

Family Leave Policies

(Maternity, Paternity, Shared
Parental Leave and Adoption)

September 2017

CONTENTS

Introduction	5
Employees covered by the Policy	5
Definitions	6
Abbreviations and Terms	

SECTION 1 – MATERNITY

MATERNITY LEAVE	
Notification	8
Return to work	8
STATUTORY MATERNITY PAY (SMP)	9-11
Introduction	9
Who is eligible?	9
Who is not eligible?	9
Payment of SMP	10
Maternity Allowance	10
Keeping In Touch Days	10
What if the baby is born early?	11
Still births	11
Previous pregnancies	11
OCCUPATIONAL MATERNITY PAY (OMP)	12-15
Introduction	12
Who is eligible?	12
Notional deductions	12
Payment of OMP – Teachers	12
Payment of OMP – Support Staff	12
For both categories of staff	13
Summary of payments – Teachers	14
Summary of payments – Support Staff	15
CALCULATION OF AVERAGE EARNINGS	16
MATERNITY AND SICKNESS	16-17
Relationship of SSP with Maternity	16
Relationship of OSP with Maternity	17
Sickness Monitoring	17
OTHER RIGHTS	18-19
Right to return to work	18
Returning Teachers	18
Returning Support staff	18
Leaving During Pregnancy	18
Antenatal care	18
Protection from dismissal and detriment	19
Right to request flexible working	19

GENERAL INFORMATION	20-22
Advising the employee	20
Reasonable contact	20
Supporting the return to work	20
Avoiding Discrimination	21
Support for breastfeeding mothers	21
Annual Leave (NJC only)	21
Honorarium (NJC only)	22
Bank Holidays (NJC only)	22
Free prescriptions and dental treatment	22
Temporary Employees	22
HEALTH AND SAFETY	23-25
Introduction	23
Risk Assessment	23
Informing employees	24
What to do	24
Breastfeeding	24
Rest	25
Night work	25
Medical Suspension	25
QUESTIONS AND ANSWERS	26-29

SECTION 2 - PATERNITY

PATERNITY LEAVE	30-31
Who is eligible?	30
Who is not eligible?	30
Leave entitlement	30
PATERNITY PAY	31
Notification	31
Returning Early from Paternity Leave	31
Ante Natal Care	31
Surrogate parents	31

SECTION 3 – SHARED PARENTAL LEAVE

WHO IS ENTITLED TO SHARED PARENTAL LEAVE?	32
Mother's eligibility	32
Partner's eligibility	33
AMOUNT AND TIMING OF SPL	33
WHO IS ENTITLED TO SPL?	34
NOTIFICATION REQUIREMENTS	34-36
Notice of entitlement and intention to take SPL / ShPP	34
Notice to stop statutory maternity (or adoption) leave payments	35

Notice to take a specific period of SPL / ShPP	35
REQUESTS FOR LEAVE	36
Requests for continuous leave	36
Requests for discontinuous leave	36
VARYING PERIOD OF LEAVE	36
EVIDENCE REQUIREMENTS	37
KEEPING IN TOUCH DURING SPL	37
KIT Days	37
Contact during SPL	37
TERMS AND CONDITIONS DURING SPL	37
Contractual Benefits	37
Holidays	37
Right to Return	38
Surrogate parents	38
QUESTIONS AND ANSWERS	39-41

SECTION 4 - MATERNITY SUPPORT LEAVE (Support Staff Only)

Who is eligible?	42
Leave entitlement	42
Maternity support leave pay	42
Notification	42
Returning early from leave	42

SECTION 5 – ADOPTION

ADOPTION LEAVE	43
Who is eligible?	43
Who may be eligible?	43
Who is not eligible?	43
Leave entitlement	43
ADOPTION PAY	44
Statutory Adoption pay	44
Notification	44
Contractual position	44
Pension	45
Annual leave (NJC only)	45
Keeping in touch days	45
Contact during Adoption Leave	46
Returning early from adoption leave	46
Returning to work	46
Redundancy and Re-organisation	46
Contract	46
Dismissal	46
Right to request flexible working	46

Transfer of adoption leave to APL	47
What if the adoption fails	47
Adoption from Overseas	47
Surrogate parents	47

SECTION 5A – DUAL APPROVED PROSPECTIVE ADOPTERS

Who is eligible?	47
When a dual approved prospective adopter is eligible for pay	48
The qualifying week	48
Notification requirements for dual approved prospective adopters	48
If the adoption doesn't go ahead	48
Entitlement to adoption leave and pay if the adoption goes ahead	48

SECTION 6 – PARENTAL LEAVE (From birth to 18 years)

Who is eligible?	49
Birth or adoption of more than one child	49
Definition of a week	49
Leave entitlement	50
Notification	50
Evidence of employee responsibility	50
Postponement of leave	50
Rights during parental leave	51

INTRODUCTION

This policy should be used in conjunction with the Guidance notes and also the Flexible Working and Special Leave Policies for Schools.

The policy was amended in 2015 when Shared Parental Leave was introduced which enables parents to share the caring responsibilities of their child within the first year of birth or adoption.

Explanations are given of the statutory rights to leave and pay, and also the Occupational entitlements to leave and pay, the latter being in the main more generous.

EMPLOYEES COVERED BY THE POLICY

This policy and procedure applies to all school employees whose employment is under the purview of the Governing Body. Where there are differences between the terms and conditions of employment of teachers and support staff, this has been indicated.

This policy and procedure does not apply to centrally managed staff who work within the school i.e. those under the purview of the Local Authority.

DEFINITIONS

Head Teacher means the Head Teacher of the school. Acting Head Teacher, Deputy or Assistant Head Teacher carrying out the Head Teachers duties in their absence or Head Teacher's nominee.

Full governors' meeting means a quorate meeting of the whole governing body of the school.

Five days means five working days excluding bank holidays and school holidays.

Fourteen days means ten working days, excluding bank holidays and school holidays.

A working day is any working term day as defined by the Local Authority term dates. School holidays are not categorised as working days, including the three floating occasional days that are at the discretion of the school.

Trade Union means trade unions and professional associations that are recognised for the purposes of collective bargaining by the Local Authority. Trade Union Representatives means any representative of a trade union or any other staff representative.

Human Resources Advisor means the Senior Human Resources Adviser allocated to support the school, or if appropriate another member of the HR Team such as the HR Advisory Manager.

Where the employer for many schools is the Local Authority, reference in this document to the employer also relates to the School Governing Body when the school is the employer, i.e., a Trust, Foundation, Academy or Voluntary Aided School.

ABBREVIATIONS AND TERMS

OML: Ordinary Maternity Leave

All pregnant employees are entitled to OML. The length of the leave is 26 weeks.

AML: Additional Maternity Leave

Begins at the end of OML and runs for a further 26 weeks, all pregnant employees are entitled to AML regardless of length of service.

SMP: Statutory Maternity Pay

Similarly, **SPP:** Statutory Paternity Pay, **SAP:** Statutory Adoption Pay and **ShPP:** Statutory Shared Parental Pay. This is the pay funded in the main by the government through national insurance. The amount is updated annually.

OMP: Occupational Maternity Pay

This is the maternity pay paid by The Employer under the provisions of the Local Government Scheme.

EDC: Expected Date of Childbirth

This is the day on which the baby is expected to be born.

EWC: Expected Week of Childbirth

This is the week during which the baby is expected to be born starting on the Sunday before.

QW: Qualifying Week

This is the week used in deciding whether the employee qualifies for maternity benefits. The qualifying week differs depending on whether you are calculating SMP or occupational benefits. The QW is the 15th week before the expected week of childbirth (EWC) when assessing entitlement to SMP, but is the 11th week before the EWC when assessing entitlement to the local government scheme.

MPP: Maternity Pay Period

This is the period during which Statutory Maternity Pay is paid. The employee can choose when to start her MPP but it cannot start any earlier than the 11th week before the EWC.

LEL: Lower Earnings Limit

The figure for the Lower Earnings Limit is set by the DSS and relates to the payment of national insurance and to the eligibility for SMP. Women who earn below the LEL do not qualify for SMP.

