



# **ADOPTION POLICY FOR TEACHING STAFF**

**OCTOBER 2011**

## **CHANGES**

August 2011:	Policy Implemented
October 2011:	Updates to repaying adoption pay

If you have any questions regarding this policy please contact your HR Adviser

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This model policy has been written with maintained status in mind. If this model is to be adopted by schools with Trust, Foundation, Voluntary Aided or Academy Status reference to the "Local Authority" need to be replaced with "the Governing Body" Controlled.

# **1 POLICY OVERVIEW**

## **Policy statement**

Following the introduction of the Work and Families Act 2006, this policy sets out the rights and responsibilities of employees who are adopting a child/children, the help and support that [insert name of school] will give them, and the law relating to adoption entitlements.

Adoption leave and pay are available to:

- Individuals who adopt
- One member of a couple where a couple adopts jointly (the couple must choose which partner takes adoption leave).

Same sex parents can qualify for adoption leave and pay as can the male partner in a heterosexual relationship. The partner of an individual who adopts, or the other member of a couple who are adopting jointly, may be entitled to statutory paternity leave and pay and/or paternity/maternity support leave and pay, subject to meeting qualification requirements.

## **Scope**

This policy and procedure applies to all staff employed under School Teachers Pay and Conditions. This includes temporary, part time and fixed term employees, but excludes agency and self employed workers.

It applies only to legal adoption through an approved adoption agency. It does not apply to:

- Short term fostering, eg where a person undertakes regular short term fostering assignments for a local authority or temporarily cares for a relative's child
- Cases where legal adoption is being arranged after a period of fostering has already taken place
- A private adoption, eg where the child of a close relative is being adopted and is known by the prospective parent, or in cases of surrogacy.

In the last two cases, it will be assumed the child(ren) will already be familiar with the applicant, who will have made adequate arrangements for their care. In these cases employees may be eligible to take parental leave, a career break, or special leave (policies are held in the document library). There may be exceptional circumstances where the occupational benefits of the scheme are extended to other staff. Examples include where the natural parents have recently died and the adopting parents know the children. Requests for adoption leave in these circumstances should be made in writing to the Head/Principal.

## **Protection from detriment and dismissal**

Employees seeking to take or taking adoption leave have the right not to be dismissed or discriminated against for any reason connected with their adoption leave.

All the rights described in this policy apply equally to all staff, provided they satisfy any qualifying conditions, such as length of service.

# **2 THE RIGHT TO TAKE ADOPTION LEAVE**

All employees have an occupational entitlement to adoption leave.

### **Ordinary adoption leave (OAL)**

Ordinary adoption leave (OAL) is 26 weeks.

### **Additional adoption leave (AAL)**

Employees with more than 26 weeks continuous local government service at the end of the notification week are entitled to a further period of 26 weeks additional adoption leave, making a total of 52 weeks leave.

## **3 IMPACT ON EMPLOYMENT CONTRACT**

During the whole 52 weeks adoption leave, employees have the right to the continuation of all terms and conditions of employment, including benefits such as car allowance, accrual of holiday entitlement and bank holidays, but excluding normal pay and sick pay.

### **Ordinary adoption leave**

An employee returning from OAL is entitled to return to the same job as before on the same terms and conditions of employment, unless a redundancy situation arises (in which case they are entitled to be offered a suitable and appropriate vacancy if one exists).

### **Additional adoption leave**

AAL immediately follows OAL and there must be no gap between the two. An employee returning from AAL is entitled to return to the same job unless it is not reasonably practicable for the employer to allow them to do so. In such circumstances, the employee is entitled to be offered a suitable and appropriate position. Again, if the employee's position is made redundant, they are entitled to be offered a suitable vacancy where one exists.

### **Other terms and conditions that apply during OAL and AAL**

The contract of employment will continue throughout OAL and AAL unless either party to the contract expressly ends it or it expires.

## **4 ADOPTING A CHILD FROM THE UK**

### **Eligibility**

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

- Have a contract of employment with [insert name of school]
- Have 26 weeks service by the notification week
- Produce documentary evidence of adoption
- Be newly matched with a child for adoption by an adoption agency
- Have notified the adoption agency that they agree that the child should be placed with them and that they agree with the date of placement.

