

Fertility Treatment (Employment Rights) Bill

[AS INTRODUCED]

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[AS INTRODUCED]

A

B I L L

TO

Require employers to allow employees to take time off from work for appointments for fertility treatment; and for connected purposes.

BE IT ENACTED by the King’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Right to time off for fertility treatment

- (1) The Employment Rights Act 1996 is amended as follows.
- (2) After section 57ZS, insert—

“Fertility treatment

57ZT Right to time off for fertility treatment

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- (1) An employee who—
 - (a) is receiving fertility treatment, and
 - (b) has, on the advice of a registered medical practitioner or registered nurse, made an appointment to attend at any place for the purpose of receiving that treatment; or
 - (c) has made an appointment with a registered medical practitioner or registered nurse to attend at any place for a purpose connected with fertility treatment

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is entitled to be permitted by their employer to take time off during the employee’s working hours in order to enable them to keep the appointment.

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- (2) An employee is not entitled to take time off under this section to keep an appointment unless, if their employer requests it, they produce for inspection by the employer—
 - (a) a certificate from a registered medical practitioner or registered nurse stating that the employee is receiving fertility treatment, and
 - (b) an appointment card or some other document showing that the appointment has been made.

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- (3) Subsection (2) does not apply where the employee's appointment is the first appointment for which they seek permission to take time off in accordance with subsection (1).
- (4) For the purposes of this section the working hours of an employee shall be taken to be any time when, in accordance with their contract of employment, the employee is required to be at work. 5

57ZU Right to remuneration for time off under section 57ZT

- (1) An employee who is permitted to take time off under section 57ZT is entitled to be paid remuneration by their employer for the period of absence at the appropriate hourly rate. 10
- (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 – 15
- (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 20
- (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. 25
- (4) The considerations referred to in subsection (3)(b) are – 30
- (a) the average number of normal working hours in a week which the employee could expect in accordance with the terms of their contract, and
- (b) the average number of normal working hours of other employees engaged in relevant comparable employment with the same employer. 35
- (5) A right to any amount under subsection (1) does not affect any right of an employee in relation to remuneration under their contract of employment ("contractual remuneration").
- (6) Any contractual remuneration paid to an employee in respect of a period of time off under section 57ZT goes towards discharging any liability of the employer to pay remuneration under subsection (1) in respect of that period; and, conversely, any payment of remuneration under subsection (1) in respect of a period goes towards discharging 40

any liability of the employer to pay contractual remuneration in respect of that period.

57ZV Complaints to employment tribunals

- (1) An employee may present a complaint to an employment tribunal that their employer— 5
 - (a) has unreasonably refused to permit them to take time off as required by section 57ZT, or
 - (b) has failed to pay the whole or any part of any amount to which the employee is entitled under section 57ZU.
- (2) An employment tribunal shall not consider a complaint under this section unless it is presented— 10
 - (a) before the end of the period of three months beginning with the date of the appointment concerned, 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. 15
- (3) Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (2)(a).
- (4) Where an employment tribunal finds a complaint under this section well-founded, the tribunal shall make a declaration to that effect. 20
- (5) If the complaint is that the employer has unreasonably refused to permit the employee to take time off, the tribunal shall 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 57ZU if the employer had not refused. 25
- (6) If the complaint is that the employer has failed to pay the employee the whole or part of any amount to which they are entitled under section 57ZU, the tribunal shall also order the employer to pay to the employee the amount which it finds due to them. 30

57ZW Right to time off for fertility treatment (agency workers)

- (1) An agency worker who— 35
 - (a) is receiving fertility treatment, and
 - (b) has, on the advice of a registered medical practitioner or registered nurse, made an appointment to attend at any place for the purpose of receiving that treatment; or
 - (c) has made an appointment with a registered medical practitioner or registered nurse to attend at any place for a purpose connected with fertility treatment

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 to enable them to keep the appointment. 40

- (2) An agency worker is not entitled to be permitted by either of those persons to take time off under this section to keep an appointment unless, if that person requests the agency worker to do so, produces for that person's inspection—
- (a) a certificate from a a registered medical practitioner or registered nurse stating that the agency worker is receiving fertility treatment , and
 - (b) an appointment card or some other document showing that the appointment has been made.
- (3) Subsection (2) does not apply where the agency worker's appointment is the first appointment for which they seek permission to take time off in accordance with subsection (1).
- (4) For the purposes of this section the working hours of an agency worker shall 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.