MAT B1:

This is the maternity certificate, which normally provides medical evidence on when the baby is due. A doctor or midwife must sign the certificate no earlier than twenty weeks before the EWC. This must be given to the employer by the end of the third week of what would be the MPP and the employer cannot pay SMP until the certificate is received.

MATERNITY ALLOWANCE:

This is paid by the DWP to qualifying women where the woman is not eligible for SMP. It is based on the woman's recent employment and earnings record.

KITS: KEEPING IN TOUCH DAYS

The employee is entitled to attend work for up to 10 days for the purpose of Keeping in touch.

Section 1

MATERNITY

MATERNITY LEAVE

All pregnant employees are entitled to a period of 26 weeks' ordinary maternity leave (OML) and 26 weeks' additional maternity leave (AML), making one year in total. This entitlement is regardless of the length of continuous service.

Women can start maternity leave any time from the 11th week before the baby is due, provided they give at least 28 days' notice in writing (wherever reasonably practicable):

- that they are pregnant;
- of the expected week of childbirth (EWC);
- of the start date of maternity leave (which can be varied by the employee, provided that the new date is notified at least 28 days before whichever is the earlier of the old intended date and the new intended date).

The employee will be required to produce a certificate from a registered medical practitioner or a registered midwife stating the EWC. This certificate is known as a MAT B1 and is available from the 20th week before your EWC.

They can work up until the birth itself unless absent from work with a pregnancy related illness in which case they cannot work beyond the fourth week before the expected week of childbirth.

The Maternity (Compulsory Leave) Regulations 1994 stipulate a minimum period of maternity leave for all women of two weeks after the date of the birth. This means that the employee cannot return to work until at least two weeks after the actual date of the birth.

The contract of employment continues through both the ordinary and additional maternity leave. This does not include remuneration but does include the accrual of annual leave.

Notification

The employee must be written to within 28 days of receipt of the initial notification, stating the date on which she is expected to return from maternity leave if the full entitlement is taken. It is important that these dates are included even where the employee has proposed an earlier date for returning. There is no further notification required by management or the employee.

Return to Work

The employee will have been formally notified in writing of the date on which she is expected to return to work to work if she takes her full 52 week entitlement to maternity leave.

The employee is expected to return on this date unless she notifies the department otherwise. If the employee wishes to return earlier than the expected return date, she must give the department at least 21 day's notice of her new return date.

Employees are not required to state in advance that they intend to return to work following maternity leave unless they are claiming Occupational Maternity Pay

STATUTORY MATERNITY PAY

Introduction

Statutory Maternity Pay (SMP) is treated as pay and is subject to the usual deductions for NI, Income Tax and the Local Government Pension Scheme and Teacher Pensions.

SMP is payable for a period of up to 39 weeks – known as the Maternity Pay Period (MPP)

Who is Eligible for SMP?

A woman must satisfy all the following criteria in order to qualify for SMP:

Be continuously employed for at least 26 weeks continuing into the Qualifying Week (15th week before the expected week of childbirth). This must include at least one day in the qualifying week.

An employee can satisfy the continuous employment rule even if she has been employed only for short spells during the 26 week period. If a temporary or casual employee does not work any particular week because they were not offered work, as opposed to turning down the offer of work, continuity of service is not broken (for the purposes of SMP only).

- have average weekly earnings of not less than the lower earnings limit for the payment of NI contributions (contact payroll for details).
- must still be pregnant at the 11th week before the EWC or have given birth by that time;
- must have ceased working for the employer wholly or partly because of pregnancy or childbirth;
- must have given notice of the date her MPP is due to start at least 28 days beforehand.

Who is Not Eligible for SMP?

A woman who falls into any one of these categories will not be entitled to SMP:

- if she is not continuously employed for at least 26 weeks into the QW. However if her employment ceased after the QW her entitlement to SMP is not affected;
- if her average weekly earnings are below the LEL;
- if she fails to comply with the notification provisions;
- if she is in legal custody at any time in the maternity pay period.

If for any of the above reasons an employee is not entitled to SMP, the HR Administration and Payroll Provider Service will complete form SMP1 and give it to the employee. This must be done within seven days of deciding the employee is not entitled to SMP so that she may then claim the Maternity Allowance direct from the Benefits Agency.

If the employee does not agree with the decision not to pay her SMP she can ask the Adjudication Officer for a formal decision. The Adjudication Officer is independent and works from a local Benefits Agency. There is also a right of appeal for both the employer and employee against the decision of the Adjudication Officer.

Payment of SMP

SMP is payable for a period of up to 39 weeks even if the employee does not intend to return to work after the baby is born. This “Maternity Pay Period” (MPP) effectively starts when a woman starts her maternity leave and ceases at the end of the 39 weeks or when she returns to work, whichever is the earlier. The earliest an employee can start her maternity leave is the 11th week before the EWC. The employee can work up to the birth if she wishes in which case the maternity pay period will start from the day after the birth.

The first six weeks of the MPP are paid at the higher rate of 90% of average weekly earnings followed by the lower rate for 33 weeks. In the unlikely event that the lower rate of SMP is greater than 90% of average earnings, the lower amount should be paid throughout the maternity pay period.

SMP is payable on a daily basis and is regarded as taxable earnings. If an employee who is entitled to SMP leaves or is dismissed after the start of the qualifying period, SMP will still be paid. If this situation arises before she has given notice of when she wishes her maternity leave to start, SMP will commence on the later of:

- the 11th week before the expected week of childbirth
- the start of the week after employment ends.

If the employee starts work for a new employer after the baby is born but before the end of the MPP the SMP must end. However if she starts work for a new employer before her baby is born, the employer is still liable to pay SMP until the end of the Maternity Pay Period.

Maternity Allowance

Maternity Allowance (MA) is claimed direct from the Benefits Agency by an employee who is not eligible for SMP. MA can be paid for up to 39 weeks and is normally equivalent to the rate for SMP although this can vary dependent upon the contributions made by the employee.

It is worth noting that MA is a National Insurance (NI) benefit and employees must have paid NI contributions for at least 26 weeks out of the last 66 weeks. Employees do not pay NI contributions if they earn less than the lower earnings limit (LEL). If an employee is therefore not eligible for SMP because her earnings are below the LEL, it is unlikely that she will be eligible for MA either, unless perhaps her earnings fluctuate.

If an employee is not eligible for MA she can claim benefit if she has paid NI contributions for at least 26 weeks out of the last two years. This is made up of a total of eight weeks’ benefit, (six weeks before the birth and two weeks after the birth).

Working During the Maternity Pay Period – ‘Keeping In Touch’ Days

An employee is entitled to work for up to 10 days during her maternity leave period (excluding compulsory maternity leave i.e. the 2 week period immediately after the baby is born) without that work bringing her maternity leave to an end and without loss of a week’s Statutory Maternity Pay.

These are known as ‘Keeping in Touch Days’, and can include work activities such as training or any other activity undertaken to assist you in keeping in touch with the workplace, such as attending conferences, appraisals or team meetings.

Any work carried out during maternity leave will count towards a keeping in touch day. Once the 10 keeping in touch days have been used up, the employee will lose a week’s SMP for any day in which she works during maternity leave.

Please note that any keeping in touch days worked do not extend the period of maternity leave and the employee will be expected to return at the end

The employee is under no obligation to work during her maternity leave and should not suffer any detriment by refusing to work, nor does she have any right to undertake work and each request will be judged on its own merit in agreement with the line manager. However, as the purpose of keeping in touch days is to assist the employee in their return to work it is unlikely that a request would be refused.

Employees will continue to receive their SMP payment for the week in which they work; in addition they will be paid at their normal contractual rate of pay for any work undertaken during the keeping in touch days.

SMP will not be offset against any payment for attending a 'keeping in touch' day except where the total payment exceeds normal contractual pay. This principle will also apply to employees in receipt of OMP.

What if Baby is Born Early?

If the employee's baby is born before the maternity pay period is due to start, the MPP will be the period of 39 weeks beginning from the day following the date of birth.

If this happens before the employee has notified you of the start date of her MPP, she must, if reasonably practicable, notify you within 28 days of the date the baby was born.

The continuous employment rule for qualifying for payment of SMP is satisfied if the baby is born before or during the qualifying week AND the employee would have completed 26 weeks' employment into the qualifying week if the baby had not been born early.