Only one period of leave is available irrespective of whether more than one child is placed for adoption as part of the same arrangement.

Employees must give their employer documentary evidence from their adoption agency as evidence of their entitlement to statutory adoption pay (SAP). Employees should ask their adoption agency for this documentary evidence, which may be provided in the form of a matching certificate, which includes basic information on matching and expected placement dates.

### **Notification requirements**

The employee must notify their line manager of their intention to take adoption leave within seven days of being notified of a match by the adoption agency, unless this is not reasonably practicable. Evidence of adoption must be provided within 28 days to qualify for SAP.

The employee must provide the following details in writing:

- That they would like to take adoption leave
- When the child is expected to be placed with them
- When they would like their leave and statutory adoption pay to begin

If the employee would like to receive statutory adoption pay, they will need to give human resources a declaration, preferably in writing that they have chosen to receive SAP and not statutory paternity pay (SPP).

### **How to start adoption leave**

Adoption leave can start either:

- 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.

It starts on the day the employee specifies in their notice. If the employee is at work on the day the placement starts, the adoption leave will start the next day.

### **Changing the start of adoption leave**

Employees can change their mind about when they would like to commence leave, provided they give at least 28 days notice of change, unless this is not reasonably practicable.

If an employee starts their adoption leave before the child is placed, they need to be sure that the placement is going to go ahead. If the placement is delayed once the employee has started their leave, they cannot stop their leave and start it again at a later date.

### **Pre-adoption leave**

Employees with at least one year's continuous service may take up to five days paid leave for visits prior to the placement, which may include one court appearance, related to the adoption order.

## **Termination of employment**

Once an employee has satisfied the qualifying conditions for SAP they will continue to be eligible for it even if their employment ends, ie they resign or are dismissed for whatever reason.

If employment ends before the employee has started their adoption leave, SAP will start 14 days before the expected day of placement, or on the day after the last day of employment where this is within that 14 days period. The employee will not need to have complied with the notice requirements in these cases. However, the employee should still provide evidence of their entitlement.

## **5 ADOPTING A CHILD FROM OVERSEAS**

To qualify for leave and pay, an employee who adopts from overseas must have received a written official notification from the Secretary of State for Health which confirms that the adopter is eligible to adopt and has been assessed and approved as being a suitable adoptive parent.

There are a number of modifications to the statutory adoption scheme for employees adopting a child from overseas.

### **Eligibility**

To be eligible for adoption leave for a child from overseas, an employee must have been continuously employed for at least 26 weeks ending with the week in which they received the official notification that they are a suitable adoptive parent.

However an employee may receive the official notification a year or more before the child enters the country and an employee may have changed jobs during that period. Therefore an employee will still be able to take adoption leave once they have completed 26 weeks' service with their current employer even if this is after the official notification has been received.

### **Notification requirements**

The employee must provide the following information at least 28 days (where reasonably practicable) before an employee wants their adoption leave to start:

- A copy of the official notification
- The date they received the official notification
- Their name and address
- The date the child is expected to enter Great Britain (within 28 days after the date they received their official notification or the date they completed 26 weeks' continuous employment, whichever is the later)
- If the child has already entered Great Britain, the date they entered plus evidence (eg plane tickets) within 28 days of that date.
- The date they expect their adoption leave to begin (at least 28 days before they want their leave to begin)
- A declaration that they have elected to receive SAP and not SPP.

## How to start adoption leave

Employees may choose to start their leave:

- On the date the child enters Great Britain, or
- On a specified date within 28 days after the child enters Great Britain.

When an employee adopts a child from overseas their adoption leave cannot begin until the child enters Great Britain. The employee must notify their employer as soon as reasonably practicable if the child is no longer going to enter Great Britain.

## Changing the start of adoption leave

To remain entitled to statutory adoption leave, where the child has not entered Great Britain on the expected date the employee must inform their employer of the new date they expect their leave to start. This can either be the new date the child is expected to enter Great Britain or a specified date within the 28 days of when the child is expected.

## Termination of employment

Once an employee has qualified for SAP they keep their entitlement even if their employment ends, ie they resign or are dismissed. In these circumstances adoption leave will start on a day chosen by the employee. The employee must give their ex-employer 28 days notice and start their leave within 28 days of the child entering Great Britain.

