

# ADOPTIVE PARENTS: RIGHTS TO LEAVE AND PAY



**This section gives information on the right to Statutory Adoptive Leave and Pay which is available to employees. The right to adoption and paternity leave and pay entitles eligible employees to take paid leave when a child is newly placed for adoption. Adoption Leave and Adoption Pay will be available to individuals who adopt. Where two people are adopting jointly, one member of a couple can take Adoption Leave and the other can take Paternity Leave and Paternity Pay. The couple will need to choose who gets what.**

## START DATES

Both paid adoption leave and paid paternity leave will be available to employees where an approved adoption agency notifies the adopter of a match with a child. Both adoption and Paternity Leave and pay will also be available to employees where an approved adoption agency notifies the adopter of a match with a child.

## ADOPTION LEAVE AND PAY ELIGIBILITY

To qualify for adoption leave, an employee must:

1. Be \*newly matched with a child for adoption by an approved adoption agency
2. Have worked continuously for their employer for 26 weeks leading into the week in which they are notified of being matched with a child for adoption

*\*Adoption leave and pay is not available in circumstances where a child is not newly matched for adoption, for example when a step-parent is adopting a partner's children.*

## LENGTH OF ADOPTION LEAVE

Adopters will be entitled to up to 26 weeks ordinary adoption leave followed immediately by up to 26 weeks additional adoption leave, a total of up to 52 weeks leave.

They can choose to start their leave:

- From the date of the child's placement (whether this is earlier or later than expected), or
- From a fixed date which can be up to 14 days before the expected date of placement.
- Leave can start on any day of the week.
- Only one period of leave will be available irrespective of whether more than one child is placed for adoption as part of the same arrangement.
- If the child's placement ends during the adoption leave period, the adopter will be able to continue adoption leave for up to eight weeks after the end of the placement.

## STATUTORY ADOPTION PAY

During their adoption leave, most adopters will be entitled to Statutory Adoption Pay (SAP) from their employers. Six weeks at the higher rate and 33 weeks at the lower rate. Statutory Adoption Pay will be paid by employers for up to 39 weeks providing you have 26 weeks of service at the date of placement. The rate of Statutory Adoption Pay will be the same as the standard rate of Statutory Maternity Pay which currently is £123.06 a week or 90% of your average weekly earnings if this is less. Adopters who have average weekly earnings below the Lower Earnings Limit for National Insurance Contributions will not qualify for SAP.

### **If you don't earn enough to qualify**

If you meet the other conditions but earn less than the lower earnings limit (LEL) for National Insurance contributions, you can still take unpaid adoption leave. You might get Income Support while on leave. Notice of intention to take adoption leave Adopters will be required to inform their employers of their intention to take adoption leave within 7 days of being notified by their adoption agency that they have been matched with a child for adoption, unless this is not reasonably practicable. They will need to tell their employers:

- When the child is expected to be placed with them
- When they want their adoption leave to start

Adopters will be able to change their mind about the date on which they want their leave to start providing they tell their employer at least 28 days in advance (unless this is not reasonably practicable). They will have to tell their employer the date they expect any payments of SAP to start at least 28 days in advance, unless this is not reasonably practicable.

Employers will have 28 days in which to respond to their employees' notification of their leave plans. An employer will need to write to the employee, setting out the date on which they expect the employee to return to work if the full entitlement to adoption leave is taken.

### **Matching certificate**

Employees will have to give their employer documentary evidence – a 'matching certificate' – from their adoption agency as evidence of their entitlement to SAP. Employers can also ask for this certificate as proof of entitlement to Adoptive Leave. Employees should ask their adoption agency for a matching certificate, which will include basic information on matching and expected placement dates.

### **Contractual benefits**

Employees are entitled to the benefit of their normal terms and conditions of employment, except for terms relating to wages or salary (unless their contract of employment provides otherwise), throughout their 26 week ordinary Adoption Leave period. However, most adopters will be entitled to SAP during this period. If the employee has a contractual right to Adoption Leave as well as the statutory right, he/she may take advantage of whichever is the more favourable. Any adoption pay to which he/she has a contractual right reduces the amount of SAP to which he/she is entitled.

During additional adoption leave, the employment contract continues and some contractual benefits and obligations remain in force, for example compensation in the event of redundancy and notice periods.

### **Return to work after adoption leave**

Adopters who intend to return to work at the end of their full adoption leave entitlement will not have to give any further notification to their employers. Adopters who want to return to work before the end of their adoption leave period, must give their employers 8 weeks notice of the date they intend to return.