57ZX Right to remuneration for time off under section 57ZW

- (1) An agency worker who is permitted to take time off under section 57ZW is entitled to be paid remuneration by the temporary work agency for the period of absence 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 their 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 57ZW goes towards discharging any liability of the temporary work agency to pay remuneration under subsection (1) in respect of that period; and, conversely, any payment of remuneration under subsection (1) in respect of a period goes towards discharging any liability of the temporary work agency to pay contractual remuneration in respect of that period.

57ZY 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 permit them to take time off as required by section 57ZW, or 5
 - (b) has failed to pay the whole or any part of any amount to which they are entitled under section 57ZX.
- (2) An agency worker may present a complaint to an employment tribunal that the hirer has unreasonably refused to permit them to take time off as required by section 57ZW. 10
- (3) An employment tribunal shall 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 date of the appointment concerned, 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. 15
- (4) Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (3)(a). 20
- (5) Where an employment tribunal finds a complaint under this section well-founded, the tribunal shall make a declaration to that effect.
- (6) If the complaint is that the temporary work agency or hirer has unreasonably refused to permit the agency worker to take time off, the tribunal shall also order payment to the agency worker of an amount that is twice the amount of the remuneration to which they would have been entitled under section 57ZX if they had not been refused the time off. 25
- (7) Where the tribunal orders payment under subsection (5), the amount payable by each party shall 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. 30
- (8) 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 they are entitled under section 57ZX, the tribunal shall also order the temporary work agency to pay to the agency worker the amount which it finds due to them. 35

57ZZ 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 57ZW to 57ZY do not apply where the agency worker –
 - (a) has not completed the qualifying period, or 40

- (b) is no longer entitled to the rights conferred by regulation 5 of the Agency Workers Regulations 2010 pursuant to regulation 8(a) or (b) of those Regulations.
- (2) Nothing in those sections 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. 5
- (3) Those sections do not apply where sections 57ZT to 57ZV apply.
- (4) In this section and sections 57ZW to 57ZY the following have the same meaning as in the Agency Workers Regulations 2010 – 10
- “agency worker”;
 - “assignment”;
 - “hirer”;
 - “qualifying period”;
 - “temporary work agency”.

57ZZ1 Right to time off to accompany to fertility treatment 15

- (1) An employee who has a qualifying relationship with a person receiving fertility treatment or with any child which may be born as a result of that treatment is entitled to be permitted by their employer to take time off during the employee's working hours in order that they may accompany the person when they attend by appointment at any place for the purpose of receiving fertility treatment. 20
- (2) 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 or registered nurse.
- (3) 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). 25
- (4) The employee must state in the declaration – 30
- (a) that the employee has a qualifying relationship with a person receiving fertility treatment or with any child which may be born as a result of that treatment,
 - (b) that the employee's purpose in taking time off is the purpose specified in subsection (1), 35
 - (c) that the appointment in question is made on the advice of a registered medical practitioner or registered nurse, and
 - (d) the date and time of the appointment.
- (5) A person has a qualifying relationship with a person receiving fertility treatment if – 40
- (a) the person is the spouse or civil partner of the person receiving fertility treatment,

- (b) the person lives with the person receiving fertility treatment in an enduring family relationship but is not a relative of them,
 - (c) the person is the father of any child which may be born as a result of the treatment,
 - (d) the person is a parent, by virtue of section 42 or 43 of the Human Fertilisation and Embryology Act 2008, of any child which may be born as a result of the treatment, 5
 - (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 any child which may be born as a result of the treatment, or 10
 - (f) the person is a potential applicant for a parental order under section 54A of the Human Fertilisation and Embryology Act 2008 in respect of any child which may be born as a result of the treatment. 15
- (6) For the purposes of subsection (5) a relative of a person is the person's parent, grandparent, sister, brother, aunt or uncle.
- (7) The references to relationships in subsection (6)–
- (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 20
 - (b) include the relationship of a child with the child's adoptive, or former adoptive, parents,
- but do not include any other adoptive relationships.
- (9) 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. 25

57ZZ2 Complaint to employment tribunal

- (1) An employee may present a complaint to an employment tribunal that their employer has unreasonably refused to let them take time off as required by section 57ZZ1. 30
- (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 35
 - (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) Section 207B applies for the purposes of subsection (2)(a). 40
- (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 57ZZ1 to be absent if the time off had not been refused. 5
- (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. 10
- (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 – 15
- (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 20
- (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. 25
- (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 30
- (b) the average number of normal working hours of other employees engaged in relevant comparable employment with the same employer. 35

