



Adoption/Surrogacy Policy

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Surrogacy and Adoption Leave

1.1 An employee who adopts a child through

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- i. an approved adoption agency or
- ii. is the intended parent in a surrogacy arrangement who meets the criteria to apply for a parental order

are both entitled to up to 52 weeks' adoption/surrogacy leave. The employee's entitlement is to take up to 26 weeks' ordinary adoption/surrogacy leave followed immediately by up to 26 weeks' additional adoption/surrogacy leave. The employee's maximum entitlement is thus to take up to 52 weeks' adoption/surrogacy leave.

1.2 All employees who take adoption/surrogacy leave have the right to return to work at any time during either ordinary adoption/surrogacy leave or additional adoption/surrogacy leave subject to their following the correct notification procedures as set out below.

Statutory Adoption/Surrogacy Pay and Leave

2.1 Payments for employees who have less than 1 year's continuous employment with their employer

- for adoption at the beginning of the 26th week before being matched with a child and
- for surrogacy – by the 15th week before the Expected Week of Childbirth (EWC)

shall be entitled to Statutory Maternity Pay (SMP), where eligible.

2.2 Employees who qualify for statutory adoption/surrogacy leave will also qualify for statutory adoption/surrogacy pay provided that their average weekly earnings are not less than the lower earnings limit for national insurance contributions. Statutory adoption/surrogacy pay is payable for up to 39 weeks at a rate set by the Government for the relevant tax year. In the first six weeks of the adoption/surrogacy pay period, statutory adoption/surrogacy leave will be paid at 90% of the employee's normal weekly earnings.

2.3 Statutory adoption/surrogacy pay is treated as earnings and is therefore subject to PAYE and national insurance deductions.

Enhanced Adoption/Surrogacy Pay

2.4 Payments for employees who have completed 1 year's continuous employment with their employer by

- for adoption - 26 weeks before matched with a child and

- for surrogacy - 15 weeks before the EWC shall be as follows:-
- (i) For the first six weeks of absence an employee shall be entitled to nine-tenths of a week's pay offset against payments made by way of Statutory Maternity Pay (SMP) or Maternity Allowance (MA) for employees not eligible for SMP.
 - (ii) An employee who declares in writing that she intends to return to work will for the subsequent 12 weeks' absence receive half a week's pay **plus** SMP, where eligible, without deduction except by the extent to which the combined pay and SMP (or MA and any dependant's allowances if the employee is not eligible for SMP) exceeds full pay. Alternatively the equivalent amount (i.e. 6 weeks' pay) may be paid on any other mutually agreed distribution.
 - (iii) For employees not intending to return to work payments during their adoption/surrogacy leave period following the first 6 weeks will be their entitlement to SMP (currently 39 weeks in total), where eligible.
 - (iv) Payments made by the Council during adoption/surrogacy leave under (ii) above shall be made on the understanding that the employee will return to the Council employment for a period of at least three months, which may be varied by the Council on good cause being shown and, in the event of her not doing so, she shall refund the monies paid, or such part thereof, if any, as the Council may decide. Payments made to the employee by way of SMP are not refundable.

Timing of Adoption/Surrogacy leave

- 3.1 Adoption leave can start on the day the child is placed for adoption or for surrogacy the expected week of childbirth, or up to 14 days earlier.
- 3.2 In order to make administration as easy as possible, the employee should discuss the timing of his/her adoption leave with his/her line manager as early as possible.

Notice requirements

- 4.1 In order to be entitled to take adoption leave and receive statutory adoption pay, the employee is required to give the Council written notification of his/her intention to take adoption leave no later than seven days after the date on which notification of the match with the child was provided by the adoption agency. Notice, which must be in writing if the Employer requests it, must specify the date the child is expected to be placed with the employee for adoption and the date the employee intends his/her adoption leave to start.
 - 4.2 The employee is permitted to bring forward his/her adoption leave start date, provided that he/she advises the Council in writing at least 28 days before the new start date or, if that is not possible, as soon as reasonably practicable. The employee may also postpone his/her adoption leave start date, provided that he/she advises the Council in writing at least 28 days before the original proposed start date or, if that is not possible, as soon as reasonably practicable. The employee must also, if his/her employer requests it, provide evidence of entitlement to adoption leave and pay by producing a "matching certificate" from the adoption agency.
 - 4.3 Any failure to give proper notice of an intention to start adoption leave will be regarded as a
- Policies and Procedures/Current Policies/Adoption-Surrogacy Policy – Approved Council March 2022

disciplinary offence, leading potentially to disciplinary sanctions for misconduct if appropriate.

- 4.4 Within 28 days of receiving the employee's notice of intention to take adoption leave, the Employer will write to the employee confirming the latest date on which the employee must return to work after adoption leave.

