



# Employment Rights Act 1996

## 1996 CHAPTER 18

### PART VI

#### TIME OFF WORK

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

#### Textual Amendments

- F1** Ss. 57ZE-57ZI and cross-headings inserted (1.10.2014) by [Children and Families Act 2014 \(c. 6\)](#), ss. [127\(1\)](#), [139\(6\)](#); S.I. 2014/1640, art. 4(a)

#### **57ZG Right to time off to accompany to ante-natal appointment: agency workers**

- (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.
- (2) In relation to any particular pregnancy, an agency worker is not entitled to take time off for the purpose specified in subsection (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 subsection (1) unless the appointment is made on the advice of a registered medical practitioner, registered midwife or registered nurse.
- (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 subsection (1) unless the agency worker gives that declaration (which may be given in electronic form).

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- (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 subsection (1),
  - (c) that the appointment in question is made on the advice of a registered medical practitioner, registered midwife or registered nurse, 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 the Human Fertilisation and Embryology Act 2008 in respect of the expected child.
- (8) For the purposes of subsection (7) a relative of a person is the person's parent, grandparent, sister, brother, aunt or uncle.
- (9) The references to relationships in subsection (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 subsection (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 section 54(3),
  - (b) the expected child is being carried by the pregnant woman as a result of such procedure as is described in section 54(1)(a),
  - (c) the requirement in section 54(1)(b) is satisfied by reference to A or B,
  - (d) A and B would satisfy section 54(2) if they made an application under section 54 at the time that A seeks to exercise the right under this section, and
  - (e) A expects that A and B will satisfy the conditions in section 54(2), (4), (5) and (8) as regards the intended application.
- (11) The references in this section to a registered nurse are references to a registered nurse—
- (a) who is also registered in the Specialist Community Public Health Nurses Part of the register maintained under article 5 of the Nursing and Midwifery Order 2001 ( S.I. 2002/253), and
  - (b) whose entry in that Part of the register is annotated to show that the nurse holds a qualification in health visiting.

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- (12) For the purposes of this section 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.

### **57ZH Complaint to employment tribunal: agency workers**

- (1) An agency worker may present a complaint to an employment tribunal that the temporary work agency has unreasonably refused to let him or her take time off as required by section 57ZG.
- (2) An agency worker may present a complaint to an employment tribunal that the hirer has unreasonably refused to let him or her take time off as required by section 57ZG.
- (3) An employment tribunal may not consider a complaint under subsection (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) Sections 207A(3) and 207B apply for the purposes of subsection (3)(a).
- (5) Where an employment tribunal finds a complaint under subsection (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 subsection (7).
- (6) Where the tribunal orders that payment under subsection (5) 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.
- (7) 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 section 57ZG to be absent if the time off had not been refused.
- (8) 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.
- (9) 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 shall be divided instead by the average number of normal working hours calculated by dividing by

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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.

### **57ZI Agency workers: supplementary**

- (1) Without prejudice to any other duties of the hirer or temporary work agency under any enactment or rule of law, sections 57ZG and 57ZH 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 2010 (S.I. 2010/93), is no longer entitled to the rights conferred by regulation 5 of those Regulations.
- (2) Nothing in sections 57ZG and 57ZH 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) Sections 57ZG and 57ZH do not apply where sections 57ZE and 57ZF apply.
- (4) In this section and sections 57ZG and 57ZH the following have the same meaning as in the Agency Workers Regulations 2010—
  - “agency worker”;
  - “assignment”;
  - “hirer”;
  - “qualifying period”;
  - “temporary work agency”.]

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