If the baby is born early but the MPP has started, or is born after the EWC then the maternity pay period is not affected.

Stillbirths

Even if the baby survives for only an instant it is a live birth not a stillbirth. If the baby is stillborn before the 24th week of the pregnancy, i.e. earlier than the 16th week before the expected week of childbirth, SMP is not payable. In such circumstances a decision should be made regarding the payment of sick pay instead.

If the baby is stillborn after the 24th week of pregnancy, the employee is entitled to the same SMP she would have got if the baby had been born alive.

Previous Pregnancy

If an employee previously had a period of statutory maternity leave or absence and resumed work afterwards, all weeks between the date when she was first absent and the date she resumed work count towards her period of continuous employment.

OCCUPATIONAL MATERNITY PAY (OMP)

Introduction

Local government employees benefit from more generous maternity provisions which are agreed at national level. The details are set out in the “Burgundy Book” for teachers and the “Green Book” for School support staff.

Who is Eligible?

Eligibility for occupational maternity pay is assessed at the 11th week before the EWC (not the 15th week which is when eligibility for SMP is assessed). In addition, eligibility for occupational maternity pay is regardless of the level of earnings or hours of work. All employees with one year’s continuous service at the 11th week before the EWC are entitled to the occupational maternity pay (OMP).

Notional Deductions

Under previous schemes, Occupational Maternity Pay was reduced by an amount equivalent to maternity allowance in the case of an employee with no entitlement to SMP, regardless of whether or not the employee was entitled to that allowance. In practice employees earning below the NI threshold therefore received little or no occupational maternity pay. Under the current scheme, account is only taken of the amount of SMP or maternity allowance actually received and there is an obligation on the employee to both claim and declare their entitlement to maternity allowance.

Payment of OMP - Teachers

A teacher who is entitled to Occupational Maternity Pay will for the first four weeks of absence, receive full pay, offset against payment made by way of SMP or Maternity Allowance and for the next two weeks receive 9/10 of a week’s pay, offset against payment made by way of SMP or Maternity Allowance.

A teacher who declares in writing that she intends to return to work will, for the subsequent 12 weeks, be paid half a week’s pay without deduction except by the extent to which the combined pay and SMP (or Maternity Allowance and any dependent’s allowance, if the employee is not eligible for SMP) exceeds full pay. Consequently the employee cannot actually receive more than her normal pay.

Payment of OMP - Support Staff (NJC terms of employment)

An employee who is entitled to occupational maternity pay will for the first six weeks of absence receive 9/10 of a week’s pay, offset against payment made by way of SMP or Maternity Allowance.

An employee who declares in writing that she intends to return to work will, for the subsequent 12 weeks, be paid half a week’s pay without deduction except by the extent to which the combined pay and SMP (or Maternity Allowance and /or other allowances, if the employee is not eligible for SMP) exceeds full pay. Consequently the employee cannot actually receive more than her normal pay.

Alternatively, the equivalent amount (i.e. 6 weeks’ pay) may be paid in any other mutually agreed distribution, i.e. 20 weeks 3/10 pay.

For both categories of staff:

The 12 weeks' half pay can be claimed back if the employee does not return to local authority employment for a period of at least 13 weeks. However SMP is not refundable.

For employees not intending to return to work, payments during the subsequent 33 weeks shall be SMP.

As with SMP, the earliest that OMP can commence is the 11th week before the EWC.

(NB For the remaining 21 weeks the employee shall be entitled to SMP only i.e. 39 weeks maternity pay in total).

Summary of Maternity Pay Entitlements for staff on TEACHERS' Conditions of Service (Burgundy Book)

Length of Service	Leave Entitlement	Pay
Employees with less than 26 weeks' continuous service.* *includes service with any other employer covered under the Redundancy payments Modification Order (Local Government) 1983 (as amended).	26 weeks Ordinary Maternity Leave and 26 weeks Additional Maternity Leave to start at the end of the OML (i.e. 52 weeks in total)	No SMP No OMP You may be eligible for Maternity Allowance. Contact your local Benefits Agency office for details.
With 26 weeks but less than 1 year's continuous service as defined above but not all with Oldham Council at end of 15th week before Expected Week of Childbirth	26 weeks Ordinary Maternity Leave plus 26 weeks Additional Maternity Leave to start at the end of the OML (i.e. 52 weeks in total)	No SMP No OMP You may be eligible for Maternity Allowance. Contact your local Benefits Agency office for details.
With 26 weeks but less than 1 year's continuous service with Oldham Council at end of 15th week before Expected Week of Childbirth	26 weeks Ordinary Maternity Leave plus 26 weeks Additional Maternity Leave to start at the end of the OML (i.e. 52 weeks in total)	Earnings below the Lower Earnings Limit : Maternity Allowance for the first 29 weeks Earnings above the Lower Earnings Limit: Statutory Maternity Pay - Weeks 1-6: 9/10 of a week's pay Weeks 7-26: flat rate SMP or 9/10 pay if this is less Weeks 27-39: flat rate SMP or 9/10 pay if this is less Weeks 40-52: No pay
At least 1 year's continuous service as defined at * above by 11th week before the Expected Week of Childbirth	26 weeks Ordinary Maternity Leave plus 26 weeks Additional Maternity Leave to start at the end of the OML (i.e. 52 weeks in total)	Occupational Maternity pay as follows: Weeks 1-4: Full pay offset against any SMP or Maternity Allowance payments Weeks 5-6: 9/10 of a week's pay offset against any SMP or Maternity Allowance payments Weeks 7-18: ½ pay without deduction except if the ½ pay plus SMP/Maternity Allowance exceeds full pay. This is paid on the understanding that the employee will return to her job/Oldham Council employment for at least 13 weeks, otherwise SMP or Maternity Allowance only is paid. Weeks 19-39 SMP or Maternity Allowance only (if you have worked for Oldham Council for 26 weeks by the end of the 15th week before the EWC, otherwise no pay) Weeks 27-52: No pay Or 40-52: No pay

Summary of Maternity Pay Entitlements for staff on NJC Conditions of Service (i.e. Support Staff)

Length of Service	Leave Entitlement	Pay
Employees with less than 26 weeks' continuous service.* *includes service with any other employer covered under the Redundancy payments Modification Order (Local Government) 1983 (as amended).	26 weeks Ordinary Maternity Leave and 26 weeks Additional Maternity Leave to start at the end of the OML (i.e. 52 weeks in total)	No SMP No OMP You may be eligible for Maternity Allowance. Contact your local Benefits Agency office for details.
With 26 weeks but less than 1 year's continuous service as defined above, but not all with Oldham Council at end of 15th week before Expected Week of Childbirth	26 weeks Ordinary Maternity Leave plus 26 weeks Additional Maternity Leave to start at the end of the OML (i.e. 52 weeks in total)	No SMP No OMP You may be eligible for Maternity Allowance. Contact your local Benefits Agency office for details.
With 26 weeks but less than 1 year's continuous service with Oldham Council at end of 15th week before Expected Week of Childbirth	26 weeks Ordinary Maternity Leave plus 26 weeks Additional Maternity Leave to start at the end of the OML (i.e. 52 weeks in total)	Earnings below the Lower Earnings Limit : Maternity Allowance for the first 39 weeks Earnings above the Lower Earnings Limit: Statutory Maternity Pay - Weeks 1-6: 9/10 of a week's pay Weeks 7-26: flat rate SMP or 9/10 pay if this is less Weeks 27-39: flat rate SMP or 9/10 pay if this is less Weeks 40-52: No pay
At least 1 year's continuous service defined at * above by 11th week before the Expected Week of Childbirth	26 weeks Ordinary Maternity Leave plus 26 weeks Additional Maternity Leave to start at the end of the OML (i.e. 52 weeks in total)	Occupational Maternity pay as follows: Weeks 1-6: 9/10 of a week's pay offset against any SMP or Maternity Allowance payments Weeks 7-18: ½ pay without deduction except if the ½ pay plus SMP/Maternity Allowance exceeds full pay. Alternatively, the equivalent amount (i.e. 6 weeks' full pay) may be paid on any other mutually agreed distribution e.g. 3/10ths over 20 weeks. ½ pay (or equivalent) is paid on the understanding that the employee will return to local authority employment for at least 3 months (13 weeks), otherwise SMP or Maternity Allowance only is paid. Weeks 19-39: SMP or Mat Allowance only, provided that You meet the qualification requirements, Otherwise no pay Weeks 27-52: or 40-52 : No pay

CALCULATION OF AVERAGE EARNINGS

Calculation of Average Weekly Earnings for SMP

An employee's average weekly earnings must be calculated in order to decide if SMP is payable. This will normally be undertaken by the HR Business Support Section or payroll provider.

