

*These notes refer to the Work and Families Act (Northern Ireland)
2015 (c.1) which received Royal Assent on 8th January 2015*

Work and Families Act (Northern Ireland) 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3: Time Off Work: Ante-Natal Care, Adoption Appointments

Section 15: Time off work to accompany to ante-natal appointments

Section 15 amends the ERO to make provision to allow employees to take time off work to attend ante-natal appointments.

Subsection (2) inserts new *Articles 85ZE to 85ZI* in the ERO.

Subsection (3) amends Article 21 of the ERO to provide that the calculation date to be used for determining a week's pay for an employee is the date of the appointment in question.

Subsection (4) amends Article 70C of the ERO to give an employee a right not to be subjected to a detriment as a result of exercising or proposing to exercise a right to time off work to accompany a pregnant woman to an ante-natal appointment. (A similar right for an agency worker not to be subjected to a detriment is created in *section 18*.)

Subsection (5) amends Article 131 of the ERO to give an employee a right not to be unfairly dismissed, as a result of exercising or proposing to exercise a right to time off work to accompany a pregnant woman to an ante-natal appointment.

Article 85ZE: Right to time off to accompany to ante-natal appointment

Article 85ZE(1) creates a right for an employee who has a qualifying relationship with a pregnant woman or her expected child to take time off during working hours to accompany her to an ante-natal appointment which, in accordance with *paragraph (4)*, must be made on the advice of a designated healthcare professional. *Paragraphs (7) to (10)* define a qualifying relationship so that the right is available to the woman's husband, civil partner or partner; the father or parent of the pregnant woman's expected child; and an intended parent in a surrogacy situation who meets specified conditions.

In accordance with *paragraphs (2) and (3)*, the right to take time off can be exercised on up to two occasions for a maximum of six and a half hours on

each occasion. *Paragraph (5)* provides that an employee is not entitled to take time off unless he or she gives the employer (upon request) a declaration in the form specified in *paragraph (6)*. *Paragraph (6)* provides that the declaration must set out the employee's relationship to the woman and expected child, the purpose in taking time off, the fact that the appointment is made on the advice of a designated healthcare professional, and the date and time of the appointment.

Article 85ZF: Complaint to industrial tribunal

Article 85ZF(1) provides that an employee who is unreasonably refused time off by an employer may present a complaint to an industrial tribunal. The complaint must be made within the designated time limit in *paragraph (2)* (usually three months). If the complaint is substantiated the tribunal, per *paragraph (3)*, must make an order to this effect and must award compensation calculated in accordance with *paragraphs (4) to (7)* of twice the hourly pay of the employee for the period of absence.

Article 85ZG: Right to time off to accompany to ante-natal appointments: agency workers

Article 85ZG(1) creates a right for an agency worker who has a qualifying relationship with a pregnant woman or her expected child to take time off during working hours to accompany her to an ante-natal appointment which, in accordance with *paragraph (4)*, must be made on the advice of a designated healthcare professional. *Paragraphs (7) to (10)* define a qualifying relationship so that the right is available to the woman's husband, civil partner or partner; the father or parent of the pregnant woman's expected child; and an intended parent in a surrogacy situation who meets specified conditions.

In accordance with *paragraphs (2) and (3)*, the right to take time off can be exercised on up to two occasions for a maximum of six and a half hours on each occasion. *Paragraph (5)* provides that an agency worker is not entitled to take time off unless he or she gives the temporary work agency or the hirer (upon request) a declaration in the form specified in *paragraph (6)*. *Paragraph (6)* provides that the declaration must set out the agency worker's relationship to the woman and expected child, the purpose in taking time off, the fact that the appointment is made on the advice of a designated healthcare professional, and the date and time of the appointment.

Article 85ZH: Complaint to industrial tribunal: agency workers

Article 85ZH(1) provides that an agency worker who is unreasonably refused time off by a temporary work agency may present a complaint to an industrial tribunal; *paragraph (2)* provides the same right where the unreasonable refusal is by the hirer. The complaint must be made within the designated time limit in *paragraph (3)* (usually three months). If the complaint is substantiated the tribunal, per *paragraph (4)*, must make an order to this effect and must award compensation calculated in accordance with *paragraphs (6) to (9)* of twice the hourly pay of the agency worker for the period of absence. In ordering such a

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payment, the tribunal under *paragraph (5)* will determine the proportion to be paid, respectively, by the temporary work agency and the hirer in accordance with its assessment of the culpability of each for the infringement.

Article 85ZI: Agency workers: supplementary

Article 85ZI sets out which agency workers have the right to time off under *Article 85ZG*.