



# Employment Rights Act 1996

## 1996 CHAPTER 18

### PART VI

#### TIME OFF WORK

#### *f<sup>1</sup> Adoption appointments: agency workers*

#### 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)

#### **57ZN Right to paid time off to attend adoption appointments: agency workers**

- (1) An agency worker who has been notified by an adoption agency that a child is to be, or is expected to be, placed for adoption with the agency worker alone 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 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 agency worker 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 agency worker 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 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 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 agency worker may not make an election for the purposes of subsection (2)(b) if—

*Status: Point in time view as at 05/04/2015.*

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- (a) the agency worker has made an election for the purposes of section 57ZP(1)
    - (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 (2)(b) or section 57ZJ(2)(b) in connection with the adoption.
- (4) An agency worker is not entitled to take time off under this section on or after the date of the child's placement for adoption with the agency worker.
- (5) In relation to any particular adoption, an agency worker 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 agency worker is entitled is six and a half hours.
- (7) An agency worker 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 agency worker is not entitled to take time off under subsection (1) unless, if the temporary work agency or the hirer requests it, the agency worker gives that person 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 agency worker is not entitled to take time off under subsection (2) unless, if the temporary work agency or the hirer requests it, the agency worker gives that person—
- (a) a declaration signed by the agency worker stating that the agency worker 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 agency worker 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 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.

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- (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.

#### **57ZO Right to remuneration for time off under section 57ZN**

- (1) An agency worker who is permitted to take time off under section 57ZN is entitled to be paid remuneration by the temporary work agency for the number of working hours for which the agency worker is entitled to be absent at the appropriate hourly rate.
- (2) 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 is taken.
- (3) 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 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 is taken.
- (4) A right to any amount under subsection (1) does not affect any right of an agency worker in relation to remuneration under the agency worker's contract with the temporary work agency (“contractual remuneration”).
- (5) Any contractual remuneration paid to an agency worker in respect of a period of time off under section 57ZN goes towards discharging any liability of the temporary work agency to pay remuneration under subsection (1) in respect of that period.
- (6) Any payment of remuneration under subsection (1) in respect of a period of time off under section 57ZN goes towards discharging any liability of the temporary work agency to pay contractual remuneration in respect of that period.

#### **57ZP Right to unpaid time off to attend adoption meetings: agency workers**

- (1) An agency worker 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 agency worker 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 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 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 agency worker may not make an election for the purposes of subsection (1)(b) if—
  - (a) the agency worker has made an election for the purposes of section 57ZN(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 57ZL(1)(b) in connection with the adoption.

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- (3) An agency worker is not entitled to take time off under this section on or after the date of the child's placement for adoption with the agency worker.
- (4) In relation to any particular adoption, an agency worker 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 agency worker is entitled is six and a half hours.
- (6) An agency worker 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 agency worker is not entitled to take time off under this section unless, if the temporary work agency or the hirer requests it, the agency worker gives that person—
  - (a) a declaration signed by the agency worker stating that the agency worker 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 agency worker 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 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.
- (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 by section 119(1)(a) of the Adoption and Children (Scotland) Act 2007.

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

- (1) An agency worker may present a complaint to an employment tribunal that the temporary work agency—

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- (a) has unreasonably refused to let him or her take time off as required by section 57ZN or 57ZP, or
  - (b) has failed to pay the whole or any part of any amount to which the agency worker is entitled under section 57ZO.
- (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 57ZN or 57ZP.
- (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 must make a declaration to that effect.
- (6) If the complaint is that the temporary work agency or hirer has unreasonably refused to let the agency worker take time off as required by section 57ZN, the tribunal must also order payment to the agency worker of an amount that is twice the amount of the remuneration to which the agency worker would have been entitled under section 57ZO if the agency worker had not been refused the time off.
- (7) If the complaint is that the temporary work agency has failed to pay the agency worker the whole or part of any amount to which the agency worker is entitled under section 57ZO, the tribunal must also order the temporary work agency to pay to the agency worker the amount which it finds due to the agency worker.
- (8) If the complaint is that the temporary work agency or hirer has unreasonably refused to let the agency worker take time off as required by section 57ZP, the tribunal must also order payment to the agency worker of an amount determined in accordance with subsection (9).
- (9) The amount payable to the agency worker under subsection (8) is—
$$A \times B \times 2$$
where—
  - a A is the appropriate hourly rate for the agency worker determined in accordance with section 57ZO(2) and (3), and
  - b B is the number of working hours for which the agency worker would have been entitled under section 57ZP to be absent if the time off had not been refused.
- (10) Where the tribunal orders that payment under subsection (6) or (8) 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.

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### **57ZR 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 57ZN to 57ZQ 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 57ZN to 57ZQ 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 57ZN to 57ZQ do not apply where sections 57ZJ to 57ZM apply.
- (4) In this section and sections 57ZN to 57ZQ the following have the same meaning as in the Agency Workers Regulations 2010—
  - “agency worker”;
  - “assignment”;
  - “hirer”;
  - “qualifying period”;
  - “temporary work agency”.

### **57ZS Placement of looked after children with prospective adopters**

- (1) Subsection (2) applies where a local authority in England notifies a person—
  - (a) who is a local authority foster parent, and
  - (b) who has been approved as a prospective adopter,
 that a child is to be, or is expected to be, placed with that person under section 22C of the Children Act 1989.
- (2) Where this subsection applies, sections 57ZJ, 57ZL, 57ZN and 57ZP have effect as if—
  - (a) references to adoption or placement for adoption were references to placement of a child under section 22C of the Children Act 1989 with a local authority foster parent who has been approved as a prospective adopter;
  - (b) references to placing for adoption were references to placing a child under section 22C of that Act with a local authority foster parent who has been approved as a prospective adopter;
  - (c) references to an adoption agency were references to a local authority in England.
- (3) Where a child is placed under section 22C of the Children Act 1989 with a local authority foster parent who has been approved as a prospective adopter, notification of that person by an adoption agency during that placement that the child is to be, or is expected to be, placed with that person for adoption is not to give rise to a right to time off under section 57ZJ, 57ZL, 57ZN or 57ZP for that person or another person.]

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