



# Children and Families Act 2014

## 2014 CHAPTER 6

### PART 8

#### TIME OFF WORK: ANTE-NATAL CARE ETC

#### **127 Time off work to accompany to ante-natal appointments**

(1) After section 57ZD of the Employment Rights Act 1996 there is inserted—

*“Accompanying to ante-natal appointments*

#### **57ZE Right to time off to accompany to ante-natal appointment**

- (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 subsection (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 subsection (1) unless the appointment is made on the advice of a registered medical practitioner, registered midwife or registered nurse.
- (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 subsection (1) unless the employee gives that declaration (which may be given in electronic form).
- (6) The employee must state in the declaration—

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- (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 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—

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- (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.
- (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.

### **57ZF Complaint to employment tribunal**

- (1) An employee may present a complaint to an employment tribunal that his or her employer has unreasonably refused to let him or her take time off as required by section 57ZE.
- (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—
- (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 subsection (5).
- (5) 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 section 57ZE to be absent if the time off had not been refused.
- (6) 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.
- (7) 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—

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- (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 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 (8) as are appropriate in the circumstances.
- (8) The considerations referred to in subsection (7)(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*

**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).
- (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.

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- (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.
- (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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### **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

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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.

### **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”.
- (2) In the Employment Rights Act 1996—
  - (a) in section 47C (right not to be subject to detriment: leave for family reasons), in subsection (2) (prescribed reasons), after paragraph (a) there is inserted—

“(aa) time off under section 57ZE,”;
  - (b) in section 99 (being regarded as unfairly dismissed: leave for family reasons), in subsection (3) (prescribed kinds of reasons), after paragraph (a) there is inserted—

“(aa) time off under section 57ZE,”;
  - (c) in section 225 (the calculation date in finding a week's pay), after subsection (3) there is inserted—

“(3A) Where the calculation is for the purposes of section 57ZF, the calculation date is the day of the appointment.”

#### **Commencement Information**

- I1** S. 127(1)(2)(c) in force at 1.10.2014 by S.I. 2014/1640, art. 4(a)
- I2** S. 127(2)(a)(b) in force at 30.6.2014 by S.I. 2014/1640, art. 3(1)(i)

### **128 Time off work to attend adoption appointments**

- (1) After section 57ZI of the Employment Rights Act 1996 (as inserted by section 127) there is inserted—

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*“Adoption appointments*

**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
  - (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—



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- (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.

#### **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

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- (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—
  - (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.

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- (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.

### **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—

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- (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.

*Adoption appointments: agency workers*

**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—

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- (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—
  - (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

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- 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.
- (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.

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### **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.
- (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—

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- (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—
- (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



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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.

#### **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”;

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“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.”
- (2) In the Employment Rights Act 1996—
- (a) in section 47C (right not to be subject to detriment: leave for family reasons), in subsection (2) (prescribed reasons), after paragraph (aa) (as inserted by section 127(2)(a)) there is inserted—
 

“(ab) time off under section 57ZJ or 57ZL.”;
  - (b) in section 80B (entitlement to ordinary paternity leave: adoption), in subsection (5) (provision that may be made in regulations under subsection (1)), after paragraph (b) there is inserted—
 

“(ba) make provision excluding the right to be absent on leave under this section in the case of an employee who has exercised a right to take time off under section 57ZJ.”;
  - (c) in section 99 (being regarded as unfairly dismissed: leave for family reasons), in subsection (3) (prescribed reasons), after paragraph (aa) (as inserted by section 127(2)(b)) there is inserted—
 

“(ab) time off under section 57ZJ or 57ZL.”;
  - (d) in section 225 (the calculation date in finding a week's pay), after subsection (3A) (as inserted by section 127(2)(c)) there is inserted—
 

“(3B) Where the calculation is for the purposes of section 57ZK or 57ZM, the calculation date is the day of the appointment.”;
  - (e) in section 235 (other definitions), in subsection (1), at the appropriate place there is inserted—

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““local authority”, in relation to the placement of children under section 22C of the Children Act 1989, has the same meaning as in that Act (see section 105(1) of that Act);”;

“ “local authority foster parent” has the same meaning as in the Children Act 1989 (see section 22C(12) of that Act);”.