### **Work During The Adoption Leave Period – "Keeping In Touch Days"**

Employees may, by agreement with their employer, do up to ten days' work – known as "Keeping in Touch Days" – under their contract of employment during the adoption leave period. Such days are different to the reasonable contact that employers and employees may make with one another as during Keeping in Touch Days employees can actually carry out work for the employer, for which they will be paid.

## Protection from detriment and dismissal

Employees will be protected from suffering detriment or unfair dismissal for reasons related to taking or seeking to take, adoption leave. Employees who believe they have been treated unfairly will be able to complain to an Employment Tribunal.

## Termination of Placement

If, after the employee has begun Adoptive Leave, a child's placement is terminated and the child returned to the adoption agency (or if the child dies), the employee will continue to be entitled to Adoptive Leave for up to 8 weeks after the placement ends – provided this period of 8 weeks does not extend beyond the date on which ordinary or additional Adoptive Leave would otherwise have ended.

## PATERNITY LEAVE AND PAY (ADOPTION)

Following the placement of a child for adoption, the right to paternity leave and pay will give eligible employees the right to take paid leave at the Statutory Paternity Pay rate to care for their new child or support the adopter.

## Eligibility

Employees will need to satisfy the following conditions in order to qualify for Paternity Leave. They must:

- Have or expect to have responsibility for the child's upbringing
- Be the adopter's spouse or partner
- Have worked continuously for their employer for 26 weeks leading into the week in which the adopter is notified of being matched with a child

Employers can ask their employees to provide a self-certificate (see below for further details) as evidence that they meet these eligibility conditions.

## Length of paternity leave

Eligible employees will be entitled to choose to take either one week or two consecutive weeks paid paternity leave (not odd days). They can choose to start their leave:

- From the date of the child's placement (whether this is earlier or later than expected) or
- From a chosen number of days or weeks after the date of the child's placement (whether this is earlier or later than expected), or
- From a chosen date.

Leave can start on any day of the week on or following the child's placement but must be completed within 56 days of the child's placement. Only one period of leave will be available to employees irrespective of whether more than one child is placed together.

## Statutory Paternity Pay

During their paternity leave most employees will be entitled to Statutory Paternity Pay (SPP) from their employers. It can be taken in a block of one week or two weeks but if the employee chooses to take one week off, it is not possible to take the other week at a later stage. The leave can start on any day of the week but it must finish within 56 days of the of the baby being born or the adoption placement. If your weekly average earnings is £90 – Lower Earnings Limit (this amount may be subject to change each year), SPP is paid for one or two consecutive weeks. If you qualify for SPP you will be paid £123.06 pw or 90% of your weekly average earnings if this is less.

## Notice of intention to take paternity leave

Employees will be required to inform their employers of their intention to take paternity leave within seven days of the adopter being notified by their adoption agency that they have been matched with a child, unless this is not reasonably practicable.

They will need to tell their employers:

- When the child is expected to be placed
- Whether they wish to take one or two weeks leave
- When they want their leave to start

Employees will be able to change their mind about the date on which they want their leave to start

providing they tell their employer 28 days in advance (unless this is not reasonably practicable). Employees will have to tell their employers the date they expect any payments of SPP to start at least 28 days in advance, unless this is not reasonably practicable.

### **Self-certificate**

Employees will have to give their employers a completed self-certificate as evidence of their entitlement to SPP. Employers can also request a completed self-certificate as evidence of entitlement to paternity leave. The self-certificate must include a declaration that the employee meets certain eligibility conditions and provide the information specified above as part of the notice requirements. By providing a completed self-certificate, employees will be able to satisfy both the notice and evidence conditions for paternity leave and pay. Employers will not be expected to carry out any further checks.

### **Contractual benefits**

Employees are entitled to the benefit of their normal terms and conditions of employment, except for terms relating to wages or salary (unless their contract of employment provides otherwise) throughout their paternity leave. However, most employees will be entitled to SPP for this period. If the employee has a contractual right to Paternity Leave as well as the statutory right, he/she may take advantage of whichever is the more favourable. Any paternity pay to which he/she has a contractual right reduces the amount of SPP to which he/she is entitled.

### **Return to work after paternity leave**

Employees will be entitled to return to the same job following paternity leave.

### **Protection from detriment and dismissal**

Employees will be protected from suffering unfair treatment or dismissal for taking or seeking to take, Paternity Leave. Employees who believe they have been treated unfairly will be able to complain to an Employment Tribunal.

### **Child Benefit**

Don't forget that you are now eligible for child benefit.

### **TAX CREDITS AND OTHER FINANCIAL PROVISIONS**

All new parents should check with the HM Revenue and Customs about tax credits and the Government has an Internet site which provides information on a whole range of financial issues for parents and the site can be accessed as follows: <http://www.direct.gov.uk/Homepage/fs/en>

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