

Adoption Leave and Pay Policy

1.0 Introduction

- 1.1 This policy aims to support parents through employment matters relating to adoption, surrogacy and child fostering. Supporting employees through parental matters makes good business sense for Huntingdonshire District Council as the Council retains valuable knowledge and skills and contributes towards equal opportunity in employment.

2.0 Scope

- 2.1 This policy applies to all Council employees.
- 2.2 This policy does not apply if employees are claiming Maternity or Shared Parental entitlements.

3.0 Time-off to attend appointments

3.1 Adoption

An employee is entitled to be paid 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.

If the employee is adopting the child as a couple and the employee's partner (e.g. spouse or partner) is exercising this right, the employee is not entitled to paid time off. Instead, the employee is entitled to take up to six and a half hours off work on two occasions without pay in order to attend a pre-adoption appointment.

The employee must give their manager 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.

3.2 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 in respect of the child is entitled to take up to six and a half hours off work (unpaid) to attend two antenatal appointments with the woman carrying the child.

If requested to do so, the employee must give his or her line manager a written declaration stating:

- The date and time of the appointment.
- That the employee qualifies for the unpaid time off through his or her relationship with the child.
- That the time off is for the purpose of attending an antenatal appointment with the pregnant woman that has been made on the advice of a registered medical practitioner, nurse or midwife.

4.0 Adoption leave

4.1 An eligible employee can take up to 52 weeks' adoption leave, which is made up of 26 weeks' ordinary adoption leave followed immediately by 26 weeks' additional adoption leave.

Eligibility

An employee is eligible to take adoption leave if:

- The employee adopts a child within the UK through an approved adoption agency (**UK Adoption**).
- The employee adopts a child from overseas and has received a written "official notification" in respect of the child (**Overseas Adoption**). An official notification is a notification issued by the Secretary of State to the overseas authority concerned with the child's adoption, confirming that the adopter is eligible to adopt and has been assessed and approved as being a suitable adoptive parent.
- The employee is part of a couple who applies for a parental order in accordance with section 54 of the Human Fertilisation and Embryology Act 2008 (i.e. surrogate parents) in relation to a child born to a surrogate and the child's expected week of birth is on or after 5 April 2015 (**Surrogacy**).
- The employee is 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 (**Foster to Adopt**).

4.2 If the employee adopts a child as a couple (e.g. with their spouse, civil partner or partner) only one person in the couple is entitled to take adoption leave. The couple can choose which person takes adoption leave. The other adoptive parent may be entitled to take paternity leave if they meets the criteria.

5.0 Statutory adoption pay

5.1 An eligible employee will receive statutory adoption pay for a period of up to 39 weeks. The employee will receive:

- 90% of their average weekly earnings (before tax) for the first six weeks.

- Pay at the rate set by the Government or at 90% of the employee's average weekly earnings (if this is lower) for the following 33 weeks.

An employee will be entitled to statutory adoption pay if they:

- Satisfies the continuous employment rule.
- Satisfies the earnings rule.
- Gives their manager the correct notice and evidence.

5.2 **Continuous employment**

The employee must have worked for the Council for at least 26 weeks as at the end of the week in which the employee is notified of a match of adoption (**Qualifying Week**).

An employee who stops working before the Qualifying Week will not be entitled to statutory adoption pay. If the employee's employment ends (e.g. because of a dismissed or resignation) during or after the Qualifying Week, the employee can still qualify for statutory adoption pay. This includes employees who do not intend to return to work for the Council after adoption leave ends.

5.3 **Earnings**

The employee's average weekly earnings must be at least equal to the lower earnings limit for national insurance contributions.

The employee's average weekly earnings are calculated by averaging the employee's earnings over a period of eight weeks before the Qualifying Week (**Reference Period**). Any back-dated pay rises, arrears of pay, honoraria payments or salary deductions (e.g. salary sacrifice deductions) will be included in the calculation of the employee's average weekly earnings.

An employee who participates in a salary sacrifice scheme should consider whether they want to remain in the scheme and continue to receive contractual non-cash benefits throughout the adoption leave or opt-out of the scheme so that their statutory adoption pay will be calculated using a higher salary.

