

Dream Believe Achieve

PARENTAL LEAVE incl. ADOPTION LEAVE POLICY VERSION 2

DATE OF ORIGINAL RATIFICATION: 2015

DATE OF MOST RECENT REVIEW: November 2022

SUMMARY OF CHANGES AT LAST REVIEW

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1. Policy statement

The right to parental leave is covered by the Employment Relations Act 1999 and the Maternity and Parental Leave Regulations 1999. Employees are entitled to 13 weeks' unpaid leave to care for a child. Parents of disabled children are entitled to 18 weeks unpaid leave.

2. Who does this procedure apply to?

This policy is recommended policy for adoption by the Governing Body. It applies to all school based staff.

3. Which employees qualify for parental leave?

Employees qualify for parental leave if they have worked for the council for at least one year and are a parent. By 'parent' we mean:

- the mother; or
- the father of the child if he was married to the mother at the time of the birth or he is registered as the child's father; or
- the father if he has parental responsibility under the Children Act 1989; or
- a guardian appointed under the Children Act 1989; or
- adoptive parents.

The right applies for children who:

- were born or adopted on or after 15 December 1994;

Normally, the right lasts until the child is five. However, if the child is disabled and receives Disability Living Allowance, the right lasts until the child is 18. If the child has been adopted, the right lasts until five years after the adoption or until the child is 18, whichever is the earliest.

For parents of children who qualify for parental leave which were born before 15th December 1999 or adopted between 15th December 1994 and 14th December 1999, parental leave must be taken by 31st July 2005.

4. Do we need proof of parental responsibility?

Yes. When an employee applies for parental leave, they must send the Principal a copy of the child's birth certificate. If this does not show proof of parental responsibility, they will need to send us documents that do, for example a court order or formal agreement.

5. What notice does an employee have to give?

The employee must give their Principal at least 21 days' notice that they are taking parental leave. This must include the dates when the leave will begin and end. If employees want to take leave immediately after a child is born or adopted, they should give at least 21 days' notice before the expected week of childbirth or adoption.

6. Taking parental leave

The parental leave year will start either when the child is born or when the employee has worked for us for one year. In a 12-month parental leave year, employees can take up to four weeks' parental leave for each child.

Employees must take parental leave in blocks of one week. Even if the employee only takes one day, this will count as a week of the entitlement. However, for payment purposes, you must give payroll the exact dates of the leave.

If the child is disabled, the employee may take leave in blocks of one day.

Both parents are entitled to leave. The right applies to each child.

Employees who work part-time are entitled to take leave on a pro-rata basis.

7. Can the school postpone parental leave?

Yes, the Principal can postpone the parental leave if:

- the employee is needed at a particular time and it is not possible to cover the work; or
- the school will be seriously disrupted.

If this happens, the Principal must tell the employee why it is postponed, in writing, within seven days of their request. The Principal must not postpone the leave for any longer than is necessary and definitely for no longer than six months.

The Principal should seek advice from the nominated HR adviser

The Principal cannot postpone the leave if the employee wants to take it immediately after a child is born or adopted.

If an employee feels that the leave has been unfairly turned down or postponed, they should discuss the matter with the Principal. If the Principal cannot sort out the issue, the employee can raise the matter using the grievance procedure.

8. How does parental leave affect benefits?

During parental leave, the employee will continue to build up service for annual leave, maternity and sickness benefits. The employee will not be paid for any bank holidays when they are on parental leave.

Employees must pay pension contributions for the first 30 days they are off. These will be taken from their pay when they return to work.

9. What about the employee's return to work?

If an employee takes less than four weeks' parental leave in a row, they will be guaranteed to be able to return to their current job.

10. What records do we need to keep?

The school must record any parental leave taken, and keep this on the employee's personal file. A parental leave record sheet is available for this. New employees need to tell the school how much (if any) parental leave they have already taken with previous employers. The school is responsible for telling payroll about parental leave through absence and sickness returns.

11. What happens if the employee has more than one job?

If an employee has more than one job within the county council, this does not increase the total leave they are entitled to.

If an employee takes parental leave in one of their jobs, they must record that as full parental leave and take it from the 13-week total allowance.

If an employee wants to take parental leave at the same time in both jobs and one school cannot give permission, this will mean postponing leave for both jobs. If the employee still wants to take leave from both jobs, the Head Teacher must agree a convenient time for the employee to take their parental leave. It must be within six months of the original request.

