



2015 CHAPTER 1

PART 3

TIME OFF WORK: ANTE-NATAL CARE, ADOPTION APPOINTMENTS

Time off work to accompany to ante-natal appointments

- 15.—(1) The Employment Rights Order is amended as follows.
(2) After Article 85ZD insert—

“Accompanying to ante-natal appointments

Right to time off to accompany to ante-natal appointments

85ZE.—(1) An employee who has a qualifying relationship with a pregnant woman or her expected child 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 accompany the woman when she attends by appointment at any place for the purpose of receiving ante-natal care.

(2) In relation to any particular pregnancy, an employee is not entitled to take time off for the purpose specified in paragraph (1) on more than two occasions.

(3) On each of those occasions, the maximum time off during working hours to which the employee is entitled is six and a half hours.

(4) An employee is not entitled to take time off for the purpose specified in paragraph (1) unless the appointment is made on the advice of a registered medical practitioner, registered midwife or registered health visitor.

(5) Where the employer requests the employee to give the employer a declaration signed by the employee, the employee is not entitled to take time off for the purpose specified in paragraph (1) unless the employee gives that declaration (which may be given in electronic form).

(6) The employee must state in the declaration—

- (a) that the employee has a qualifying relationship with a pregnant woman or her expected child,
- (b) that the employee's purpose in taking time off is the purpose specified in paragraph (1),
- (c) that the appointment in question is made on the advice of a registered medical practitioner, registered midwife or registered health visitor, and
- (d) the date and time of the appointment.

(7) A person has a qualifying relationship with a pregnant woman or her expected child if—

- (a) the person is the husband or civil partner of the pregnant woman,
- (b) the person, being of a different sex or the same sex, lives with the woman in an enduring family relationship but is not a relative of the woman,
- (c) the person is the father of the expected child,
- (d) the person is a parent of the expected child by virtue of section 42 or 43 of the Human Fertilisation and Embryology Act 2008, or
- (e) the person is a potential applicant for a parental order under section 54 of that Act in respect of the expected child.

(8) For the purposes of paragraph (7), a relative of a person is the person's parent, grandparent, sister, brother, aunt or uncle.

(9) The references to relationships in paragraph (8)—

- (a) are to relationships of the full blood or half blood or, in the case of an adopted person, such of those relationships as would exist but for the adoption, and
- (b) include the relationship of a child with the child's adoptive, or former adoptive, parents,

but do not include any other adoptive relationships.

(10) For the purposes of paragraph (7)(e), a person ("A") is a potential applicant for a parental order under section 54 of the Human Fertilisation and Embryology Act 2008 in respect of an expected child only if—

- (a) A intends to apply, jointly with another person ("B"), for such an order in respect of the expected child within the time allowed by subsection (3) of that section,

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- (b) the expected child is being carried by the pregnant woman as a result of such procedure as is described in subsection (1)(a) of that section,
- (c) the requirement in subsection (1)(b) of that section is satisfied by reference to A or B,
- (d) A and B would satisfy subsection (2) of that section if they made an application under that section at the time that A seeks to exercise the right under this Article, and
- (e) A expects that A and B will satisfy the conditions in subsections (2), (4), (5) and (8) of that section as regards the intended application.

(11) For the purposes of this Article, 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.

Complaint to industrial tribunal

85ZF.—(1) An employee may present a complaint to an industrial tribunal that his or her employer has unreasonably refused to let him or her take time off as required by Article 85ZE.

(2) An industrial tribunal may 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 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) Where an industrial tribunal finds a complaint under paragraph (1) well-founded, it—

- (a) must make a declaration to that effect, and
- (b) must order the employer to pay to the employee an amount determined in accordance with paragraph (4).

(4) The amount payable to the employee is—

$$A \times B \times 2$$

where—

- (a) A is the appropriate hourly rate for the employee, and
- (b) B is the number of working hours for which the employee would have been entitled under Article 85ZE to be absent if the time off had not been refused.

(5) 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 would have been taken.

(6) 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 is to 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 would have been taken, or

(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 (7) as are appropriate in the circumstances.

(7) The considerations referred to in paragraph (6)(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.

Accompanying to ante-natal appointments: agency workers

Right to time off to accompany to ante-natal appointments: agency workers

85ZG.—(1) An agency worker who has a qualifying relationship with a pregnant woman or her expected child is entitled to be permitted, by the temporary work agency and the hirer, to take time off during the agency worker's working hours in order that he or she may accompany the woman when she attends by appointment at any place for the purpose of receiving ante-natal care. when she attends by appointment at any place for the purpose of receiving ante-natal care.

(2) In relation to any particular pregnancy, an agency worker is not entitled to take time off for the purpose specified in paragraph (1) on more than two occasions.

(3) On each of those occasions, the maximum time off during working hours to which the agency worker is entitled is six and a half hours.

(4) An agency worker is not entitled to take time off for the purpose specified in paragraph (1) unless the appointment is made on the advice of a registered medical practitioner, registered midwife or registered health visitor.

(5) Where the temporary work agency or the hirer requests the agency worker to give that person a declaration signed by the agency worker, the agency worker is not entitled to take time off for the purpose specified in paragraph (1) unless the agency worker gives that declaration (which may be given in electronic form).

(6) The agency worker must state in the declaration—

- (a) that the agency worker has a qualifying relationship with a pregnant woman or her expected child,
- (b) that the agency worker's purpose in taking time off is the purpose specified in paragraph (1),
- (c) that the appointment in question is made on the advice of a registered medical practitioner, registered midwife or registered health visitor, and
- (d) the date and time of the appointment.

