

6. Employing and managing people

6.14.3 Adoption policy

Organisations should have a policy setting out an employee's rights to adoption leave and adoption pay, which takes into account minimum statutory entitlements. An employer must not subject an employee to a disadvantage or dismiss him or her for taking, or seeking to take, adoption leave.

The following sample policy is provided for guidance only and should not be regarded as an authoritative statement of the law.

Sample Adoption Policy and procedure

It is *<Name of organisation>*'s policy to comply with both the letter and spirit of the law on adoption rights. To this end its aim is to inform all employees of their entitlement to statutory adoption rights and to ensure that those rights are understood by employees who qualify.

An employee is entitled to take 52 weeks' statutory adoption leave and receive statutory adoption pay (SAP) for 39 weeks when they adopt a child, providing they meet the qualifying criteria as laid out below.

1. Entitlement to Statutory Adoption Leave (SAL)

The employee is entitled to take up to 52 weeks' statutory adoption leave.

The statutory adoption leave period is made up of 26 weeks' ordinary adoption leave followed immediately by 26 weeks' additional adoption leave.

2. Eligibility for Statutory Adoption Leave (SAL)

UK Adoptions

An employee is entitled to statutory adoption leave when they:

- have been matched with a child to be placed with them by a UK adoption agency
- have notified the agency that they agree that the child should be placed with them and agree the date of placement
- have been employed with this organisation for at least 26 weeks into the week in which they are notified of having been matched with the child

- have notified this organisation of when they want to take their statutory adoption leave no more than seven days after they are notified that they have been matched with a child Overseas adoptions

An employee is entitled to statutory adoption leave if they:

- have received **official notification** from the relevant UK authority of their eligibility to adopt a child from abroad
- have been employed with this organisation for at least 26 weeks by the time they have received official notification or by the time their statutory adoption leave is due to begin, whichever is later
- have given you the correct notification
- are the child's adopter. This is the person who will adopt or has adopted the child or, in a case where the child will be or has been adopted by two people jointly, whichever of the joint adopters has chosen to take adoption leave in respect of the child.

Official Notification for Overseas Adoptions

This is written notification issued by or on behalf of the relevant domestic authority that they have issued a certificate which confirms that the other or main adopter is eligible to adopt.

Joint and individual adoptions

Where a couple are adopting jointly, they can choose who will take statutory adoption leave and who (regardless of gender) will take statutory paternity leave (SPL).

If an employee is adopting individually, only they are eligible for statutory adoption leave, although their partner (regardless of gender) may be eligible for statutory paternity leave.

Foster parents who adopt a child

A foster parent can take statutory adoption leave if:

- the child that the employee fostered is then matched with them for adoption by a UK adoption agency. Adoption via a court order does not count.
- the child is then actually placed with them for adoption
- the usual notification and service criteria still apply. The adoption leave only relates to the actual placement for adoption - any period of foster caring does not count.

Special guardianships

Statutory adoption leave is not available to special guardianships.

Surrogacy

An employee who becomes a parent through an arrangement with a surrogate mother is not normally entitled to statutory adoption leave.

However, on becoming a parent, they could take parental leave (if they qualify) and/or annual leave.

3. When Statutory Adoption Leave can start

UK adoptions

An employee can choose to begin their adoption leave (and pay) on either of the following:

- the date on which the child is placed with them for adoption
- a pre-determined date no earlier than 14 days before the expected date of placement and no later than the expected date of placement

Overseas adoptions

Employees may choose to start their adoption leave (and pay) from either

- the date the child enters the UK; or
- a fixed date (as notified to you) no later than 28 days after the date the child enters the UK.

(NB: Statutory adoption leave is not meant to be used to cover the period employees spend travelling overseas to arrange the adoption or visiting the child. You could, however, allow the employee to take annual leave or unpaid leave for these purposes).

4. When Statutory Adoption Leave can end

The employee's Statutory Adoption Leave will usually end 52 weeks from their intended start of their adoption leave.

