concerns that this would result in occupational health and safety (OHS) training no longer being provided to employees.

The following points should be noted:

- OHS is a State / Territory government responsibility.
- Each State / Territory government administers their own OHS laws.
- The WorkChoices legislation, which amended the WR Act, recognises this is a State / Territory issue and does not prevent State legislation from operating in this area.
- Some State OHS laws actually require that employers ensure that health and safety representatives and committee members undertake OHS training, which in some cases may be provided by a trade union. Furthermore, some State/ Territory laws provide that the employer continue to pay these representatives their entitlements while attending that training, as well as the costs of the training.
- Employers are still able to direct their employees to attend training, and to grant leave to their employees to attend OHS training (or any other training).
- The restrictions on the content of workplace agreements under the amended WR Act and Workplace Relations Regulations 1996 are not directed at agreements made before the commencement of the amended WR Act.

The following list of FAQs will help you answer enquiries relating to training.

## **FAQs**

Q1: I have heard that I can no longer have union training in my agreement. What happens to the union OHS training that my employer agreed to in my pre-reform agreement?

*A: Workplace agreements including AWAs and collective agreements that are lodged after the commencement of the Work Choices legislation on 27 March 2006 are prohibited from containing clauses that provide leave for employees to attend union training. If a pre reform agreement contains a clause providing trade union training leave, that clause will continue to operate after 27 March 2006 up until the agreement is terminated or replaced by a workplace agreement made in the new system. Generally, the restrictions on what can be included in workplace agreements under WorkChoices, which include the prohibition on clauses providing for leave to attend union training, do not apply to pre-reform certified agreements and pre reform AWAs.*

Q2. I'm worried about safety at my workplace as my employer will not put OHS training arrangements in my Collective Agreement/Australian Workplace Agreement.

*OHS is the responsibility of the State and Territory governments. OHS laws in all jurisdictions impose a duty on employers to provide their employees with the necessary information, training, instruction and supervision to perform their work safely. The WorkChoices legislation maintains this arrangement.*

*WorkChoices does not require workplace agreements made under the WR Act to contain a term relating to OHS training; nor does it restrict the inclusion of such a term, although there are other restrictions on what can be included in workplace agreements. WorkChoices prevents clauses being included in formal agreements made under the WR Act (Collective Agreements and Australian Workplace Agreements) which provide for leave to attend trade union training.*

Q3. My employer has asked me to attend a training course but has told me I have to take this time out of my annual leave.

*A. For full-time employees, the Australian Fair Pay and Conditions Standard provides for a minimum of four weeks of paid annual leave each year. Part-time employees accrue paid annual leave on a pro-rata basis. Annual leave accrues for each completed four week period of continuous service.*

*Annual leave is paid leave of absence from work, the purpose of which is to provide employees with an annual period of rest and recreation.*

*An employer cannot direct an employee to take annual leave for the purpose of undertaking training. Under the Workplace Relations Act an employer may only direct an employee to take annual leave in two situations:*

- *during a period of 'shut down' of the business; or*
- *if the employee has accumulated an excessive amount of annual leave.*

*For a proposed shut down period, an employer may only direct an employee to take annual leave where that employee has an annual leave credit that is at least equal to the shut down period.*

*An employer may direct an employee to take a period of paid annual leave if the employee has an excessive annual leave balance (e.g. an amount equivalent to 8 weeks for an employee working 38 hours per week over that 24 month period). In this situation, the employer may direct the employee to take up to one quarter of his or her annual leave credit.*

Q4. The union is offering a training course I would like to attend, however my Collective Agreement/Australian Workplace Agreement does not mention anything about training. Can I ask my employer if I am able to attend this training?

*A. Nothing in WorkChoices prevents employees and employers entering into agreements that provide for training. WorkChoices does not stop employers from allowing employees to attend any training course, including training provided by trade unions. An employer is also able to grant leave to their employees to attend training, subject to the operational requirements of the employer. WorkChoices only prevents formal agreements made under the WR Act (Collective Agreements and Australian Workplace Agreements) from including terms which provide for leave to attend training provided by a trade union.*

Q5. My employer has asked me to attend a trade union training course. Can my employer do this under WorkChoices?

*A. An employer can request an employee to attend any course. WorkChoices does not prevent training from being provided by trade unions, nor does it stop employers from allowing employees to attend trade union training courses. WorkChoices only prevents formal workplace agreements from including a clause which provides for leave to attend training provided by a trade union.*

Q6. My union is holding a training session which I need to attend, however my employer has told me that I won't be getting paid for attending this training session. Can they do this?

*A. If an employer directs an employee to attend training that is related to their employment, then the training is likely to be 'work' for which the employee is entitled to be paid. Under the Australian Fair Pay and Conditions Standard, employees are entitled to payment for each hour worked. If the training course is one that the employee is interested in attending, but their employer has not directed that they attend the course, they may still enter into an agreement with their employer to arrange for the training (see question 4).*