(7) A person has a qualifying relationship with a pregnant woman or her expected child if—

- (a) the person is the husband or civil partner of the pregnant woman,
- (b) the person, being of a different sex or the same sex, lives with the woman in an enduring family relationship but is not a relative of the woman,
- (c) the person is the father of the expected child,
- (d) the person is a parent of the expected child by virtue of section 42 or 43 of the Human Fertilisation and Embryology Act 2008, or
- (e) the person is a potential applicant for a parental order under section 54 of that Act in respect of the expected child.

(8) For the purposes of paragraph (7), a relative of a person is the person's parent, grandparent, sister, brother, aunt or uncle.

(9) The references to relationships in paragraph (8)—

- (a) are to relationships of the full blood or half blood or, in the case of an adopted person, such of those relationships as would exist but for the adoption, and
- (b) include the relationship of a child with the child's adoptive, or former adoptive, parents,

but do not include any other adoptive relationships.

(10) For the purposes of paragraph (7)(e), a person (“A”) is a potential applicant for a parental order under section 54 of the Human Fertilisation and Embryology Act 2008 in respect of an expected child only if—

- (a) A intends to apply, jointly with another person (“B”), for such an order in respect of the expected child within the time allowed by subsection (3) of that section,
- (b) the expected child is being carried by the pregnant woman as a result of such procedure as is described in subsection (1)(a) of that section,
- (c) the requirement in subsection (1)(b) of that section is satisfied by reference to A or B,
- (d) A and B would satisfy subsection (2) of that section if they made an application under that section at the time that A seeks to exercise the right under this Article, and
- (e) A expects that A and B will satisfy the conditions in subsections (2), (4), (5) and (8) of that section as regards the intended application.

(11) For the purposes of this Article, the working hours of an agency worker are to be taken to be any time when, in accordance with the terms under which the agency worker works temporarily for and under the supervision and direction of the hirer, the agency worker is required to be at work.

Complaint to industrial tribunal: agency workers

85ZH.—(1) An agency worker may present a complaint to an industrial tribunal that the temporary work agency has unreasonably refused to let him or her take time off as required by Article 85ZG.

(2) An agency worker may present a complaint to an industrial tribunal that the hirer has unreasonably refused to let him or her take time off as required by Article 85ZG.

(3) An industrial tribunal may not consider a complaint under paragraph (1) or (2) 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.

(4) Where an industrial tribunal finds a complaint under paragraph (1) or (2) well-founded, it—

- (a) must make a declaration to that effect, and
- (b) must order the payment to the agency worker of an amount determined in accordance with paragraph (6).

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(5) Where the tribunal orders that payment under paragraph (4) be made by the temporary work agency and the hirer, the proportion of that amount payable by each respondent is to be such as may be found by the tribunal to be just and equitable having regard to the extent of each respondent's responsibility for the infringement to which the complaint relates.

(6) The amount payable to the agency worker is—

$$A \times B \times 2$$

where—

- (a) A is the appropriate hourly rate for the agency worker, and
- (b) B is the number of working hours for which the agency worker would have been entitled under Article 85ZG to be absent if the time off had not been refused.

(7) The appropriate hourly rate, in relation to an agency worker, is the amount of one week's pay divided by the number of normal working hours in a week for that agency worker in accordance with the terms under which the agency worker works temporarily for and under the supervision and direction of the hirer that are in force on the day when the time off would have been taken.

(8) But where the number of normal working hours during the assignment differs from week to week or over a longer period, the amount of one week's pay is to be divided instead by the average number of normal working hours calculated by dividing by twelve the total number of the agency worker's normal working hours during the period of twelve weeks ending with the last complete week before the day on which the time off would have been taken.

Agency workers: supplementary

85ZI.—(1) Without prejudice to any other duties of the hirer or temporary work agency under any statutory provision or rule of law, Articles 85ZG and 85ZH do not apply where the agency worker—

- (a) has not completed the qualifying period, or
- (b) pursuant to regulation 8(a) or (b) of the Agency Workers Regulations (Northern Ireland) 2011, is no longer entitled to the rights conferred by regulation 5 of those Regulations.

(2) Nothing in Articles 85ZG and 85ZH imposes a duty on the hirer or temporary work agency beyond the original intended duration, or likely duration, of the assignment, whichever is the longer.

(3) Articles 85ZG and 85ZH do not apply where Articles 85ZE and 85ZF apply.

(4) In this Article and Articles 85ZG and 85ZH the following have the same meaning as in the Agency Workers Regulations (Northern Ireland) 2011 (see regulations 2(2), 3, 4 and 7 of the regulations)—

- “agency worker”,
- “assignment”,
- “hirer”,
- “qualifying period”,
- “temporary work agency”.

(3) In Article 21 (the calculation date in finding a week’s pay), after paragraph (3) insert—

“(3A) Where the calculation is for the purposes of Article 85ZF, the calculation date is the day of the appointment.”.

(4) In Article 70C (right not to be subject to detriment: leave for family and domestic reasons), in paragraph (2) (prescribed reasons), after sub-paragraph (a) insert—

“(aa) time off under Article 85ZE,”.

(5) In Article 131 (being regarded as unfairly dismissed: leave for family reasons), in paragraph (3) (prescribed kinds of reasons or prescribed circumstances), after paragraph (a) insert—

“(aa) time off under Article 85ZE,”.