



# Employment Rights Act 1996

## 1996 CHAPTER 18

### PART VI

#### TIME OFF WORK

##### *[<sup>F1</sup> Adoption appointments*

#### Textual Amendments

- F1** Ss. 57ZJ-57ZS and cross-headings inserted (5.4.2015) by [Children and Families Act 2014 \(c. 6\)](#), ss. [128\(1\)](#), [139\(6\)](#); S.I. 2014/1640, art. 6(d)

#### **57ZJ Right to paid time off to attend adoption appointments**

- (1) An employee who has been notified by an adoption agency that a child is to be, or is expected to be, placed for adoption with the employee alone is entitled to be permitted by his or her employer to take time off during the employee's working hours in order that he or she may attend by appointment at any place for the purpose of having contact with the child or for any other purpose connected with the adoption.
- (2) An employee who—
- (a) has been notified by an adoption agency that a child is to be, or is expected to be, placed for adoption with the employee and another person jointly, and
  - (b) has elected to exercise the right to take time off under this section in connection with the adoption,
- is entitled to be permitted by his or her employer to take time off during the employee's working hours in order that he or she may attend by appointment at any place for the purpose of having contact with the child or for any other purpose connected with the adoption.
- (3) An employee may not make an election for the purposes of subsection (2)(b) if—
- (a) the employee has made an election for the purposes of section 57ZL(1)(b) in connection with the adoption, or

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- (b) the other person with whom the child is to be, or is expected to be, placed for adoption has made an election for the purposes of subsection (2)(b) or section 57ZN(2)(b) in connection with the adoption.
- (4) An employee is not entitled to take time off under this section on or after the date of the child's placement for adoption with the employee.
  - (5) In relation to any particular adoption, an employee is not entitled to take time off under this section on more than five occasions.
  - (6) On each of those occasions, the maximum time off during working hours to which the employee is entitled is six and a half hours.
  - (7) An employee is not entitled to take time off under this section unless the appointment has been arranged by or at the request of the adoption agency which made the notification described in subsection (1) or (2)(a).
  - (8) An employee is not entitled to take time off under subsection (1) unless, if the employer requests it, the employee gives the employer a document showing the date and time of the appointment in question and that it has been arranged as described in subsection (7).
  - (9) An employee is not entitled to take time off under subsection (2) unless, if the employer requests it, the employee gives the employer—
    - (a) a declaration signed by the employee stating that the employee has made an election for the purposes of subsection (2)(b) in connection with the adoption, and
    - (b) a document showing the date and time of the appointment in question and that it has been arranged as described in subsection (7).
  - (10) A document or declaration requested under subsection (8) or (9) may be given in electronic form.
  - (11) In cases where more than one child is to be, or is expected to be, placed for adoption with an employee as part of the same arrangement, this section has effect as if—
    - (a) the purposes specified in subsections (1) and (2) were the purpose of having contact with any one or more of the children and any other purpose connected with any of the adoptions that are part of the arrangement;
    - (b) the references in subsections (2)(b) and (9)(a) to the adoption were references to all of the adoptions that are part of the arrangement;
    - (c) the references in subsection (3) to the adoption were references to any of the adoptions that are part of the arrangement;
    - (d) the reference in subsection (4) to the date of the child's placement for adoption were a reference to the date of placement of the first child to be placed as part of the arrangement;
    - (e) the reference in subsection (5) to a particular adoption were a reference to the adoptions that are part of a particular arrangement.
  - (12) For the purposes of this section the working hours of an employee are to be taken to be any time when, in accordance with the employee's contract of employment, the employee is required to be at work.
  - (13) In this section “ adoption agency ” means an adoption agency within the meaning of section 2 of the Adoption and Children Act 2002 or as defined in section 119(1)(a) of the Adoption and Children (Scotland) Act 2007.

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### **57ZK Right to remuneration for time off under section 57ZJ**

- (1) An employee who is permitted to take time off under section 57ZJ is entitled to be paid remuneration by his or her employer for the number of working hours for which the employee is entitled to be absent 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
  - (b) where the employee has not been employed for a sufficient period to enable the calculation to be made under 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 subsection (4) as are appropriate in the circumstances.
- (4) The considerations referred to in subsection (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 the employee's 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 subsection (1) does not affect any right of an employee in relation to remuneration under the employee's contract of employment (“contractual remuneration”).
- (6) Any contractual remuneration paid to an employee in respect of a period of time off under section 57ZJ goes towards discharging any liability of the employer to pay remuneration under subsection (1) in respect of that period.
- (7) Any payment of remuneration under subsection (1) in respect of a period of time off under section 57ZJ goes towards discharging any liability of the employer to pay contractual remuneration in respect of that period.

