

Adoption Leave Policy

Introduction

This document is designed to assist you in understanding what the basic statutory and occupational entitlements to Adoption Leave and Pay are. If you have any queries after reading this document please refer them to Human Resources.

The rules are different depending on whether a child is adopted from within the UK or from overseas.

Adoption Leave and Entitlement

Eligible employees can take up to 52 weeks Statutory Adoption Leave. The first 26 weeks is known as 'Ordinary Adoption Leave' and the last 26 weeks as 'Additional Adoption Leave'. Either adoptive parent can take the leave but not both. However, the other parent may be able to take paternity leave.

The entire Adoption Leave period counts towards an employee's period of continuous service for the purpose of entitlement to other statutory employment rights.

Only one period of adoption leave can be taken regardless of the number of children adopted at the time of placement.

Employees eligible for adoption leave will have the right to take paid time off to attend up to five adoption appointments. Their partner/co-adopter will have the right to take unpaid time off to attend up to two appointments.

If an employee is adopting the children of a partner (i.e. as a step-parent) the legal entitlement is to parental leave, not adoption leave.

A foster parent may be able to take Adoption Leave if the child that the employee has fostered is matched with them for adoption by a UK adoption agency (adoption via court does not count) or the child is placed with the employee for adoption.

Notification

UK Adoptions

An employee must give written notice to Human Resources as to when the child is expected to be placed for adoption and the date on which they wish their leave to begin. This should be no more than seven days after the day they are notified of having been matched with a child. The written notification should include evidence of the entitlement and will include the following:

- The name and address of the UK adoption agency;
- The date on which the employee was notified that he/she had been matched with the child; and
- The expected date of placement.

If the date of placement changes, the employee should discuss the situation with their line manager or their HR officer. Statutory Adoption Leave can be varied providing notice is given 28 days before the original start date or 28 days in advance of the new date. If it is not reasonably practicable the

employee should give as much notice as possible.

If the employee starts their adoption leave and the placement is delayed for whatever reason, the employee cannot stop leave and start it again at a later date.

The earliest an employee can begin their adoption leave and pay is 14 days before the expected date of placement. Otherwise, an employee can choose to begin their leave and adoption pay on:

- The date on which the child is placed with them for adoption: *or*
- A predetermined date no more than 14 days before the date on which the child is expected to be placed for adoption (and no later than the expected date of placement)

Once the notice has been received from the employee, Human Resources will write to the employee within 28 days giving notice of when the leave will end.

Overseas Adoptions

An employee is required to give notice in 3 stages:

First Stage

The date on which they received official notification and the date the child is expected to enter the UK. This information must be given within 28 days of receiving official notification.

Second Stage

An employee is required to give 28 days notice of the date of Statutory Adoption Leave. This date can be varied providing notice is given 28 days in advance of the new date or as soon as reasonably practicable.

Third Stage

An employee must notify the Council of the date the child entered the UK. This must be done within 28 days of the child's date of entry.

An employee must tell the Council as soon as reasonably practicable if they find out that the child will not be entering the UK.

Once the notice has been received from the employee, Human Resources will write to the employee within 28 days giving notice of when the leave will end.

SAL can start from either the date the child enters the UK or a fixed date no later than 28 days after the date the child enters the UK.

SAL cannot be used to cover the period an employee may spend travelling overseas to arrange the adoption or to visit the child.

Adoption Pay

To be eligible for statutory adoption leave and pay an employee must:

- Have been matched with a child to be placed with them by a UK adoption agency and have a "matching certificate" to confirm this. An employee adopting a child from outside the UK must have a certificate of eligibility to adopt from the Department of Health and

confirmation that an application to adopt has been agreed by the relevant local authority.

- Have notified the agency that they agree that the child should be placed with them and a date for placement.
- Notify HR of when they want to receive Statutory Adoption Pay at least 28 days before the date they want it to begin or as soon as is reasonably practicable.
- Have average weekly earnings at or above the lower earnings limit for national insurance which applied at the end of the matching week.
- Statutory Adoption Pay (SAP) is paid for a maximum of 39 weeks. Please contact payroll for current rates.

If an employee, irrespective of the number of hours worked per week, meets all of the conditions set out above, they qualify for SAP even if they do not intend to return to work after the adoption of the child.

Arun Adoption Pay

In addition to SAP qualifying employees are entitled to the following payment:

Weeks 1-6 = 90% of your actual average weekly earnings offset against your first 4 weeks of SAP.

Weeks 7-18 = 12 weeks of half pay paid alongside standard rate of SMP, provided it does not exceed a normal weeks salary.

Weeks 19-39 standard rate of SMP.

If you are an Essential Car User, this will be paid in full throughout the adoption pay period.

To qualify for Arun Adoption Pay (AAP) and leave, you must satisfy the following conditions:

- Have continuous service with Arun District Council of one year or more by the week in which the adopter was notified of having been matched with a child, irrespective of the number of hours worked per week.
- You must return to work for at least 3 months to qualify for Arun Adoption Pay and satisfy all other conditions for SAP entitlement. If you do not return to work any payments above SAP will have to be paid back to the Council, unless circumstances are exceptional.
- Where the adoptive parents are both employed by the Council, Adoption Leave is only available to one of them. The other partner is entitled to paternity leave.

Method of Payment

SAP and Arun Adoption Pay are treated like normal earnings in that they are subject to PAYE Income Tax, National Insurance and Pension contributions. The method and time of payment does not change, but your payslip will be sent to your home address.

Any deduction which can lawfully be made from pay can also be made from SAP and AAP. Any voluntary deductions will continue to be made as before unless you request otherwise.

Pension Contributions

If you are a member of the Local Government Pension Scheme, the following conditions apply during your Adoption absence regarding contributions:

You must pay Pension contributions on the adoption and contractual pay actually received during paid adoption leave.