If the employee's adoption leave has still not started after six months the liability to pay SAP will transfer to the Inland Revenue, unless and until the employee qualifies for SAP through working for another employer.

## 6 ADOPTION PAY

There are two types of adoption pay:

- Statutory adoption pay (SAP) which is funded by the government, but paid via our payroll.
- Occupational adoption pay (OAP) is a contractual benefit for staff.

First 4 weeks	Full pay including SAP
Next 2 weeks	90% of pay including SAP
Next 12 weeks	Half pay including SAP
Next 21 weeks	SAP
Next 13 weeks	Unpaid leave

See the section on working during adoption leave for additional days that may be available to work.



## **Eligibility for statutory adoption pay**

To qualify for SAP employees must have:

- 26 weeks' continuous local government service
- Average weekly earnings of at least the lower earnings limit for NI contributions in the eight weeks ending with the week in which the adoptive parent is notified as being matched with the child(ren).

SAP is payable for up to 39 weeks. The rates are fixed by law, are subject to tax and National Insurance deductions, and are paid at either 90% of an employee's average earnings or the standard SAP rate whichever is the lesser. The SAP rate is reviewed on an annual basis in April. Full details of SAP rates and how and when it may be paid can be obtained from HR Payroll.

Once an employee has satisfied the qualifying conditions for SAP they will continue to be eligible for it even if their employment ends, ie they resign or are dismissed for whatever reason.

## **7 DISRUPTION TO THE PLACEMENT**

If, after the adoption has started, the placement ends for whatever reason, the employee's adoption leave will end eight weeks after the week in which the placement ends or at the end of the adoption leave if this is sooner.

## **8 REPAYING ADOPTION PAY**

Employees must return to work for a period of not less than three months following the period of adoption leave or repay the 12 weeks half-OAP received. If an employee returns part time, they may be required to work longer than the three months, please seek guidance from your schools HR adviser. There is no requirement to refund SAP.

## **9 PATERNITY LEAVE/MATERNITY SUPPORT LEAVE**

Paternity/maternity support leave is available to eligible employees not taking adoption leave and pay. Please see paternity/maternity support leave policy for details.

## **10 PARENTAL LEAVE**

Employees may extend adoption leave by combining it with a period of parental leave, provided that they meet the qualifying criteria (see parental leave policy for further information). Where parental leave is taken as a full time block of leave following adoption leave, an employee will still be required to refund some OAP unless the employee returns to local authority employment for a period of at least three months after the end of the parental leave period.

## **11 RETURNING TO WORK**

Employees who intend to return to work at the end of their full adoption leave period do not have to give any further notification before returning.

Employees who want to return to work before the end of their adoption leave period must give 28 days written notice of the date they intend to return. If the employee attempts to return early without notification the line manager may delay the return by up to the 28 days notice period, provided this does not extend beyond the end of additional adoption leave.

If an employee is unable to return to work on the expected date due to sickness, they must follow the required notification procedure. The employee will then commence a period of sickness absence and will be treated as any other employee who is absent due to sickness, including payment of sick pay.

Employees are strongly encouraged to exercise their right to return to work. If an employee resigns instead of taking adoption leave, they will forfeit their right to return to work at a later date.

### **Returning to work after adoption leave followed by parental leave**

An employee returning to work after ordinary adoption leave followed by a four weeks parental leave (maximum in any leave year 01 April to 31 March) or less, is entitled to return to their original job on the same terms and conditions as if they had not been absent, unless a redundancy situation has arisen in which case the employee is entitled to be offered a suitable alternative vacancy where one exists.

An employee returning to work after additional adoption leave followed by four weeks parental leave (maximum in any leave year) or less, is entitled to return to their original job, unless it is not reasonably practicable for the employer to allow them to do so. In such circumstances, the employee is entitled to be offered a suitable and appropriate position. If the employee's position is made redundant, they are entitled to be offered a suitable vacancy where one exists.

## **12 OFFER OF A SIMILAR JOB**

Where it is not practicable for the employee to return to their original job a similar job must be offered. The job must be such that:

- The work undertaken by the employee is both suitable and appropriate for the employee to do in the circumstances, and
- The capacity and place in which the employee is to be employed and the other terms and conditions of their employment are no less favourable.