This involves adding the gross earnings together over the eight weeks up to and including the last pay day before the end of the qualifying week. Any payment, which is treated as earnings for NI contribution purposes, e.g. SSP must be counted. This will also include for example honorarium payments made during the eight week period. The amount will be adjusted accordingly if a pay award is subsequently settled and backdated.

The actual calculation can vary depending on the employee's pay period. The HR Administration and Payroll Provider team will advise on such calculations where this is unclear.

Calculation of a Week's Pay for OMP

The National Joint Council defines the term 'a week's pay' for employees whose remuneration for normal working hours does not vary with the amount of work done in the period, as the amount payable by the council to the employee under the current contract of employment for working her normal hours in a week. Where there are no normal working hours, a week's pay is the average remuneration in the period of 12 weeks preceding the date on which the last complete week ended, i.e. before the commencement of OMP. This period will exclude any week in which no remuneration was earned.

MATERNITY AND SICKNESS

Relationship of SSP with Maternity

Sickness absence that occurs prior to the fourth week before the EWC will attract SSP and occupational sick pay (subject to eligibility). Employees who are absent through sickness after the fourth week before the EWC will be entitled to SSP only if the sickness is non pregnancy related. In such circumstances the maternity pay period will start as notified or from the day following the date of birth, whichever is the earlier.

However if the sickness is pregnancy related and occurs on or after the start of the fourth week before the baby is due, the maternity pay period will start on either the:

- day following the first day of that absence if the employee has worked or been entitled to SSP for a reason not connected with her pregnancy, in that week, or
- Sunday of the first week of absence if the employee has not worked in the week or been entitled to SSP in that week e.g. temporary/casual employee.

However if the employee then becomes fit enough to return to work before the birth, she can do so and will then lose one week's SMP for each week or part-week worked. Weeks lost in this way are at the lower rate first.

If you are unsure whether or not an illness is pregnancy related advice should be sought from a GP or the HR Advisor who may in turn seek guidance from the occupational health provider.

An employee who is entitled to SMP or Maternity Allowance cannot get SSP for at least 39 weeks starting with the start of the week she is first entitled to the SMP or Maternity Allowance.

An employee who is not entitled to SMP or Maternity Allowance cannot get SSP for at least 39 weeks starting with the earlier of

- the date of childbirth; or
- the start of the fourth week before the EWC if she is already absent with a pregnancy related illness; or
- the first day she becomes sick with a pregnancy related illness if this is after the start of the fourth week before the baby is due.

Relationship of Occupational Sick Pay with Maternity

Maternity leave is not treated as sick leave and is separate to any entitlement to paid sickness leave.

Periods of OML and AML are regarded as continuous service for the purposes of the National Joint Council's sickness scheme and annual leave.

Sickness Monitoring

Schools should maintain records of pregnant employees' sickness in line with other employees. However no action should be taken under the sickness monitoring procedure in respect of any pregnancy related illness during pregnancy.

OTHER RIGHTS

Right to Return to Work

Following maternity leave an employee is entitled to return to the job in which she was employed under her original contract of employment and on terms no less favourable than those that would have been applicable to her had she not been absent. "Job" for this purpose means the nature of the work, which she is employed to do and the capacity and place in which she is so employed. Special conditions apply if redundancy or re-organisation has taken place during her leave.

Return before the end of the Maternity Pay Period:

The minimum period of maternity leave for all women is two weeks after the date of birth. This means that the employee cannot return to work until at least two weeks after the actual date of birth. Should the baby arrive after the due date, OML can be extended to ensure these provisions are met.

An employee who wishes to return to work before the end of her OML or AML must inform the school and then give the HR Administration and Payroll Provider Team advance notice. As the notice periods given by the National terms and Conditions are more favourable than the statutory requirements, these must apply. Where the employer has not given the employee notification of their expected day of return, the employee may return without giving any notice.

Returning Teachers:

When returning from OML the minimum notice is 28 days. Where the employee fails to give the correct notice, the employer may postpone her return to work until the 28 days have elapsed, or until the end of the maternity leave entitlement, whichever is shorter.

Returning from AML the minimum notice is also 28 days. Where the employee fails to give the correct notice, the employer may postpone her return for a period of up to 28 days.

Returning School Support Staff:

When returning from OML the minimum notice is 7 days. Where the employee fails to give correct notice, the employer may postpone her return until 7 days have elapsed or until the end of the maternity leave entitlement, whichever is the shorter.

Returning from AML the minimum notice is 21 days. Where the employee fails to give the correct notice, the employer may postpone the return to work until 21 days have elapsed, or until the end of the maternity leave entitlement, whichever is sooner.

Leaving During Pregnancy

If the pregnant employee resigns, or is dismissed after the start of the 15th week before the EWC, she is entitled to be paid SMP for 39 weeks (assuming she qualifies for it). However, she will not be entitled to Occupational Maternity Pay beyond her finish date.

Antenatal Care

There is a statutory right for all pregnant employees to paid time off to attend antenatal care appointments. This right arises where an employee has been advised to make such appointments by a registered medical practitioner, midwife or health visitor. After the first appointment, the employee can be required to produce evidence of appointments.

An employee has a right to not be unreasonably refused time off. Managers should grant time off when requested unless it is clear that an employee is abusing their rights, and can ask (but not insist) employees to rearrange appointments where it is reasonable to do so. Credits under the Flexi time Scheme are not restricted to core time, but are restricted to the boundaries of the normal working day (e.g. 8.40am – 5.00pm)

Antenatal care is not defined in the legislation. It does however include antenatal relaxation classes and parent classes where these have been recommended by a doctor, midwife or health visitor.

There is no service qualification or need to work a certain number of hours. An employee may submit a complaint to an Employment Tribunal to the effect that her employer has unreasonably refused her time off or has failed to pay her any amount under statutory provisions.

Protection from Dismissal and Detriment

Any dismissal on the grounds of a woman's pregnancy or for any reasons connected with it is automatically unfair. Protection against dismissal is extended to all employees regardless of hours worked or length of service.

If a pregnant employee is dismissed for any reason connected with her pregnancy or because she took maternity leave, she can make a complaint to an employment tribunal. See guidance for further information.

Right to Request Flexible Working

It is important to give full consideration to any request to work part time, flexibly or on a job share basis. Employees can formally request flexible working arrangements where they have parental responsibility for a child aged under 17. An unreasonable refusal may be construed as indirect sex discrimination and, in addition, employees will have the right to make a claim to an Employment Tribunal where they feel the council has not given a request proper consideration within the statutory requirements.

GENERAL INFORMATION

Advising the Employee

When a manager becomes aware that an employee is pregnant, he/she should ensure that the maternity provisions are explained to her and that the payroll provider is informed so that the appropriate letter can be sent within 28 days of receipt of the initial notification. Time should be put aside to explain the policy and to carry out a Pregnancy Risk Assessment at the earliest opportunity. This should be reviewed as the pregnancy progresses.

Reasonable Contact

Reasonable contact should be kept with employees during maternity leave.

This contact may be to discuss such issues as whether the planned return to work date has changed, or is likely to do so, and flexible working arrangements that would make the return to work easier.

The employer must keep employees informed of promotion opportunities, job vacancies, significant workplace developments and training opportunities, together with any information relating to their job that an employee would normally be made aware of if they were in work.

This contact can be made in any way that best suits either one or both parties; for example, it could be by telephone, by e-mail, by letter, a visit to the workplace, or in other ways.

