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## STATUTORY INSTRUMENTS

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# 1996 No. 1919

## The Employment Rights (Northern Ireland) Order 1996

### PART VII

#### TIME OFF WORK

*<sup>F1</sup>Accompanying to ante-natal appointments*

**F1** Arts. 85ZE-85ZI and cross-headings inserted (15.3.2015) by [Work and Families Act \(Northern Ireland\) 2015 \(c. 1\), ss. 15\(2\), 23\(1\)](#); S.R. 2015/86, art. 3(1)(l)

#### **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 <sup>F2</sup>spouse 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,

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- (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,<sup>F3</sup>...
  - (e) the person is a potential applicant for a parental order under section 54 of that Act in respect of the expected child,<sup>F4</sup> or
  - (f) the person is a potential applicant for a parental order under section 54A 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.

[<sup>F5</sup>(10A) For the purposes of paragraph (7)(f) a person is a potential applicant for a parental order under section 54A of the Human Fertilisation and Embryology Act 2008 in respect of an expected child only if—

- (a) the person intends to apply for such an order in respect of the expected child within the time allowed by subsection (2) 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 the person, and
- (d) the person expects that he or she will satisfy the conditions in subsections (3), (4) and (7) 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.

**F2** Word in art. 85ZE(7)(a) substituted (13.1.2020) by [The Marriage \(Same-sex Couples\) and Civil Partnership \(Opposite-sex Couples\) \(Northern Ireland\) Regulations 2019 \(S.I. 2019/1514\)](#), regs. 1(2), [143\(a\)](#) (with regs. 6-9)

**F3** Word in art. 85ZE(7) omitted (3.1.2019) by virtue of [The Human Fertilisation and Embryology Act 2008 \(Remedial\) Order 2018 \(S.I. 2018/1413\)](#), art. 1(1), [Sch. 1 para. 13\(3\)](#)

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- F4** Art. 85ZE(7)(f) and word inserted (3.1.2019) by [The Human Fertilisation and Embryology Act 2008 \(Remedial\) Order 2018 \(S.I. 2018/1413\)](#), art. 1(1), **Sch. 1 para. 13(4)**
- F5** Art. 85ZE(10A) inserted (3.1.2019) by [The Human Fertilisation and Embryology Act 2008 \(Remedial\) Order 2018 \(S.I. 2018/1413\)](#), art. 1(1), **Sch. 1 para. 13(5)**

## 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.

[  
<sup>F6</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 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.]

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**F6** Art. 85ZF(2A) inserted (27.1.2020) by Employment Act (Northern Ireland) 2016 (c. 15), s. 29(2), **Sch. 2 para. 23**; S.R. 2020/1, art. 2(n)

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