However it is important to note that if the offer made is a suitable alternative and the employee refuses they will have effectively resigned.

‘Return to work’ means to the job to which the employee was employed under the original contract of employment and on terms and conditions not less favourable than those which would have been applicable, had he or she not been absent.

‘Job’ for this purpose means the nature of the work that the employee is employed to do and the capacity and place in which he or she is so employed.

## **13 CHOOSING NOT TO RETURN TO WORK**

If an employee chooses not to return to work their last day of adoption leave will be their last day of service, unless they give written notice to resign on an earlier date.

## **14 RIGHT TO REQUEST FLEXIBLE WORKING**

An employee with a child under the age of six (or 18 in cases where the child is disabled) is entitled to request flexible working. Please see the right to request flexible working policy for further information.

## **15 WORKING DURING ADOPTION LEAVE**

Employees can work for up to ten days during adoption leave. These work days are called keeping in touch (KIT), and do not trigger the end of adoption leave or affect entitlement to SAP.

Keeping-in-touch days are not compulsory. The Council encourages line managers to offer KIT days, however the employee is under no obligation to use them if they do not wish to do so. They do not have to be consecutive and can be used to attend any work-related activity including training, conferences, meetings etc.

Employees who do work on a KIT day will be entitled to their normal rate of pay for the day/half day that they work, which will be offset against SAP (if the KIT day occurs during the period when SAP is received). Working for part of a day will still count as one KIT day entitlement, out of a total of ten. The total duration of the adoption leave period will remain the same regardless of whether or not the employee works on a KIT day, therefore the adoption leave period will not be extended or reduced as a result. If a line manager and employee arrange KIT days, the line manager should advise HR Payroll so appropriate payments can be arranged.

## **16 CONTACT DURING ADOPTION LEAVE**

During the adoption leave period the school encourages either the manager or another member of the team to keep reasonable contact with the employee. For example, the line manager may contact the employee to discuss their plans to return to work or to be brought up to date with a project. These conversations are not counted the same as KIT days. The line manager will also contact the employee to keep them informed about other relevant issues such as any job vacancies, workplace development, organisational changes etc, if the employee wishes.

## **17 LOCAL GOVERNMENT PENSION SCHEME**

If you are a member of the Teachers Pension Scheme (TPS), the first 26 weeks (Ordinary Adoption Leave) will count in full for pension purposes, irrespective of whether you receive any pay. If you receive pay, then both you and the school will pay pension contributions on the pay you are receiving. Benefits will continue to accrue to you as if you were working and receiving normal pay. No contributions will be paid, by either the school or you, during any period of unpaid adoption leave. For further information please contact the pensions department.

## **18 GENERAL**

Employees are strongly encouraged to exercise their right to return to work. If an employee resigns instead of taking adoption leave, they will forfeit their right to return to work at a later date.

All periods of time which employees take off work as adoption leave are subsequently counted as continuous service for the purposes of calculating any occupational rights that are service-related. Thus, once the employee has returned to work, their length of service is calculated as if they had never been absent.

If employees have any queries regarding their rights or obligations under (name of school) adoption policy, they should raise them in the first instance with their manager. If there are any further questions please refer to the Schools HR Adviser.

## **APPENDIX: TERMS AND ABBREVIATIONS**

### **OAL (Ordinary adoption leave)**

Employees who satisfy qualifying conditions are entitled to 26 weeks OAL.

### **AAL (Additional adoption leave)**

Employees who satisfy qualifying conditions are entitled to 26 weeks AAL which immediately follows OAL.

### **SAP (Statutory adoption pay)**

Providing the qualifying week and national insurance contribution criteria are met the employee will be entitled to SAP. This payment is made by Plymouth City Council on behalf of the Department for Work and Pensions for 39 weeks.

### **OAP (Occupational adoption pay)**

This is the payment made by Plymouth City Council over and above SAP, as part of the employee's conditions of service, provided the employee has at least one year's service.

I can confirm that the governors of Weston Mill Community Primary School have adopted this policy as their own.

**Chair of Governors**  
  
Sign.....  
  
Print.....  
  
Date .....

**Headteacher**  
  
Sign.....  
  
Print.....  
  
Date .....

This policy will next be reviewed on.....