What is classed as 'reasonable' contact will vary according to the circumstances; some women may be happy to stay in close touch with their workplace and may not mind frequent contact with their line manager, or alternatively, they may prefer to keep such contact to a minimum.

Managers should discuss the arrangements for staying in touch, before maternity leave starts. This might include agreements on the way in which contact will happen, how often it will take place, who will initiate the contact, reasons for making contact and the types of things that could be discussed.

Supporting the return to work

Managers should ensure that the employee knows where and to whom to report on her first day back and that her workstation is ready. The manager should arrange catch-up meetings to update the employee on any workplace developments about which she has not already been informed - such as new or amended systems of work, and any new members of staff or staff departures. They will also need to discuss any training needs that the employee may have, and ensure that arrangements are put in place to address these as soon as possible. Introductions between the employee and any new members of staff should be made.

Where other members of staff, or temporary cover have covered the employee's work, a handover should be arranged. The manager will need to check that the work has been completed satisfactorily, and that they are aware of anything outstanding at the point of handover.

Depending on the employee's job, it may be appropriate that her work is handed back to her on a gradual basis. A date by which she is expected to be back up to speed with her work should be set. Her progress should be reviewed, and any necessary support provided. Where the employee has returned to work on a part-time basis, the employer should ensure that her workload is in proportion to her hours.

Avoiding discrimination on the employee's return

The employer should ensure that, on her return, the employee is offered the same opportunities as other staff members for career development, training and promotion. She should not be treated less favourably because she has been absent on maternity leave.

The employee may also have a significant amount of leave to take before the end of the leave year.

The employer should treat any requests from the employee to take this leave in the usual way - a refusal to allow a request for annual leave because she had recently been absent for a long period on maternity leave would amount to pregnancy and maternity discrimination under the Equality Act 2010.

Support for breastfeeding mothers

The Government recommends that babies should be exclusively breastfed for the first six months, and that breastfeeding should continue until they are 12 months old.

In many cases employees returning to work after maternity leave will have stopped breastfeeding. However, some employees may still be breastfeeding at this stage, or expressing breast milk during the day to give to their baby later on - which also counts as "breastfeeding".

Whilst the law does not give a "right" to breastfeed at work it might be indirectly discriminatory to refuse to allow a breastfeeding employee the flexibility that she needs to continue, e.g. reduced hours or breaks to express milk. The law does, however, protect the health and safety of a mother and baby. While it is unlikely that the health of a baby over 12 months old would be put at risk if it was not breastfed, there might be a health and safety risk if the baby was at risk from certain allergies and, as a result, the mother had been advised to continue breastfeeding.

Employers are required to provide suitable rest facilities for mothers who are breastfeeding and it is therefore good practice to seek to provide a private, clean environment in which milk can be expressed undisturbed, such as a spare office (or one which the office owner temporarily vacates and will be private) and a fridge in which to store the milk. It would not be appropriate to expect an employee to express milk in a toilet or car park area. An employee may require flexibility over lunchtimes or break times so that she can express milk.

Annual Leave (NJC only)

Employees continue to accrue annual leave whilst on maternity leave. The normal rules relating to the carry over of annual leave from one financial year to another still apply, i.e. she must take annual leave within the financial year that it has accrued with the facility to carry over up to five days. See Q12 in Questions and Answers section for more details.

However where a woman is unable to take her annual leave before she starts her maternity leave due to the early birth of her child or pregnancy related sickness absence, or where maternity leave is close to or overlaps with the end of the annual leave year to the extent that she cannot take all of her annual leave, an exception should be made to carry over policies to allow her to take the leave that she would otherwise lose in the next year.

Employees who have left the service of local government due to maternity reasons, or reasons concerned with caring for children or other dependents, he/she can, if they have not undertaken any paid employment in the interim, count their previous continuous local government service for the calculation of their holiday entitlement when returning to work in a local authority.

Honorarium (NJC only)

If an employee is undertaking additional duties for a temporary period, for which she is receiving an honorarium and then takes maternity leave during this period payment should continue for the 39 week maternity pay period.

Bank Holidays (NJC only)

Employees who work full year on NJC terms and conditions are entitled to a substitute day's leave for any bank holidays falling within the Maternity Leave period; this includes OML and AML periods.

Free Prescriptions and Dental Treatment

During pregnancy and for 12 months after the birth, women have the right to free prescriptions and dental treatment. They have to ask their GP or midwife for Form FW8.

Temporary Employees

All female employees qualify for 52 weeks maternity leave regardless of their length of service or the number of hours worked. Consequently temporary employees will qualify for statutory maternity rights for as long as they remain employees. If their contract is terminated during their maternity leave this will end their maternity leave as well as their employment. There will be no right to claim unfair dismissal if the reason for the termination of their contract is not pregnancy related unless the employee has one year's qualifying service. Conversely if the reason for dismissal is pregnancy related then the employee can claim unfair dismissal regardless of their length of service. It is therefore important to ensure that temporary employees are treated in the same way in these circumstances, as they would have been if they had not become pregnant.

It is feasible to have a situation where a permanent employee is on maternity leave and a temporary employee is appointed to cover her maternity leave. The temporary employee may herself become pregnant and will qualify for 52 weeks maternity leave subject to the end of the contract date. She has the right not to be unfairly dismissed because of her pregnancy and an additional temporary employee could then be appointed to cover her maternity leave. The maternity leave period will of course end when the contract of the pregnant temporary employee expires. There is no requirement to extend the temporary contract because of the maternity leave. The main point being that the employee should be treated no differently because of her pregnancy.

It is worth noting that an employee can satisfy the continuous employment rule to qualify for SMP even if she has been employed only for short spells during the qualifying period. If a temporary employee or casual worker does not work any particular week because they were not offered work, as opposed to turning down an offer of work, continuity of service is not broken. If the employee was offered work but was unavailable, the period of absence can only count as continuous service for SMP, if she was unable to work because of sickness, injury or pregnancy.

HEALTH AND SAFETY

Introduction

Employers are required to undertake risk assessments of all the hazards relating to their work. The Management of Health and Safety at Work Regulations 1999 contain specific provisions relating to risk assessments with respect to new or expectant mothers. This incorporates the European Directive into UK law.

The definition of a 'new or expectant mother' is an employee who is pregnant, who has given birth within the past six months or one who is breast feeding.

The 1994 Regulations require the risks to new or expectant mothers to be controlled or the employer must, where reasonable to do so, alter the working conditions or hours to avoid the risks. If this is not reasonable or would not avoid the risks, then suitable alternative work must be offered. Where this is not available then the new or expectant mother must be suspended on medical grounds from work with pay (see later for more details).

Risk Assessment

Managers must carry out risk assessments. These involve an assessment of the risks to the health and safety of all employees whilst they are at work and of others who may be affected by the work activities. This may need to be reviewed during the pregnancy as it progresses. Specific attention should be paid to changes in the health of the expectant mother, changes in the work place which may affect her and if necessary to the medical history of previous pregnancies of the employee.

More specifically, Managers must assess any risks to the safety or health of new and expectant mothers and their children and any possible effect on the pregnancies or breast feeding of workers and decide what measures should be taken.

The assessment must also consider working conditions i.e.

- Facilities (including rest rooms)
- Mental and physical fatigue and working hours
- Stress (including postnatal depression)
- Passive smoking
- Temperature
- Working with visual display units (VDUs)
- Working alone
- Work at heights
- Travelling
- Violence
- Working and personal protective equipment

Managers should therefore undertake an assessment into the effect of work activities on pregnant and breast-feeding women and act on any identified risk. Physical working conditions such as travelling and working hours do not have a uniform effect on pregnant women and pregnancy is an ever changing condition. Medical advice on the adverse effects of working conditions given to individual pregnant and breast-feeding employees should therefore be taken seriously and acted upon.

Informing Employees

Many of the hazards are already covered by specific health and safety legislation, e.g. COSHH. You should refer to the relevant regulations for information.

If the risk assessment does identify a risk you should tell female employees of childbearing capacity about the potential risks, if they are or could in the future be pregnant or breast-feeding. You should also make clear what you will do to make sure that new and expectant mothers are not exposed to the risks that could cause them harm. Do not wait until an employee becomes pregnant before carrying out a pregnancy risk assessment. Failure to carry out such a risk assessment can amount to a detriment within the meaning of the Sex Discrimination Act.