Where an employee receives a pay rise between the start of the Reference Period and the end of their adoption leave, his or her statutory adoption pay will be recalculated to take account of the pay rise. Any arrears will be paid to the employee.

- 5.4 If the employee is adopting with their partner, the employee is not entitled to receive statutory adoption pay if the employee's partner has already elected to receive statutory adoption pay.

5.5 An employee will lose their entitlement to statutory adoption pay if:

- The employee returns to work for the Council or a new employer after the child is matched but before the full entitlement to statutory adoption pay has been paid.
- The employee does work for the Council over and above the 10 keeping-in-touch days while he or she is receiving statutory adoption pay. The employee will not receive statutory adoption pay for the week in which she performs work over and above the 10 keeping-in-touch days.
- The employee is taken into legal custody.
- The child stops living with the employee. Statutory adoption pay will end eight weeks after the end of the week in which the child stops living with the employee, unless it was due to end earlier.

6.0 Occupational adoption pay

6.1 Eligibility

The Council provides occupational adoption pay to employees who meet the following criteria.

- The employee has worked continuously for the Council (and/or another local authority) for at least one year as at the 11th week before the expected week of placement.
- The employee returns to work for the Council (or another local authority) for at least three months immediately after adoption leave.
- The employee indicates in writing his or her intention to return to work for the Council for at least 3 months.
- The employee gives the Council the correct notice and evidence.

6.2 An eligible employee will receive occupational adoption pay at the rate of:

- 90% of the employee's average weekly earnings (before tax) in weeks 1-6 (inclusive) of the employee's adoption leave. This amount will be offset against any entitlement to statutory adoption pay (i.e. the employee cannot receive greater than 90% of their average weekly earnings).
- 50% of his or her average weekly earnings (before tax) in weeks 7-18 (inclusive) of the employee's adoption leave (**Additional Occupational Adoption Pay**). This entitlement is in addition to any entitlement to statutory adoption pay but is limited so that statutory adoption pay plus occupational adoption pay does not exceed the employee's average weekly earnings.

6.3 If an employee is paid Additional Occupational Adoption Pay but does not return to work for the Council or another local authority for at least three months immediately after adoption leave, the employee must repay any Additional Occupational Adoption Pay he or she received to the Council. The amount to be repaid is calculated as a proportion of the time worked upon return (e.g. an employee who

returns for two months will be required to pay one third of the occupational adoption pay).

7.0 Notice and evidence requirements

7.1 UK adoption

No later than seven days after the date the employee is notified of the match by the adoption agency, the employee must give their manager written notice of:

- The employee's intention to take adoption leave.
- The date the child is expected to be placed for adoption or, if the child has already been placed, the date of placement.
- The date on which the employee intends to start adoption leave and pay.
- The name and address of the adoption agency.
- The date on which the employee was informed by the adoption agency of the match.
- The date on which the adoption agency expects to place the child with the employee.

The employee must confirm the above in writing by submitting an **Adoption Leave Form**. The employee must attach a matching certificate from the approved adoption agency to the form.

7.2 Overseas adoption

No later than 28 days after the date the employee receives an official notification or within 28 days of the employee's completion of 26 weeks' continuous service (if this is later), the employee must give his or her manager notice of:

- The employee's intention to take adoption leave.
- The date on which the official notification was received.
- The date the child is expected to enter Great Britain.

The employee must confirm the above in writing by submitting an **Adoption Leave Form**. The employee must attach a copy of the official notification to the form. Within 28 days of the child's entry into Great Britain, the employee must give their manager written notice of the date the entry occurred.

7.3 Additional evidence

At least 28 days before the date on which the employee expects to start adoption leave or, if that is not reasonably practicable, as soon as is reasonably practicable, an employee who is eligible for adoption pay must also provide evidence of:

- The employee's name and address.
- The name and address of the adoption agency.

- The date on which the employee was informed by the adoption agency of the match (UK adoption) or on which the official notification was received (overseas adoption).
- The date on which the child is expected to be placed for adoption or, if the child has already been placed for adoption, the date of the placement.

Generally this information should be found in the matching certificate or official notification. Where it is not, the employee must provide additional documentary evidence. In addition, the employee must also confirm the following by completing an **Adoption Pay Form**.