5. Notification procedures

UK adoptions

The employee should notify *<insert whom e.g. Line Manager>* no more than seven days after they are matched with a child:

- that they intend to take adoption leave
- when they intend to start it
- the date the child is expected to be placed with them for adoption

Overseas adoptions

The employee must give *<insert whom e.g. Line Manager>* notice in three stages

First stage

The employee must:

- inform *<insert whom e.g. Line Manager>* of the date on which they received official notification; and
- the date the child is expected to enter the UK.

Second stage

The employee must:

- give *<insert whom e.g. Line Manager etc>* at least 28 days' notice of the actual date they want their statutory adoption leave (and SAP if they qualify) to start. (The employee can give this notice at the first notification stage if they know the date).

Third stage (after the child has entered the UK)

Employees must:

- *<insert whom e.g. Line Manager>* the date the child entered the UK within 28 days of the child's date of entry.

Statutory adoption leave cannot start before the child enters the UK.

6. Changing the start date of Statutory Adoption Leave

The employee can change their intended start date providing they notify *<insert whom e.g. Line Manager >* of the new start date.

The employee must do this by whichever is the earlier of:

- 28 days before their adoption start date
- 28 days before their new adoption start date

If it is not reasonably practicable for the employee to provide this much notice, the employee should provide as much notice as possible.

7. Enhanced Adoption Leave

Statutory adoption leave arrangements can be enhanced to attract or retain employees. These arrangements should be a contractual right rather than a discretionary case-by-case basis to avoid direct or indirect discrimination.

Additional rights

8. Eligibility for Statutory Adoption Pay (SAP)

UK adoptions

An employee qualifies for statutory adoption pay (SAP) provided they have:

- been employed with this organisation for at least 26 weeks' extending into the week in which they are notified of having been matched with the child (the 'matching week')
- notified *<insert who e.g. line manager>* that they want to receive SAP at least 28 days, or as soon as is reasonably practicable, before they want payment to begin
- average weekly gross earnings (earnings before Tax and National Insurance) of £97.00

Overseas adoptions

An employee qualifies for statutory adoption pay (SAP) provided they have:

- received official notification

- been employed with this organisation for at least 26 weeks' into the week that they receive official notification or by the time they want to start their SAP to begin, whichever is later
- notified <insert who e.g. line manager> that they want to receive SAP at least 28 days, or as soon as is reasonably practicable, before they want payment to begin
- Average weekly gross earnings (earnings before Tax and National Insurance) of £97.00

Joint and individual adoptions

Where a couple are adopting jointly, they can choose who will take statutory adoption leave and pay and who (regardless of gender) will take statutory paternity leave and pay.

If an employee is adopting individually, only they are eligible for statutory adoption pay, although their partner (regardless of gender) may be eligible for statutory paternity leave and pay.

9. Rates and duration

Statutory adoption pay is payable at either:

- the standard weekly rate of £124.88, or
- 90 per cent of their average weekly earnings if this is lower than the standard weekly rate

Statutory adoption pay can be paid for no more than 39 weeks.

10. Working during Adoption Leave (Keeping in Touch Days)

Employees on Adoption Leave may work up to ten days during their Adoption Leave without affecting their entitlement to SAP. These days, termed 'Keeping in Touch' or 'KIT Days', can be used for any work completed under the employee's contract of employment, training or any activity undertaken for the purposes of keeping in touch with the workplace. The employee must be paid for the work they do at a rate which has been mutually agreed. The type of work to be undertaken must be discussed and agreed beforehand by <insert who e.g. line manager>.

<Name of organisation> cannot insist that the employee completes any work during their adoption leave and the employee is protected from suffering a detriment or being dismissed by refusing to complete a KIT day. Equally an employee cannot demand to work at any time during their adoption leave period.