What to Do

If you, or an employee has identified a significant risk to the health or safety of a new, breast feeding, or expectant mother you need to take the following appropriate action.

- Consider removing the hazard or seek to prevent exposure to the risk, or removing or reducing the effect of the risk e.g. by providing aids to help with manual handling duties
- If this is not possible the risk should be controlled

If there is still a significant risk to the safety or health of a new, breastfeeding or expectant mother then the following steps must be taken:

- temporarily adjust her working conditions and/or hours of work; or if this will not avoid the risk or is not reasonable to do
- offer her suitable alternative work (on no less favourable terms) if any is available; or if this is not possible you must
- Medically suspend her from work (paid) for as long as necessary to protect her safety or health or that of her child.

If you are in any doubt you may want to seek professional advice (e.g. Personnel Officer, Health & Safety Officer, Welfare Officer, Occupational Health) on what the risks are and whether they arise from work before offering alternative work or paid suspension. Consideration will be given to alternative work in other departments before suspension.

It is important to monitor and review risk assessments.

Breast-feeding

You also need to remember that the risks are different for women who are breast-feeding. There is no time limit set by the regulations. Again you will need to continue to follow the steps to avoid exposure to risks (i.e. adjustment/alternative work/paid leave) for as long as it threatens the health and safety of a breast-feeding employee or her child. The main concern is exposure to lead which can enter the breast milk.

Where the risks are being controlled in line with the regulations it is unlikely that breast-feeding workers will be exposed to risks, which require alternative work or paid leave being offered.

Rest

Under the Workplace (Health, Safety and Welfare) Regulations 1992 you are required to provide suitable facilities for workers who are pregnant or breastfeeding to rest

Night Work

The regulations require that if a new or expectant employee works at night and has a medical certificate stating that night work could affect her health or safety you must either:

- offer her suitable alternative daytime work if any is available on terms and conditions that are no less favourable; or, if that is not reasonable
- suspend her from work (paid) for as long as necessary to protect her health or safety.

The Health and Safety Executive is not aware of any risks to pregnant or breast-feeding workers or their children from working at night.

If an employee claims she cannot work nights you should seek advice from your HR Adviser

Medical Suspension

Where it is necessary to medically suspend an employee on the grounds that her health would be unnecessarily put at risk, for reasons detailed in this section, she must be paid at her full normal rate.

The only exception is where she has unreasonably refused an offer of alternative work, (which would minimise the risk to health) in which case no remuneration is payable for the period during which the offer applies.

The suspension period counts towards her period of continuous employment.

QUESTIONS AND ANSWERS

1. What happens if the employee is not entitled to SMP?

The Payroll Provider will give her a completed form SMP 1 within seven days of deciding that she is not entitled to SMP. She will need to give this and her maternity certificate to her local Benefits Agency when claiming Maternity Allowance.

2. What happens if the employee has more than one contract with the Authority?

If the employee has more than one contract, which attracts liability, for class I NI contributions and she satisfies all the other conditions she will be entitled to SMP under each contract. However the gross wages from each contract will be added together as there can only be one SMP liability.

3. What if the employee is sick?

If the employee is absent from work because of a pregnancy related illness on or after the fourth week before the EWC, the maternity pay period will be triggered and her maternity leave will start on the day following the first day of absence. Her SMP will also start on this day and run the full 39 weeks. If however, the employee has not worked in that week or not been entitled to SSP in that week then the maternity pay period will commence on the first day of the first week of absence. If the employee is absent with an illness which is not pregnancy related, the maternity pay period will commence as notified or from the Sunday following the date of birth, whichever is the earlier.

4. Can the employee work up until the birth?

Yes the employee chooses when her maternity leave will commence and may work up to the birth if she wishes. She will still receive the full 52 weeks' maternity leave and pay (subject to eligibility).

5. What if the employee's contract ends at the start of her maternity absence?

If the employee satisfies all the qualifying conditions then SMP still becomes payable unlike SSP where liability to pay ceases when the contract ends. If the contract is terminated after the start of the QW, SMP will start in accordance with her original intention. If the contract is terminated before she has given notice of when she wishes her maternity absence to start, SMP will start on the later of the 11th week before the EWC or the start of the week after employment ends.

6. What if the employee resigns during maternity leave?

If an employee decides not to return she must give her written resignation giving the appropriate notice. If no notice is given it is recommended that the effective date of the termination of the contract is the date when the written confirmation of resignation is received. No notice period should be worked. If she has received full OMP then she can be requested to pay back the 12 weeks half pay element.

7. If an employee is sick during maternity leave are they entitled to contractual sick pay?

No, the entitlement to remuneration is excluded during maternity leave, this includes sick pay.

8. What if the employee finds she is pregnant before she has returned from maternity leave?

The employee would be eligible to full maternity leave as if she had been in work, in these circumstances the employee would not be liable to repay her OMP, this would only be the case where the employee did not return to work after the second period of maternity leave and in this case would only be liable to repay OMP from the second period i.e. the latest maternity leave.

9. What if the baby is born prematurely?

If the baby is born before the QW, or before her maternity leave has started, the employee must, if reasonably practicable, give her employer up to 28 days' notice of the date she gave birth. Both the maternity leave (MPP) and maternity pay start the day following the birth.

If the baby is born earlier than the EWC but after the MPP has started then payment is not affected.

10. What if the baby is stillborn?

If the baby is stillborn before the 24th week of the pregnancy SMP will not be payable, i.e. before the 16th week before the EWC and a decision should be made whether sick pay should be paid. If a still birth occurs after this, i.e. after the 16th week before the EWC, SMP will be payable.

11. What if the baby is born after the EWC?

This will not affect the maternity pay period. (The actual date of birth is irrelevant in calculating SMP.)

12. Is the employee entitled to accrue annual leave during her maternity absence? (NJC staff only)

Yes, employees on NJC terms and conditions who are contracted to work full year accrue annual leave and bank holidays during their maternity leave. She must however normally take such leave within the financial year that it is accrued subject to the local agreement permitting up to five days to be carried forward to the next financial year with the agreement of the manager.

The authority should, as a matter of good practice, calculate how much leave a woman will accrue during her maternity leave provided that management has sufficient notice of her intentions this should be done in good time to give her a number of options. Depending on the timing of her maternity leave in relation to the annual leave year, a woman may choose to take her annual leave before she starts her maternity leave. Alternatively, provided she gives sufficient notice, she could start her maternity leave earlier than she anticipated and fit her annual leave in after she returns. Finally, a woman may decide to return before the end of her maternity leave so that she can take her remaining annual leave before the end of the annual leave year.

However where a women is unable to take her annual leave before she starts her maternity leave due to the early birth of her child or pregnancy related sickness absence, or where maternity leave is close to or overlaps with the end of the annual leave year to the extent that she cannot take all of her annual leave, an exception should be made to carry over policies to allow her to take the leave that she would otherwise lose in the next year.

13. What happens to the Essential Car User Lump Sum payments during maternity leave? (NJC staff only)

As the Employment Rights Act provides that a woman on maternity leave is entitled to her terms and conditions, apart from remuneration, as if she was at work, the employee will continue to receive her essential car user lump sum payment throughout the MPP i.e. 39 weeks

14. What are the pension implications?

During any ordinary maternity leave, you pay your normal contribution rate on whatever pay you receive. If you are on less than your normal pay, or even not paid, your membership still builds up as usual. So there is no effect on your pension benefits.

During any paid additional maternity leave, you pay your normal contribution rate on whatever pay you receive. Even if this is less than your normal pay, your membership still builds up as usual, so there is no effect on your pension benefits.

During periods of unpaid additional maternity leave you will only pay contributions if you choose to. You have 30 days from returning to decide and the cost is your normal contribution rate of the last pay you received. If you choose not to, you will not build up any membership for this period, and this will affect your pension benefits.

For further advice speak to the Pensions Officer.