Contributions are deemed to be full contributions even though they may be less than the normal contributions that would be paid if you were working and being paid normally. The period of paid adoption leave is treated, for Pension purposes, as if it was a period throughout which you were working normally and receiving the pay likely to be paid for doing so.

During the unpaid period of adoption leave. You can choose to pay Pension contributions. The rate of contributions that applies is the rate that was payable at the end of the paid adoption leave. If you choose to make Pension contributions for a period of unpaid adoption absence you must inform HR/Payroll Services, in writing, no later than 30 days after either the date on which you return to work or the day which you cease employment with the Council.

Keeping in Touch Days (KIT)

An employee is able to take up to ten days work or training during adoption leave without bringing the leave to an end or losing adoption pay. KIT days can be taken at any point during the leave period and any work carried out on a particular day will count as a day's work.

Neither the employer nor an employee can insist on work being carried out during adoption leave and adoption leave cannot be extended if an employee chooses to work any of these days.

Each agreed KIT day will be paid at an employee's contracted daily rate of pay. This will be offset against any adoption pay he/she is receiving at the time.

Contact during Adoption leave

Reasonable contact can be made from time to time by HR or the line manager during an employee's adoption leave to discuss, for example, the return to work. An employee on adoption leave should also be offered their annual appraisal if this falls during the adoption leave period. Contact can be made by telephone, email, letter or in person, and will depend on any agreement made before the employee's leave commences.

The Right to Return to Work

An employee is not required to give notice of their intention to return to work unless the proposed return is before the end of the adoption leave period.

An employee who qualifies for OAL and who wants to change the return date, must give at least 7 days written notice before the end of the 26 weeks adoption leave period. Where the notice given is less than 7 days, the Council may postpone the return to ensure 7 days' notice but may not postpone beyond the end of the adoption leave period.

Where AAL applies and an employee wants to change their return date at least 21 days' notice before the earliest of the old or proposed return date must be given. Where the notice given is less than 21 days, the Council may postpone the return to ensure 21 days' notice but may not postpone beyond the end of the adoption leave period.

An employee who returns to work during or at the end of her OAL period is entitled to return to the job in which they were employed before their absence on no less favourable terms and conditions than had they not been absent.

An employee who returns to work after a period of AAL is entitled to return to the job in which they were employed before their absence except when it is not reasonably practicable. In these circumstances an employee is entitled to return to another job that is both suitable and appropriate for them to do, on terms and conditions that are no less favourable than those for their original job.

An employee is entitled to benefit from any general improvements to the rate of pay or holiday entitlement which may have been introduced for their grade or class of work during their absence.

Sickness when due to return to work

Where an employee is unable to return after their leave due to sickness, the normal sick leave procedures will apply. A Medical Certificate must be provided on the same basis as other employees.

Employee not returning to work

Where an employee does not want to return to work after their SAL, notice must be given as required by their contract of employment. As long as the employee specifies the date on which they wish to resign (eg the date they were due back after SAL) their leave continues.

An employee who does not return to work is not required to pay back any SAP that they have received. However, OAP will have to be repaid to the Council unless there are exceptional circumstances. If an employee terminates their contract before the end of the SAP period, payment will continue unless they have started work for another employer.

Annual Leave Entitlement

An employee continues to accrue annual leave throughout their adoption leave. Annual leave can not be taken during adoption leave but can be taken before and/or after adoption leave.

Employees are encouraged to take any outstanding annual leave due to them before commencing adoption leave. Employees should take leave where possible in the year that the entitlement is for, therefore, if adoption leave crosses over into the next leave year, employees should try to use their full year's entitlement, before starting adoption leave.

If the employee is unable to take her annual leave during the leave year she may carry forward all accrued leave to the following year so that the employee can take this at some other time. This includes Bank Holidays.

The Council cannot pay an employee in lieu of any untaken statutory leave unless the contract is terminated.

Protection against detriment or dismissal

Employees are protected from suffering a detriment or dismissal for taking, or seeking to take, adoption leave.

Less favourable treatment of an employee because they are absent on adoption leave is unlawful. Examples of detrimental treatment include: failure to notify of any job vacancies, denial of promotion, facilities or training opportunities.

It is automatically unfair to dismiss an employee for reasons related to adoption leave.

Any decision to dismiss an employee who is on or has recently returned from adoption leave could still be fair as long as it is unrelated to their adoption leave. In these circumstances the employer is obliged to provide written reasons for the dismissal.

Redundancy

If a redundancy situation arises whilst an employee is on adoption leave (OAL or AAL), and it is not possible to continue to employ the employee under their existing contract of employment, they will be offered any suitable available vacancy. An employee does not need to express an interest. This gives absolute more favourable treatment to an employee who has been issued with notice of redundancy and is on adoption leave. The work offered must be both suitable and appropriate for them to do and must not be substantially less favourable than their previous contract.

If the alternative role does not satisfy these conditions, it is not suitable alternative employment and the employee is not entitled to be offered the role automatically.

This special treatment does not apply before adoption leave commences or once the employee has returned to work.

Changing working hours on return to work

An employee returning to work may make a request to work flexibly either on a temporary or a permanent basis. The regulations do not give any right to work flexibly but they make it easier for an employee to make the request and have it properly considered.

An employee wishing to explore this option should follow the procedure laid down in the Council's Flexible Working Policy. Application should be made to HR at least 28 days prior to an employee's return to work date to allow due time for the request to be considered.

Sickness Leave entitlement

Adoption leave cannot be treated as sick leave and is not therefore taken into account when calculating sick leave entitlement. Equally an employee cannot claim Statutory Sick Pay at the same time as claiming SAP.