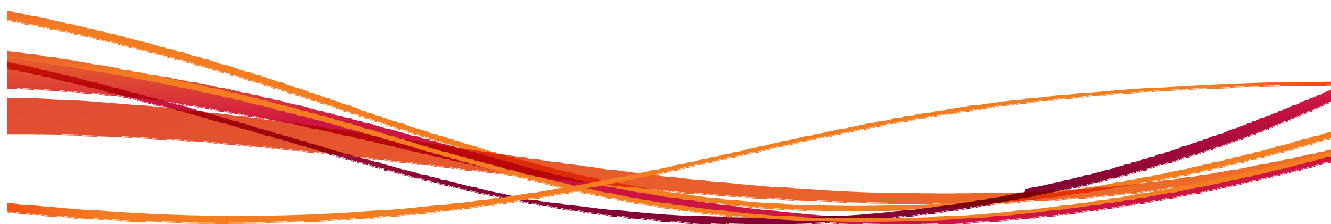


## HR Rely Guidance

### Guide to Time Off for Adoption Appointments

January 2015



## Guide to Time Off for Adoption Appointments

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## Guide to Time Off for Adoption Appointments

### Introduction

From 5 April 2015 there will be a new right for employees and agency workers who are proposing to adopt to take time off work to attend adoption appointments. Whether the time off is paid or unpaid will depend on whether the employee is adopting alone, and if not, who has elected to be the main adopter.

### Who can benefit from this new right?

This new right applies to both employees and agency workers. If it is an employee who is adopting, the employer must give permission for the employee to attend the appointment; if it is an agency worker, then it is both the temporary work agency and the hirer who must give the necessary permission.

To qualify to take time off for an adoption appointment, an agency worker must have completed the 12 week qualifying period, without breaks between or during an assignment and must not have taken a different role with the hirer during the qualifying period.

Adoption appointments take place once the prospective adopter has been notified by the adoption agency that a child is, or is expected, to be placed with him/her for adoption. The reason for the adoption appointment must either be for the adopter to have contact with the child or for any other purpose connected with the adoption.

In addition a foster parent who has been notified by a local authority in England that a child will be or is expected to be placed with him/her in a fostering for adoption placement will also be entitled to this new right. However there will be no new right or further right for time off for adoption appointments if the foster parent is subsequently notified by the adoption agency that the child is to be or is expected to be placed with that person for adoption.

### How much time off can an employee or agency worker take?

This depends on the adopter's situation. If the employee or agency worker is adopting on his/her own, he/she is entitled to take paid time off for 5 appointments arranged or requested by the adoption agency.

When a couple are jointly adopting, then only one of the couple will be entitled to paid time off. It remains for the couple to decide which of them will take time off paid. The employer or agency worker wishing to take paid time off will have to provide a signed declaration that they have elected to exercise the right to take paid time off.

For the adopter taking paid time off, the maximum time off during working hours is six and a half hours per occasion. For the adopter who has elected to take unpaid time off to attend an adoption appointments, he/she is entitled to a maximum of 2 appointments, again subject to a maximum duration of six and a half hours per occasion.

## Requesting time off

The employer (or temporary worker agency or hirer in the case of agency workers) may choose to require the employee to request time off by providing a document showing the following information:

- That he/she would like to take paid or unpaid time off
- The date and time of the appointment
- That the appointment has been made by or at the request of the adoption agency
- If they are a joint adopter, a signed declaration that they have elected to take time off.

If the employer chooses to require this information, it may decline an application where the employee fails to provide it. An employer (or temporary worker agency or hirer) has a general right to refuse an employee's request for time off but only where it is reasonable to do so.

## Where the adoption involves more than one child

Some adoptions will involve more than one child e.g. the adoption of siblings. In which case, the provisions above apply to the whole arrangement and not to each child being adopted. The maximum number of paid and unpaid appointments remains the same. However the right to take time off for adoption appointments will cease after the placement date for the first child.

## Remedies for breach of the right

An employee or agency worker who believes that they have been unreasonably refused the right to paid or unpaid time off for adoption appointments, or have taken the time off on a paid basis but have not in fact been paid, may bring an Employment Tribunal claim. The time limit for bringing such a claim is three months beginning with the day of the appointment in question.

The remedies available are as follows:

- A declaration
- A payment of an amount which is twice what the employee or agency worker should have received (where the employer unreasonably refused to allow paid time off)
- Payment of the amount due (in the case of failure to pay for the time off)
- Payment based on the formula  $A \times B \times 2$  ( if the employer unreasonably refused to allow unpaid time off). Where A is the appropriate hourly rate for the employee or agency worker and B is the number of working hours for which the employee or agency worker would have been entitled to be absent if time off had not been refused.

## Protection from detriment and dismissal

From 30 June 2014 employees are protected from being subjected to a detriment for taking time off, paid or unpaid, to attend an adoption appointment. Any dismissal where the principal reason is that the employee took time off to attend an adoption appointment, will be an automatically unfair dismissal.

Since 1 October 2014 an agency worker has been able to claim that they have been subjected to a detriment by any act or failure to act on the ground that the worker took or sought to take paid or unpaid time off work to attend an adoption appointment or received or sought to receive the pay to which they were entitled to when taking time off for adoption appointments.

This guidance note has been prepared as a general guide only. It is not a substitute for professional advice which takes account of your specific circumstances and any changes in the law and practice; at the time of the preparation of this note various changes to the relevant provisions may be pending. The subjects covered constantly change and develop. No responsibility can be accepted by the firm or the author for any loss occasioned by any person acting or refraining from acting on the basis of this note. The copyright in this guidance note is owned by Weightmans LLP.