Rights during Adoption/Surrogacy leave

- 5.1 During ordinary adoption/surrogacy leave and additional adoption/surrogacy leave, all terms and conditions of the employee's contract except normal pay will continue. Salary/wages will be replaced by statutory adoption/surrogacy pay and enhanced adoption/surrogacy pay if the employee is eligible for it.
- 5.2 This means that, while sums payable by way of wages or salary may cease, all other benefits will remain in place. For example, holiday entitlement will continue to accrue and pension contributions will continue to be paid.
- 5.3 Employees are encouraged to take any outstanding holiday due to them before the commencement of adoption/surrogacy leave. Employees are reminded that holiday must be taken in the year that it is earned.

Contact during Adoption/Surrogacy leave

- 6.1 The Council reserves the right to maintain reasonable contact with employees during adoption/surrogacy leave. This may be to discuss employees' plans for return to work, to discuss any special arrangements to be made or training to be given to ease their return to work or to update them on developments at work during their absence.

Time off to attend adoption appointments

- 7.1 Employees who are adopting a child are entitled to take time off to attend adoption appointments.
- 7.2 An employee adopting a child alone is entitled to take paid time off to attend up to five adoption appointments (under s.57ZJ of the Employment Rights Act 1996). Where an employee is part of a couple jointly adopting a child, the couple can elect for one of them to take paid time off to attend up to five adoption appointments (under s.57ZJ of the Employment Rights Act 1996). The other can elect to take unpaid time off to attend up to two adoption appointments (under s.57ZL of the Employment Rights Act 1996).
- 7.3 The purpose of the appointment is to enable the employee [and his/her partner] to have contact with the child (for example, to bond with him/her before the placement) and for any other purpose connected with the adoption (for example, to meet with the professionals involved in the care of the child).
- 7.4 The appointment must have been arranged by or at the request of the adoption agency. The time off must be taken before the date of the child's placement for adoption with the employee.

- 7.5 The organisation will ask the individual for proof of the date and time of the appointment and that the appointment has been arranged by or at the request of the adoption agency (for example, a letter or email from the adoption agency).
- 7.6 In addition, if the employee is adopting jointly, the organisation will ask the individual to sign a declaration, to be submitted alongside the documentary evidence, confirming that he/she has elected to exercise his/her right under either s.57ZJ or s.57ZL of the Employment Rights Act 1996 to take time off to attend an adoption appointment. The organisation will ask for the declaration on the first occasion on which the individual asks for time off to attend an adoption appointment.

Keeping-in-touch days

- 8.1 Employees can agree to work for the Council (or to attend training) for up to 10 days during their adoption/surrogacy leave without that work bringing their adoption/surrogacy leave to an end and without loss of a week's statutory adoption/surrogacy pay. These are known as "keeping-in-touch" days. Any work carried out on a day shall constitute a day's work for these purposes.
- 8.2 The Council has no right to require employees to carry out any work and employees have no right to undertake any work during their adoption/surrogacy leave. Any work undertaken, and the amount of salary paid for any work done on keeping-in-touch days, is entirely a matter for agreement between employees and the Council.

Returning to work after Adoption/Surrogacy leave

- 9.1 The employee may return to work at any time during ordinary adoption/surrogacy leave or additional adoption/surrogacy leave, provided that he/she gives the appropriate notification. Alternatively, the employee may take his/her full period of adoption/surrogacy leave entitlement and return to work at the end of this period. If the employee wishes to return before the full period of adoption/surrogacy leave has elapsed, he/she must give at least eight weeks' notice in writing to the Council of the date on which he/she intends to return.
- 9.2 The employee has the right to resume working in the same job if returning to work from ordinary adoption/surrogacy leave. If the employee returns to work after a period of additional adoption/surrogacy leave, he/she is entitled to return either to the same job, or if this is not reasonably practicable, to another suitable job that is on terms and conditions not less favourable.
- 9.3 Failure to return to work by the end of adoption/surrogacy leave will be treated as an unauthorised absence unless the employee is sick and produces a current medical certificate before the end of the adoption leave period.
- 9.4 If the employee decides during adoption/surrogacy leave that he/she does not wish to return to work, he/she should give written notice of resignation to The Council as soon as possible and in accordance with the terms of his/her contract of employment.
- 9.5 **Return to work – Flexible Working arrangements**
The Council will consider a range of flexible working arrangements and support facilities for employees returning to work.

Surrogacy

- 10.1 Intended parents in a surrogacy arrangement who meet the criteria to apply for a parental order under the Human Fertilisation and Embryology Act 2008 and intend to apply or have applied for one will be eligible to take ordinary paternity leave and pay, adoption leave and pay and shared parental leave and pay.
- 10.2 The couple must elect which of them will take adoption leave. An employee who takes adoption/surrogacy leave in these circumstances can curtail his or her adoption leave and take shared parental leave with the other parent, provided that the parents both meet the relevant eligibility requirements.