12. Where can I get more information?

Further advice is available from your nominated HR Adviser.

Specific guidance on Adoption Leave

1. Introduction

The purpose of adoption leave and pay is to support parents who adopt children. Supporting employees makes good business sense for the school, retaining valuable knowledge and skills and contributing towards equality of opportunity.

Where the Governing Body wishes to deviate from this proposed policy or adopt any other policy, it is the responsibility of the the Governing Body to arrange consultation with appropriate representatives from the recognised trade unions and professional associations.

2. Scope

This policy and associated procedures apply to all school based teaching employees.

3. Pre-adoption Leave

Adoption

Employees will be entitled to paid leave for up to six and a half hours off work on up to five occasions to attend a pre-adoption appointment if the following conditions are satisfied.

- The employee has been notified by an adoption agency that a child is expected to be placed for adoption.
- The appointment is arranged by or is at the request of the adoption agency.

- The appointment is for the purpose of having contact with the child or for any other purpose connected with the adoption process.
- The employee is the primary adopter.

If the employee is adopting the child as a couple and the employee's partner (spouse/ partner) is exercising this right, the employee is only entitled to take unpaid leave for up to six and a half hours off work on two occasions in order to attend a pre-adoption appointment.

The employee must give the Head Teacher written evidence showing the date and time of the appointment, if requested to do so. Wherever possible, the employee should seek appointment times outside of work hours.

Adoption via Surrogacy

An employee who is expecting a baby to be placed with him or her through a surrogacy arrangement and who intends to apply for a parental order is entitled to unpaid leave for up to six and a half hours to attend two antenatal appointments with the woman carrying the child.

If requested to do so, the employee must give the Head Teacher a written declaration stating:

- The date and time of the appointment.
- That the employee qualifies for the unpaid time off through their relationship with the child.
- That the time off is for the purpose of attending an antenatal appointment with the pregnant woman.

4. Adoption Leave Entitlement and Eligibility

Entitlement

All employees are entitled to 26 weeks ordinary adoption leave (OAL) and a further 26 weeks additional adoption leave (AAL), regardless of how long they have worked for the school. There must be no gap between the two periods.

Eligibility

An employee is eligible to take adoption leave if they are:

UK Adoptions	adopting a child within the UK through an approved adoption agency.
Overseas Adoption	adopting a child from overseas and have received notification from the relevant UK authority of their eligibility to adopt a child from abroad.
Surrogacy	part of a couple who applies for a parental order in relation to a child born to a surrogate.
Foster to Adopt	an approved local authority foster parent who is a prospective adopter and who has been notified of a child's placement under the Children Act 1989.

All eligible employees, including those in same sex relationships, are entitled to adoption leave. The only restriction is that where a couple are adopting jointly only one of them can take adoption leave. The other may wish to take paternity leave (regardless of gender).

Adoption Leave is not available in the case of special guardianships.

5. Statutory Adoption Pay (SAP)

Statutory adoption pay is paid for a maximum of 39 weeks.

- 90% of average weekly earnings for the first 6 weeks

- Statutory adoption rate (2017/18 £140.98) or 90% of average weekly earnings (whichever is lower) for the next 33 weeks

To qualify for Statutory Adoption Pay (SAP) the employee must:

- Have worked continuously for at least 26 weeks by the week they were matched with a child
- in the 8 weeks ending with the week in which they are notified of having been matched with a child for adoption (the reference period), have average weekly earnings of not less than the national insurance lower earnings limit;
- provide a matching certificate from the adoption agency;
- have given appropriate notice of adoption leave, in writing;
- have elected to receive statutory adoption pay and not statutory paternity pay; and

It can start:

- up to 14 days before the date the child starts living with the employee who is adopting them (UK adoptions)
- when the child arrives in the UK or within 28 days of this date (overseas adoptions)
- the day the child's born or the day after (if a surrogacy arrangement)

6. Occupational Adoption pay (OAP)

The School has enhanced statutory adoption pay by way of occupational adoption pay for **employees with at least 1 year's continuous local government service or service with the school** at the 11th week before notification of a match with a child.

Occupational Adoption Pay depends on whether the employee has declared, in writing, that **they intend to return** to work for at least 3 months. If an employee is not sure whether they wish to return, OAP will be paid if they subsequently confirm, in writing, that they intend to return for at least three months.