For the purposes of this procedure a part of a day or a whole day will count as one KIT day. An employee's adoption leave will not be extended if a KIT day is used

11. Enhanced Statutory Adoption Pay

Statutory adoption pay can be enhanced to attract or retain employees. These arrangements should be a contractual right rather than a discretionary case-by-case basis to avoid direct or indirect discrimination.

Contractual benefits

(An employee's contract of employment continues throughout statutory adoption leave unless either you or the employee expressly ends it or it expires).

12. Annual leave

During Adoption Leave the employee will continue to accrue annual leave as though they were in work. *<State when annual leave year runs>*. The employee must take annual leave in the year that it is accrued. *<Insert rules regarding the carry-over of annual leave to the next leave year. Note that statutory annual leave cannot be carried over to the next year>*

(NB Whether or not the employee is receiving statutory and/or enhanced adoption pay, you should calculate the employer's contribution to an Occupational Pension Scheme (OPS) as though the employee is receiving a full salary while the employee is on adoption.

During any period that your employee is on additional adoption leave but not receiving any adoption pay e.g. during the last 13 weeks of additional adoption leave, you do not have to make any employer contributions to an OPS unless the contract of employment provides otherwise.

Employee contributions will therefore stop during any period of unpaid adoption leave).

13. Pay rises

An employee on adoption leave is entitled to benefit from any general improvements to the rate of pay. Any pay rises awarded during the period of adoption leave will take effect when the employee returns to work.

14. Training and development opportunities

Employees on adoption leave must be informed of any training or development opportunities.

15. Period of continuous employment

Statutory adoption leave counts towards an employee's period of continuous employment for the purposes of entitlement to other statutory employment rights, eg, the right to a redundancy payment.

16. Right to request flexible working patterns

Parents who have been employed by <Name of organisation> for at least 26 weeks and have, or expect to have responsibility for the upbringing of a child up to the age of 6, or 18 if the child is disabled, have the right to request flexible working patterns.

<Name of organisation> will give such requests serious consideration. In order to qualify for this right, a parent must meet certain criteria. <Organisations may find it useful to put a flexible working policy in place – see Information Sheet 6.14.4 Right to request flexible working>

17. Protection against detriment or dismissal

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

18. Returning to work after Adoption Leave

The employee does not have to give advance notice to <Name of organisation> of her intention to return to work at the end of their adoption leave. It will be assumed that the employee will come back to work on the date that <Name of organisation> notified as the end of the adoption leave period.

Employees wanting to return early from adoption leave must give <insert who e.g. line Manager/HR Manager> 8 weeks notice of their date of return. If he/she does not give 8 weeks notice, <Name of organisation> has the right to delay his/her return until 8 weeks have elapsed, or, until the original date of return (whichever occurs sooner).

The employee returning to work after OAL is entitled to return to the job in which he/she was employed before his/her absence, on the same terms and conditions of employment.

The employee returning to work after AAL is entitled to return to the job in which he/she was employed before his/her absence, on the same terms and conditions of employment.

If it is not reasonably practicable to do this, he/she should return to another job which is both suitable for him/her and appropriate for him/her to do in the circumstances, which are no less favourable than the original job.

19. Employees who do not wish to return to work after Adoption Leave

An employee who does not wish to return to work after their adoption leave must give <insert who e.g. line Manager/HR Manager> notice of this as required by their contract of employment.

Further information

ACAS

Tel: 08457 474747

www.acas.org.uk

Business Link

Tel: 0845 600 9 006

www.businesslink.gov.uk

HMRC Employer Helpline

Tel: 0845 7143143

WCVA / Wales TUC Cymru

The good employment code

Tel: 0800 2888 329

www.wcva.org.uk

Wales TUC Cymru

Tel: 029 20 347010

wtuc@tuc.org.uk

www.wtuc.org.uk

Disclaimer

The information provided in this sheet is intended for guidance only. It is not a substitute for professional advice and we cannot accept any responsibility for loss occasioned as a result of any person acting or refraining from acting upon it.

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