- The date on which the employee expects to start statutory adoption pay.
- A declaration that the employee has elected to receive statutory adoption pay and not statutory paternity pay.

7.4 Contact HR Advisory for further details on surrogacy and foster to adopt arrangements.

8.0 Starting adoption leave and pay

- 8.1 An employee can start adoption leave either on the day the child is placed with the employee or up to 14 days earlier.
- 8.2 The employee must give their manager at least 28 days' notice of the start date for adoption leave. The Council will write to the employee within 28 days confirming the adoption leave start and end dates (**Adoption Leave Letter**).
- 8.3 Employees can change the start date of the adoption leave by giving their manager at least 28 days' written notice of the revised start date.

9.0 Payment of adoption pay

- 9.1 The Council will pay adoption pay into the employee's bank account on their normal pay date. Adoption pay is treated as earnings and is therefore subject to tax and national insurance deductions.
- 9.2 The employee can elect to receive the Additional Occupational Adoption Pay over 12 weeks, 33 weeks or as a lump sum on return to work.

10.0 Rights during adoption leave

- 10.1 All terms and conditions of an employee's contract of employment continue during adoption leave except normal pay (e.g. annual leave continues to accrue and Council policies and procedures continue to apply).

10.2 Pension contributions continue to be paid during any period of paid adoption leave. Employees should contact the LGSS Pensions Service to find out more about how adoption leave may affect their pension, including during unpaid periods of adoption leave.

10.3 If the employee participates in a salary sacrifice scheme (e.g. Childcare Voucher Scheme) and:

- The employee is not entitled to occupational adoption pay, the Council will fund 100% of the salary sacrifice benefit during maternity leave.
- The employee receives occupational adoption pay, the Council will make deductions from the employee's occupational adoption pay. Once occupational adoption pay ceases, the Council will fund 100% of the salary sacrifice benefit for the remainder of adoption leave.

In relation to a funded period:

- If the employee resigns, the Council will fund salary sacrifice benefits for complete months of service only.
- If the employee is made redundant, the Council will fund the salary sacrifice benefits up to the employee's leaving date.

10.4 **Keeping-in-touch days**

The Council cannot require an employee to carry out work and an employee has no right to undertake work during his or her adoption leave. However, an employee can agree with his or her manager to work up to 10 days during adoption leave without bringing adoption leave or statutory adoption pay (if any) to an end. These are known as "keeping-in-touch" (**KIT**) days. The employee and their manager may agree, for example, for the employee to work a KIT day to attend a training course or to conduct a performance appraisal.

If an employee works a KIT day, he or she should not work more than his or her normal working hours. The employee will be paid as follows.

- If the employee works for four hours or less, he or she will be paid for four hours of work.
- If the employee works for 4-8 hours, he or she will be paid for eight hours of work.

Pay is based on the employee's normal rate of pay and is offset against any entitlement to statutory adoption pay and occupational adoption pay. The employee must complete a **KIT Day Claim Form** on each KIT day so that appropriate payment can be arranged.

Employees should be aware that each day an employee works counts as one full KIT day regardless of the number of hours worked. An employee will lose any entitlement to statutory adoption pay for the week in which he or she performs

work over and above the 10 keeping-in-touch days. Accessing IT systems during adoption leave can count as work and therefore can count towards a KIT day.

- 10.5 An employee is not entitled to contractual sick pay while on adoption leave. An employee is not entitled to statutory adoption pay for any statutory adoption pay week in which the employee is entitled to be paid statutory sick pay.
- 10.6 For every bank holiday that falls during a period of adoption leave, an employee is entitled to accrue one day of annual leave.
- 10.7 An employee continues to accrue annual leave during adoption leave. An employee can take annual leave during adoption leave in accordance with the Annual Leave Policy.

If an employee takes annual leave during adoption leave, they will not be entitled to occupational adoption pay during the period of annual leave. Employees should also be aware that they may lose any entitlement to statutory adoption pay if they choose to take annual leave in the first 39 weeks of adoption leave. As a result, employees are encouraged to take annual leave during an unpaid period of adoption leave.