#### Commencement Information

**I3** S. 128(1)(2)(d)(e) in force at 5.4.2015 by S.I. 2014/1640, art. 6(d)

**I4** S. 128(2)(a)-(c) in force at 30.6.2014 by S.I. 2014/1640, art. 3(1)(j)

### 129 Right not to be subjected to detriment: agency workers

(1) In section 47C of the Employment Rights Act 1996 (right not to be subjected to detriment for taking leave for family and domestic reasons), after subsection (4) there is inserted—

“(5) An agency worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by the temporary work agency or the hirer done on the ground that—

- (a) being a person entitled to—
  - (i) time off under section 57ZA, and
  - (ii) remuneration under section 57ZB in respect of that time off, the agency worker exercised (or proposed to exercise) that right or received (or sought to receive) that remuneration,
- (b) being a person entitled to time off under section 57ZG, the agency worker exercised (or proposed to exercise) that right,
- (c) being a person entitled to—
  - (i) time off under section 57ZN, and
  - (ii) remuneration under section 57ZO in respect of that time off, the agency worker exercised (or proposed to exercise) that right or received (or sought to receive) that remuneration, or
- (d) being a person entitled to time off under section 57ZP, the agency worker exercised (or proposed to exercise) that right.

(6) Subsection (5) does not apply where the agency worker is an employee.

(7) In this section the following have the same meaning as in the Agency Workers Regulations 2010 (S.I. 2010/93)—

- “agency worker”;
- “hirer”;
- “temporary work agency”.

(2) In section 48 of that Act (complaints to employment tribunals)—

- (a) in subsection (1), for “47C” there is substituted “ 47C(1) ”;
- (b) after subsection (1A) there is inserted—

“(1AA) An agency worker may present a complaint to an employment tribunal that the agency worker has been subjected to a detriment in

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- contravention of section 47C(5) by the temporary work agency or the hirer.”;
- (c) in subsection (2), for “such a complaint” there is substituted “ a complaint under subsection (1), (1ZA), (1A) or (1B) ”;
  - (d) after subsection (2) there is inserted—
    - “(2A) On a complaint under subsection (1AA) it is for the temporary work agency or (as the case may be) the hirer to show the ground on which any act, or deliberate failure to act, was done.”;
  - (e) in subsection (4), after “an employer” there is inserted “ , a temporary work agency or a hirer ”;
  - (f) after subsection (5) there is inserted—
    - “(6) In this section and section 49 the following have the same meaning as in the Agency Workers Regulations 2010 (S.I. 2010/93)—
      - “agency worker”;
      - “hirer”;
      - “temporary work agency”.”
- (3) In section 49 of that Act (remedies in the case of complaints to an employment tribunal)—
- (a) in subsection (1), for “under section 48” there is substituted “ under section 48(1), (1ZA), (1A) or (1B) ”;
  - (b) after subsection (1), there is inserted—
    - “(1A) Where an employment tribunal finds a complaint under section 48(1AA) well-founded, the tribunal—
      - (a) shall make a declaration to that effect, and
      - (b) may make an award of compensation to be paid by the temporary work agency or (as the case may be) the hirer to the complainant in respect of the act or failure to act to which the complaint relates.”

#### **Commencement Information**

- I5** S. 129(1) in force at 1.10.2014 for specified purposes by S.I. 2014/1640, art. 4(b)
- I6** S. 129(1) in force at 5.4.2015 for specified purposes by S.I. 2014/1640, art. 6(e)
- I7** S. 129(2)(3) in force at 1.10.2014 by S.I. 2014/1640, art. 4(b)

### **130 Time off work for ante-natal care: increased amount of award**

- (1) In section 57 of the Employment Rights Act 1996 (complaints to employment tribunals where time off work for ante-natal care refused to employee), in subsection (4) (amount of award for unreasonable refusal), for “an amount equal to” there is substituted “ an amount that is twice the amount of ”.
- (2) In section 57ZC of the Employment Rights Act 1996 (complaints to employment tribunals where time off work for ante-natal care refused to agency worker), in subsection (5) (amount of award for unreasonable refusal), for “an amount equal to” there is substituted “ an amount that is twice the amount of ”.

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**Commencement Information**

**18** S. 130 in force at 1.10.2014 by S.I. 2014/1640, art. 4(c) (with art. 11)

**Changes to legislation:**

There are currently no known outstanding effects for the Children and Families Act 2014, PART 8.