Employee Returning	Employee Not Returning
Weeks 1- 4 <ul style="list-style-type: none"> • Full Pay (offset against payments made by way of SAP) 	Weeks 1- 4 <ul style="list-style-type: none"> • Full Pay (offset against payments made by way of SAP).
Weeks 5 - 6 <ul style="list-style-type: none"> • 9/10ths of a week's pay (offset against payments made by way of SAP) 	(SAP rate only)
Weeks 7- 18 <ul style="list-style-type: none"> • SAP rate, plus • half pay (An employee cannot receive more than full pay; therefore if they receive occupational adoption pay (half pay) plus SAP, this will be scaled down if it amounts to more than full pay.	(SAP rate only)

Recovery of OAP - An employee who receives occupational adoption pay but returns for less than 3 months has to repay some, or all, of that amount. This may be waived by the Governing Body if

there are exceptional reasons why they should not re-pay the occupational pay they have received. In these circumstances guidance should be sought from the HR Advisory team.

7. Notice and Evidence Requirements

UK Adoption

No later than 7 days after the date the employee is notified of being matched, or as soon as reasonably practicable, the employee must give the Head Teacher written notice of:

- the date the child is expected to be placed with them, or if the child has already been placed, the date of placement
- the date they want their adoption leave to start.

The employee will also need to complete a Notification of Adoption Leave form and attach a 'matching certificate' from their adoption agency, and forward these to the Head Teacher.

Overseas adoptions

No more than 28 days after the employee receives the official notification of the date on which the child is expected to enter the UK they must notify the Head Teacher in writing of

- the date of notification; and
- the date the child is expected to enter the UK.

Then, within 28 days of the child's entry to the UK the employee must notify the Head Teacher, in writing, of the date of entry.

The employee will need to complete a Notification of Adoption Leave form stating when they want their period of adoption leave to start. This should be forwarded to their Head Teacher no less than 28 days prior to the date they want their leave to start together with the official notification from the adoption agency and evidence of the date of entry of the child into the UK.

Surrogacy and Foster to Adopt Arrangements

Contact your HR Provider for further details.

The Head Teacher must forward the matching certificate and copy of the notification form to the School's Payroll provider so that the employee's entitlement to SAP can be calculated.

Within 28 days of receipt of the notification form, the HR provider will write to the employee stating the date when they will be expected to return to work if the full adoption leave is taken.

8. Starting adoption leave and pay

The employee can choose to start their adoption leave either:

- on the date the child is placed (for overseas adoptions the date the child enters the UK).
- from a fixed date (up to 14 days before the expected date of placement and no later than the expected date of placement).

Changing the start date of adoption leave

Employees will be able to change the date on which they want their adoption leave to start providing they give the Head Teacher/line manager 28 days written notice in advance of the new date they wish their leave to start.

9. Shared Parental Leave

If an employee returns from adoption leave early, the remaining period of adoption leave and statutory adoption pay (if any) can be shared between the employee and their partner (e.g. spouse or civil partner) in accordance with the Shared Parental Leave Policy.

For further details please refer to the Shared Parental Leave policy.

10. Placements ending during adoption leave

If the child's placement ends during the adoption leave period, the employee will continue to be entitled to adoption leave, and pay where applicable, for up to eight weeks after the end of the placement.

As the employee will be returning to work earlier than intended they will be required to notify the Head Teacher of their return date giving at least 21 days written notice. The Head Teacher will notify the School's Payroll provider.

11. Reasonable contact

Head Teachers are encouraged to maintain reasonable contact with employees during their period of adoption leave. Examples of this contact include discussions about their return to work, keeping in touch days and keeping them informed about any training opportunities or changes to their job.

It is good practice for Head Teachers and employees to agree how the contact will take place before the period of adoption leave begins. Advice about reasonable contact can be sought from the School's HR provider.

12. Keeping in touch days

An employee can agree to work up to 10 days during OAL or AAL without bringing adoption leave to an end or loss of SAP. These days are called keeping in touch (KIT) days and are to be used to help the employee back into the working environment and provide an opportunity to familiarise themselves with any changes. KIT days are not limited to the employee's normal job and can be used for training or other events.

KIT days are to be mutually agreed between the employee and the Head Teacher: employees are not obliged to undertake work and cannot insist that work is made available. The Head Teacher may wish to confirm the agreed arrangements in writing, and if so, a template letter is provided.