- 10.8 An employee employed on a term-time only contract receives payment for their annual leave entitlement in 12 monthly instalments, along with their normal pay (i.e. it is incorporated into the salary). During adoption leave, a term-time only employee's annual leave will continue to be paid monthly in addition to any adoption pay (statutory or occupational).

10.9 **Redundancy**

If an employee is made redundant during adoption leave:

- The employee will retain any entitlement to statutory adoption pay, if the employee is made redundant after the Qualifying Week.
- The employee will retain any right to receive their full entitlement to occupational adoption pay.
- The employee is entitled to receive full pay during their notice period.

The Redundancy Policy otherwise applies.

- 10.10 An employee must not be dismissed for any reason directly connected to taking adoption leave or refusing to work KIT days.

11.0 Return to work

- 11.1 An employee is entitled to return to work at any time during adoption leave provided they comply with the notice requirements. During adoption leave, the Council may make reasonable contact with the employee to help plan the return to

work (e.g. to inform the employee of significant workplace developments, learning and development opportunities or job vacancies).

- 11.2 It is assumed that the employee will return to work on the date confirmed in the Adoption Leave Letter or, if no date was confirmed, 52 weeks after adoption leave begins.
- 11.3 If the employee wants to return to work earlier or later they must give their manager at least eight weeks' written notice. If the employee does not do so they may not be able to return to work until eight weeks after the date notice is given.
- 11.4 If the child's placement ceases during the employee's adoption leave, the employee will continue to be entitled to adoption leave and pay (if any) for up to eight weeks after the placement ends. Employees must return to work within eight weeks of the placement ending or at the end of the ordinary adoption leave or additional adoption leave, if this is sooner. The employee must give the Council eight weeks' notice of their return to work.
- 11.5 Employees who return to work from ordinary adoption leave (that is, in the first 26 weeks) have the right to resume working in the same job. If the employee returns to work after a period of occupational adoption leave (that is, after 26 weeks), he or she is entitled to return to the same job or, if this is not reasonably practicable for the Council, to another suitable job which is on terms and conditions not less favourable.
- 11.6 An employee who wants to return to work on a more flexible working arrangement (e.g. reduction in hours or change in working pattern) can make an application under the Flexible Working Policy.
- 11.7 A fixed-term employee is eligible to claim adoption leave and pay provided they meets the relevant requirements. If the employee's contract terminates during adoption leave, this will end the employee's adoption leave as well as employment. The employee may still receive statutory adoption pay for its total duration.

12.0 Consecutive periods of adoption leave

- 12.1 Where an employee is matched with two children in a short space of time, he or she can take consecutive periods of adoption leave without a break between them provided the employee gives his or her manager the correct notice in relation to the second period of adoption leave.
- 12.2 To be eligible for a second period of statutory adoption pay, the employee must satisfy the continuous employment rule and the earnings rule. If the employee's Reference Period for the second period of statutory adoption pay falls during a period of unpaid adoption leave, the employee may not be entitled to statutory adoption pay. This is because the earnings rule requires that the employee's

average weekly earnings during the Reference Period are at least equal to the lower earnings limit for national insurance contributions.

12.3 An employee who meets the eligibility criteria for both periods of leave can take two consecutive periods of occupational adoption pay. In this case, the employee must return to work for the Council (or another local authority) for at least six months immediately after returning from adoption leave (i.e. three months for each period of leave).

12.4 When the employee returns from the second period of adoption leave (whether it is ordinary adoption leave or additional adoption leave), they will have the right to resume working in another suitable job which is on terms and conditions not less favourable.

13.0 Taking other leave

13.1 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 her partner (e.g. spouse or civil partner) in accordance with the Shared Parental Leave Policy.

13.2 An employee is not entitled to both paternity leave and adoption leave. Employees should be aware that if they exercise the right to paid time off to attend an adoption appointment they cannot then take paternity leave rather than adoption leave.

14.0 Further information

Employees with questions about this policy should speak to their Line Manager. Managers who need further information on how to apply this policy should contact HR Advisory.

Name of Policy	Adoption Leave and Pay Policy
Person/Posts responsible	HR Business Partner (LGSS)
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