57ZZ3 Right to time off to accompany to fertility treatment: agency workers

- (1) An agency worker who has a qualifying relationship with a person receiving fertility treatment or with any child which may be born as a result of that treatment 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 they may accompany the person when they attend by appointment at any place for the purpose of receiving fertility treatment. 40

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- (2) 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 or registered nurse.
- (3) 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). 5
- (4) The agency worker must state in the declaration –
- (a) that the agency worker has a qualifying relationship a person receiving fertility treatment or with any child which may be born as a result of that treatment, 10
 - (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 or registered nurse, and 15
 - (d) the date and time of the appointment.
- (5) A person has a qualifying relationship with a person receiving fertility treatment if –
- (a) the person is the spouse or civil partner of the person receiving fertility treatment, 20
 - (b) the person, being of a different sex or the same sex, lives with the person receiving fertility treatment in an enduring family relationship but is not a relative of them,
 - (c) the person is the father of any child which may be born as a result of the treatment, 25
 - (d) the person is a parent, by virtue of section 42 or 43 of the Human Fertilisation and Embryology Act 2008, of any child which may be born as a result of the treatment,
 - (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 any child which may be born as a result of the treatment, or 30
 - (f) the person is a potential applicant for a parental order under section 54A of the Human Fertilisation and Embryology Act 2008 in respect of any child which may be born as a result of the treatment. 35
- (6) 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. 40

57ZZ4 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 them take time off as required by section 57ZZ3.
- (2) An agency worker may present a complaint to an employment tribunal that the hirer has unreasonably refused to let them take time off as required by section 57ZZ3. 5
- (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 10
- (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. 15
- (4) Section 207B applies 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). 20
- (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. 25
- (7) The amount payable to the agency worker is—
- $$A \times B \times 2$$
- where— 30
- (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 57ZZ3 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. 35 40
- (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 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.

57ZZ5 Agency workers: supplementary 5

- (1) Without prejudice to any other duties of the hirer or temporary work agency under any enactment or rule of law, sections 57ZZ3 and 57ZZ4 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. 10
- (2) Nothing in sections 57ZZ3 and 57ZZ4 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. 15
- (3) Sections 57ZZ3 and 57ZZ4 do not apply where sections 57ZZ1 and 57ZZ2 apply.
- (4) In this section and sections 57ZZ3 and 57ZZ4 the following have the same meaning as in the Agency Workers Regulations 2010 –
 - “agency worker”;
 - “assignment”;
 - “hirer”;
 - “qualifying period”;
 - “temporary work agency”.20

57ZZ6 Application of right to time off for fertility treatment 25

Sections 57ZT to 57ZZ5 do not apply where sections 55 to 57ZI apply.

57ZZ7 Definition of fertility treatment

In this Act a person is “receiving fertility treatment” if they are –

- (a) undergoing any form of assisted reproduction carried out by a registered medical practitioner or registered nurse, including –
 - (i) in vitro fertilisation,
 - (ii) intra uterine insemination, and
 - (iii) intracytoplasmic sperm injection;30
- (b) undergoing any treatment carried out by a registered medical practitioner or registered nurse for the purpose of preserving fertility; or
- (c) undergoing any medical examination or treatment in connection with treatment falling within paragraph (a) or (b). ” 35

2 Protection from detriment for taking time off for fertility treatment

(1) In section 47C(2), at end insert—

“(e) time off under section 57ZT or 57ZW, or

(f) time off under section 57ZZ1 or 57ZZ3.”

(2) In section 99(3), after paragraph (d) insert—

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“(e) time off under section 57ZT or 57ZW, or

(f) time off under section 57ZZ1 or 57ZZ3.”

3 Extent, commencement and short title

(1) This Act extends to England and Wales and Scotland.

(2) This Act comes into force at the end of the period of 90 days beginning with the day on which it is passed.

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(3) This Act may be cited as the Fertility Treatment (Employment Rights) Act 2022.

Fertility Treatment (Employment Rights) Bill

[AS INTRODUCED]

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B I L L

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Require employers to allow employees to take time off from work for appointments for fertility treatment; and for connected purposes.

Presented by Nickie Aiken

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