Template KIT days letter ([hyperlink](#))

Where possible KIT days should reflect the employee's normal contract of employment e.g. if the employee is part time and normally works 3 hours per day the working hours on a KIT day should be 3 hours.

Any hours worked on a KIT day will count as one whole day against the 10 KIT days but not for payment purposes (see below).

Employees and Head Teachers can monitor the number of days taken on the Keeping in Touch Days form to ensure they do not exceed 10.

Payment for KIT days

Employees will be paid for the actual hours worked at the normal contractual rate of pay on the KIT day.

Employees will receive Statutory Adoption Pay (if due) at the appropriate rate as usual and payment at the normal contractual rate of pay for any hours worked on a KIT day will be paid in addition to Statutory Adoption Pay.

If the employee is receiving Occupational Adoption Pay payment for hours worked on a KIT day will be offset against their Occupational Adoption Pay.

The Head Teacher will need to inform the Payroll Provider.

13. Return to work

Right to return

An employee has the right to return to the same job on the same terms and conditions at the end of ordinary adoption leave provided notice requirements are complied with.

An employee who returns during, or at the end of, additional adoption leave is entitled to return to the same job on the same terms and conditions as if they had not been absent. However, if it is not reasonably practicable for the employee to return to their own job they will be offered a job that is suitable and on terms and conditions that are no less favourable than those of their original job.

Date of return

It will be assumed that the employee's date of return will be the date confirmed by the employee, or if no date was confirmed 52 weeks after adoption leave began.

If the employee wishes to return earlier than this they must advise the Head Teacher of the revised date of return, in writing, at least 21 days before they intend to return.

Employees have the right to vary their return date provided this date falls within the 52 week adoption leave entitlement. They will need to give at least 21 days notice to vary the date and put the request in writing to the Head Teacher.

If, due to sickness, the employee is unable to return to work on the agreed date, they will need to produce a medical certificate. Provided the employee follows the sickness procedure, they will be entitled to occupational sick pay, as appropriate, from the date they would have returned.

If the employee decides that they do not wish to return to work after adoption leave they must give their contractual notice, in writing, to the Head Teacher.

14. Annual leave and bank holidays

Annual leave accrued up to the commencement of adoption leave should be taken before adoption leave starts. The employee will continue to accrue annual leave whilst on both ordinary and additional adoption leave.

On return, any remaining annual leave should be taken during school closure periods before the end of the leave year. If this is not practical due to the timing of the return, it should be taken within the first two months of the next leave year, outside of term time and by agreement with the Head Teacher.

Employees should be given a substitute day of paid leave for any bank holidays that fall during their adoption leave.

15. Pension contributions during adoption leave

If the employee is a member of the Teachers Pension Scheme, they will continue to pay contributions during the period of **paid** adoption leave (including statutory payments). For any periods of **unpaid** adoption leave, the period will be recorded as “days excluded”.

16. Redundancy during adoption leave

Employees on adoption leave are afforded special protection. It will be automatically unfair for the School to select an employee for redundancy for adoption-related reasons.

Provided that there is a genuine redundancy situation and a fair procedure has been carried out, an employee can be included in the selection pool for redundancy irrespective of the fact that they are on adoption leave.

The School has a duty to take reasonable steps to identify suitable alternative employment for employees on adoption leave who would otherwise be dismissed by reason of redundancy.

If at any time during adoption leave an employee's position becomes redundant, an additional obligation is placed on the School to offer any suitable alternative vacancy that exists. This means that any available job must be offered to an employee on adoption leave in preference to another employee who is not on adoption leave but whose job is also redundant. This is the case even if the other employee is better qualified for the position.

The alternative job must be offered to the employee before the existing contract comes to an end, and the new contract must take effect immediately afterwards. The fact that the employee is not ready to return to work at the time the job is made redundant, must be disregarded when considering whether or not to offer an alternative position. In other words, the employee's absence on adoption leave must not be used as a factor in the determination of whether or not the alternative job is suitable and, if it is suitable, it must be offered it irrespective of the timing of the employee's availability to take up the position.

Statutory Rights

An employee retains all statutory rights in respect of redundancy, including the right to a paid notice period (ie full pay) in accordance with statute and the contract of employment.

Statutory Adoption Pay

Once an employee has qualified for statutory adoption pay, they retain the right to to be paid for the full 39-week period even if made redundant during the adoption leave.

Further details on redundancy are available in the Redundancy Procedure.