15. An employee has asked for her half pay to be paid over 33 weeks instead of the usual 12. How does this work in practice and do we have to do it at all? (NJC staff only)

A number of Authorities had expressed concern over the fact that there would be no occupational maternity pay during weeks 19 to 39. The Green Book was therefore amended to make it clear that the Authority and the employee could come to an agreement to pay the 'half pay' over a different timescale to the traditional 12 weeks, i.e. weeks 7 to 39

- the amount that they would have received if they had had their pay over 12 weeks should be calculated. This should take into account the fact that an employee may receive less than half pay if half pay plus SMP exceeds full pay.
- this amount should then be divided by 33 weeks.

In practice there is only be three different approaches to paying half pay

- pay over 12 weeks – weeks 7 – 18
- pay over 33 weeks – weeks 7 – 39
- pay in a lump sum once an employee has returned to work.

It is not intended that this provision would be used to spread occupational maternity pay into the additional maternity leave period.

16. Is it possible for a casual worker to be entitled to maternity leave and/or pay?

A casual worker does not enjoy conditions of service and is paid an hourly rate. She does not therefore qualify for local government maternity provisions. However, she may qualify for SMP if she fulfils the criteria. Section 'Temporary Employees' gives further details.

17. What if an employee is ill and cannot return to work at the end of the AML or on the notified date of return?

The sickness scheme applies to such absences including the Sickness Monitoring Policy.

18. Does any period of Parental Leave following Maternity Leave count toward the required return for 3 months for the purpose of repaying OMP?

No. Where parental leave is taken following maternity leave an employee shall not be required to refund monies paid for OMP UNLESS she does not return to work for a period of at least 3 months after the end of the parental leave period. Therefore it precludes an employee from seeking to claim that the period of parental leave counts towards the required return for 3 months.

Does a period of sickness following Maternity Leave count toward the required return for 3 months for the purpose of repaying OMP?

It is expected that the employee will physically return to work during the 3 month period. However the would consider this on a case by case basis dependent upon the circumstances

20. What if the employee wants to extend their maternity leave into AML after already giving notice to return following OML?

This is possible, but she must inform her manager of this wish as soon as possible, once this has been agreed she must then give at least 28 days (teachers) or 21 days (NJC) before the declared return date.

Section 2

PATERNITY

Paternity leave is granted for the purposes of caring for a child and/or supporting the child's mother.

PATERNITY LEAVE

Who Is Eligible To Take Ordinary Paternity Leave?

An employee who has 26 weeks continuous service at the 15th week before the Expected Week of Childbirth (EWC) or the week in which 'a match is made' in the case of adoption, and is either:

- A male employee who is the biological father of the child and will have responsibility for the child's upbringing
- An employee (male or female) who is the partner or civil partner of the child's mother and expects to have responsibility for the child's upbringing
- An employee (male or female) who is adopting a child with their 'partner'
- An employee (male or female) who is the 'partner' of someone adopting a child on their own

A partner is defined as "a person (whether of a different sex or same sex) who lives with the mother and the child in an enduring family relationship". In all cases the employee must have, or expect to have, responsibility for the upbringing of the child and be making the request to help care for the child or to support the child's mother.

Who Is Not Eligible?

- a relative of the mother of the child, i.e. her mother, father, brother, sister, aunt, uncle or grandparent.
- the biological father if he is not expecting to have responsibility for the upbringing of the child.

Leave Entitlement

The employee can take either one week's leave or two consecutive weeks' leave.
The employee is not permitted to take part weeks

The Paternity Leave must be taken after the birth of the child and within the first 8 weeks of the child's life or within the first 8 weeks of placement if an adoption.

The leave can start on:

- the date the child is born (or placed); or
- from a specified date after the birth (or placement)

The leave can start on any day of the week and then runs on a rolling basis through the Paternity Leave, for the one or two week period.

PATERNITY PAY

One week at full pay; plus

One week at SMP rate (or 90% of normal earnings whichever is less).

Where an employee's earnings are lower than the LEL they will not be eligible for ordinary SPP.

Notification

The employee wishing to take Ordinary Paternity Leave must notify their manager of their intention at a minimum by the end of the 15th week before the EWC.

If the Paternity Leave is related to an adoption then notification must be within the 7 days of being told a 'match' has been made with a child. This must include the date the child is expected to be placed, the intended start date of the OPL and the length of the intended leave and the date on which the adopter was notified of having been matched with the child.

The employee will be required to complete an Inland Revenue Form SC3 if a birth child or an SC4 if an adopted child the forms are available from the school's payroll provider. The forms require information on the EWC or the date of the adoption placement, the length of leave requested, the date the leave is to start and a signed declaration concerning their relationship to the child.

The start of the leave can be varied. Where an employee has notified management that they wish to take paternity leave from the birth of the child they will be able to do so whether or not the child is born on the expected date. Employees who have given a fixed start date however, and later wish to change the date of the leave must give 28 days' notice.

After receiving a request for Paternity Leave the manager must inform their payroll provider who will write to the employee within 28 days (where possible) to confirm the date of the leave.

Returning Early From Paternity Leave

If an employee requests to return early the decision to allow an early return would be at management discretion.

Please note that the term 'birth' in this guidance relates to the live birth of a child, or a still-birth after a pregnancy lasting 24 weeks.

Ante Natal Appointments

Fathers in a "qualifying relationship" have the right to unpaid time off to attend antenatal appointments on up to two occasions, with a maximum of 6.5 hours per occasion.

Surrogate Parents

Provided they meet the eligibility criteria, parents which a have a child through surrogacy are permitted to take paternity leave and pay, adoption leave and pay and shared parental leave and pay. Both parents are entitled to take unpaid time off to attend two antenatal appointments with the woman carrying the child.

Section 3

SHARED PARENTAL LEAVE

The statutory right to take shared parental leave to care for a child to be born or placed for adoption was introduced for babies born or placed for adoption after 5th April 2015. There are also specific notification requirements to enable a period of Shared Parental Leave (SPL) and the entitlement to Shared Parental Pay (ShPP).

Where the criteria are met, SPL gives employees with caring responsibilities for babies or newly adopted children the opportunity to share up to 52 weeks' leave with their partner if they wish (although the mother **must** take two weeks leave following the birth of the child).

Parents taking SPL can:

- Take leave in one block (continuous leave)
- Take leave in separate blocks (discontinuous leave)
- Return to work in between blocks
- Be on leave concurrently (at the same time)

Eligible employees are entitled to submit up to three notices giving details of leave requested.

Before giving formal notification of an intention to take SPL, an informal discussion should take place with management to discuss entitlements to other types of leave and pay. Plans for any discontinuous periods of leave should also be considered as early as possible.

Additional Paternity Leave was abolished in April 2015 when the Shared Parental Leave entitlement was introduced.

WHO IS ELIGIBLE FOR SHARED PARENTAL LEAVE?

Shared Parental Leave can only be used by two people:

The mother (or main adopter) **and**

One of the following:

- the father of the child (in the case of birth) or
- the spouse, civil partner or partner of the child's mother (or adopter).

Both parents must share the main responsibility for the care of the child at the time of the birth (or placement for adoption).

For employees to be eligible to take shared parental leave, both parents must meet certain eligibility requirements.

Mother's eligibility for shared parental leave

The mother is eligible for shared parental leave if she:

- has at least 26 weeks' continuous employment ending with the 15th week before the expected week of childbirth (or placement) and remains in continuous employment with the school until the week before any period of shared parental leave that she takes;
- has, at the date of the child's birth (or placement) the main responsibility, apart from the partner, for the care of the child;
- is entitled to statutory maternity leave (or adoption leave) in respect of the child;

- complies with the relevant maternity (or adoption) leave curtailment requirements (or has returned to work before the end of statutory maternity or adoption leave), and shared parental leave notice and evidence requirements.

In addition, for the mother to be eligible for shared parental leave, the partner must:

- have been employed or been a self-employed earner in at least 26 of the 66 weeks immediately preceding the expected week of childbirth (or placement);
- have average weekly earnings of at least the maternity allowance threshold [currently £30] for any 13 of those 66 weeks; and
- have at the date of the child's birth (or placement) the main responsibility, apart from the mother, for the care of the child.