### **57ZL Right to unpaid time off to attend adoption appointments**

- (1) An employee who—
  - (a) has been notified by an adoption agency that a child is to be, or is expected to be, placed for adoption with the employee and another person jointly, and
  - (b) has elected to exercise the right to take time off under this section in connection with the adoption,is entitled to be permitted by his or her employer to take time off during the employee's working hours in order that he or she may attend by appointment at any place for the purpose of having contact with the child or for any other purpose connected with the adoption.
- (2) An employee may not make an election for the purposes of subsection (1)(b) if—

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- (a) the employee has made an election for the purposes of section 57ZJ(2)(b) in connection with the adoption, or
  - (b) the other person with whom the child is to be, or is expected to be, placed for adoption has made an election for the purposes of subsection (1)(b) or section 57ZP(1)(b) in connection with the adoption.
- (3) An employee is not entitled to take time off under this section on or after the date of the child's placement for adoption with the employee.
- (4) In relation to any particular adoption, an employee is not entitled to take time off under this section on more than two occasions.
- (5) On each of those occasions, the maximum time off during working hours to which the employee is entitled is six and a half hours.
- (6) An employee is not entitled to take time off under this section unless the appointment has been arranged by or at the request of the adoption agency which made the notification described in subsection (1)(a).
- (7) An employee is not entitled to take time off under this section unless, if the employer requests it, the employee gives the employer—
- (a) a declaration signed by the employee stating that the employee has made an election for the purposes of subsection (1)(b) in connection with the adoption, and
  - (b) a document showing the date and time of the appointment in question and that it has been arranged as described in subsection (6).
- (8) A declaration or document requested under subsection (7) may be given in electronic form.
- (9) In cases where more than one child is to be, or is expected to be, placed for adoption with an employee and another person jointly as part of the same arrangement, this section has effect as if—
- (a) the purposes specified in subsection (1) were the purpose of having contact with any one or more of the children and any other purpose connected with any of the adoptions that are part of the arrangement;
  - (b) the references in subsections (1)(b) and (7)(a) to the adoption were references to all of the adoptions that are part of the arrangement;
  - (c) the references in subsection (2) to the adoption were references to any of the adoptions that are part of the arrangement;
  - (d) the reference in subsection (3) to the date of the child's placement for adoption were a reference to the date of placement of the first child to be placed as part of the arrangement;
  - (e) the reference in subsection (4) to a particular adoption were a reference to the adoptions that are part of a particular arrangement.
- (10) For the purposes of this section the working hours of an employee are to be taken to be any time when, in accordance with the employee's contract of employment, the employee is required to be at work.
- (11) In this section “adoption agency” means an adoption agency within the meaning of section 2 of the Adoption and Children Act 2002 or as defined in section 119(1)(a) of the Adoption and Children (Scotland) Act 2007.

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## **57ZM Complaint to employment tribunal**

- (1) An employee may present a complaint to an employment tribunal that his or her employer—
  - (a) has unreasonably refused to let him or her take time off as required by section 57ZJ or 57ZL, or
  - (b) has failed to pay the whole or any part of any amount to which the employee is entitled under section 57ZK.
- (2) An employment tribunal may not consider a complaint under this section unless it is presented—
  - (a) before the end of the period of three months beginning with the day of the appointment in question, 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.
- (3) Sections 207A(3) and 207B apply for the purposes of subsection (2)(a).
- (4) Where an employment tribunal finds a complaint under subsection (1) well-founded, it must make a declaration to that effect.
- (5) If the complaint is that the employer has unreasonably refused to let the employee take time off as required by section 57ZJ, the tribunal must also order the employer to pay to the employee an amount that is twice the amount of the remuneration to which the employee would have been entitled under section 57ZK if the employer had not refused.
- (6) If the complaint is that the employer has failed to pay the employee the whole or part of any amount to which the employee is entitled under section 57ZK, the tribunal must also order the employer to pay to the employee the amount which it finds due to the employee.
- (7) If the complaint is that the employer has unreasonably refused to let the employee take time off as required by section 57ZL, the tribunal must also order the employer to pay to the employee an amount determined in accordance with subsection (8).
- (8) The amount payable to the employee is—

$$A \times B \times 2$$

where—

- a A is the appropriate hourly rate for the employee determined in accordance with section 57ZK(2) to (4), and
- b B is the number of working hours for which the employee would have been entitled under section 57ZL to be absent if the time off had not been refused.]

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