Partner's eligibility for shared parental leave

The partner is eligible for shared parental leave if he/she:

- has at least 26 weeks' continuous employment ending with the 15th week before the expected week of childbirth (or placement) and remains in continuous employment with the school until the week before any period of shared parental leave that he/she takes;
- has, at the date of the child's birth (or placement) the main responsibility, apart from the mother, for the care of the child; and
- complies with the relevant shared parental leave notice and evidence requirements.

In addition, for the partner to be eligible for shared parental leave, the mother must:

- have been employed or been a self-employed earner during at least 26 of the 66 weeks immediately preceding the expected week of childbirth (or placement);
- have average weekly earnings of at least the maternity allowance threshold [currently £30] for any 13 of those 66 weeks;
- have, at the date of the child's birth (or placement) the main responsibility, apart from the partner, for the care of the child;
- be entitled to statutory maternity (or adoption) leave, statutory maternity (or adoption) pay or maternity allowance in respect of the child; and
- comply with the relevant maternity leave or pay curtailment requirements (or have returned to work before the end of statutory maternity leave).

AMOUNT AND TIMING OF SHARED PARENTAL LEAVE

A maximum of 52 week's SPL can be taken. Entitlement starts on the date of the baby's birth or the child's placement for adoption and will need to be taken in blocks of at least one week. This must be completed within a one year period.

The 52 weeks' will be reduced by any leave that has already been taken by the mother or main adopter.

After the birth of a child it is **compulsory to take 2 weeks' maternity leave**, so in the majority of cases working parents will have the opportunity to **split 50 weeks of SPL**.

SPL is in addition to the two weeks' statutory paternity leave for fathers and partners. Paternity leave must be taken before any SPL.

For the father / secondary adopter to take up SPL or ShPP the mother / main adopter must have ended / formally declared their intention to end their maternity entitlements.

- **The mother of the child** can take SPL after taking the legally required two weeks of maternity leave immediately following the birth of the child
- **The main adopter of the child** can take SPL after taking at least two weeks of adoption leave
- **The mother (or main adopter) of the child** can give notice to stop maternity (or adoption) entitlement, which allows the other parent to take SPL
- **The father (or secondary adopter) of the child** can take SPL immediately following the birth (or placement) of the child, but may first choose to use paternity leave entitlements. Ordinary Paternity leave or pay cannot be taken once SPL or ShPP has been taken.

WHO IS ENTITLED TO SHARED PARENTAL PAY?

To be entitled to ShPP, the employee must meet the criteria for SPL **and** have average weekly earnings equal to or above the Lower Earnings Limit over an eight week period ending with the relevant week.

Calculations of entitlement to SPL and ShPP can be found on the link below.

<https://www.gov.uk/shared-parental-leave-and-pay>

ShPP is a standard weekly rate (or 90% of the employee's normal weekly earnings if this is lower) which is set by government each tax year.

A maximum of 39 weeks' ShPP is payable, and this will be reduced by the number of weeks' statutory maternity (or adoption) pay or maternity allowance already taken by the mother or main adopter.

To access ShPP, statutory notification and information requirements must be followed as detailed below.

NOTIFICATION

The notification requirements for SPL and ShPP are very specific and detailed. Employees will be provided with an SPL1 and SPL2 form to help.

Requests for SPL which are not made in accordance with the statutory notification requirements will be given reasonable consideration, but may not be granted.

Irrespective of whether the employee is the mother or father of the child, an SPL1 and SPL2 form must be submitted to the school to provide the required information / declaration in order to access SPL and / or ShPP.

Notice of entitlement and intention to take SPL and ShPP

The school must be notified in writing **at least eight weeks** before the start date of the first period of SPL, but preferably sooner. The written notice must contain the following information:

- Employee's name and the other parent's name
- The start and end dates of the mother's or main adopter's maternity (or adoption) leave [or the start and end dates of the statutory maternity (or adoption) pay or maternity allowance period if the mother/main adopter is not entitled to statutory leave].
- The expected date of birth (or placement) and the actual date of birth (or placement) if the written notice is given after the birth (or placement)
- The amount of SPL and ShPP available and an indication of how much each parent intends to take (this may be varied by a subsequent written notice signed by both parents)
- An indication of the start and end dates of the periods of SPL and ShPP intended to be taken. This indication is not binding and can be amended at a later date
- A declaration that the employee meets the conditions for entitlement to SPL, the information provided is accurate and that the employee will notify the council immediately if conditions for entitlement change
- A declaration from the other parent containing his or her name, address and National Insurance number, confirmation that s/he meets the employment and earnings conditions, consents to the amount of leave the employee intends to take and will immediately inform the school if s/he ceases to meet the employment and earnings conditions.

Employees will be sent a letter acknowledging receipt of the completed SPL1 and SPL2 forms.

Notice to stop statutory maternity/adoption leave and payments

Where the employee is the father (or secondary adopter) and has informed the school of his intention to take SPL by submitting the SPL2 form, his partner must (if not employed by the council), at the same time, inform their own employer of their intention to end their maternity entitlement. This must be given with eight weeks' notice.

If the mother is only entitled to maternity allowance, her notice of curtailment must be submitted to Jobcentre Plus. Her maternity allowance cannot be reinstated, so she is in effect giving consent for her partner to take the whole of any ShPP entitlement.

If there is no entitlement to SPL but the mother wants to end their maternity (or adoption) leave and/or pay to free up the entitlement to SPL for the other parent/adopter, a different notice of curtailment must be submitted (SPL2). Her maternity allowance cannot be reinstated, so she is in effect giving consent for her partner to take the whole of any ShPP entitlement.

Notice of curtailment (SPL2) is usually binding, but may be revoked in the following circumstances:

- It becomes apparent that neither parent is entitled to SPL or ShPP
- If the curtailment notice was given before the birth and is revoked within six weeks of the birth (in this case another curtailment notice can be submitted)
- If the other parent dies

Notice to take a specific period of SPL and ShPP

An employee is entitled to submit a maximum of three notices of intention to take SPL.

The first period of SPL will be given in the initial notice (SPL2 form). Any further SPL requests will be given in the notices submitted using the SPL3 form.

At least eight weeks' notice must be given for all SPL including provision of the starting dates for ShPP to begin, if required.

If the first leave notice is submitted before the birth of the baby it is acceptable to state for

example 'starting two weeks after the baby is born for a period of four weeks'.

Every school reserves the right to ask for further information to support this request.

REQUESTS FOR SHARED PARENTAL LEAVE AND PAY

Requests for continuous leave

If SPL is requested in a continuous block, the school will approve the request and this will be confirmed in writing.

Requests for discontinuous leave

If more than one period of leave (discontinuous) is requested in a period of leave notice, managers will work with each employee to see if this is possible.

If a discontinuous leave request is not approved, managers will work with each employee to see if an alternative leave pattern could be accommodated. The manager's decision will be confirmed in writing.

If no agreement is reached within **two weeks** of the period of leave notice being submitted, the employee can:

- Take the period of leave in one continuous block, beginning on the original start date
- Take as a continuous block starting on a new date. This date would need to be after the original proposed start date. Notification needs to be given to the school within five days following the two week period above
- Withdraw the request at any time up to the 15th day after it was originally made. If the request is withdrawn it will not count as one of the three requests

VARYING PERIOD OF LEAVE

Employees are entitled to submit a request to vary a period of leave in the following ways:

- Vary the start or end date as long as the variation is requested at least eight weeks before the original start date and the new start date
- Vary or cancel the amount of leave requested at least eight weeks before the original start date
- Request that a single period of continuous leave become a discontinuous period of leave, or vice versa

A variation will count as one of the three periods of leave notices unless:

- It is made as a result of the child being born earlier or later than the expected week of childbirth
- The school has requested the variation

The usual eight week notice requirement may be modified if the child is born early. The new start date must be the same length of time following the birth as the original notice. Notice to vary the start date should be given as soon as reasonably practicable after the birth of the child.

EVIDENCE REQUIREMENTS

The school may request a copy of the child's birth certificate and the name and address of the other parent's employer.

In the case of adoption, the school may request the name and address of the other parent's employer, along with evidence confirming the following:

- The name and address of the adoption agency
- The date that the main adopter was notified of having been matched for adoption with the child
- The date on which the adoption agency expects to place the child

Requests will be made by the school within 14 days of receiving your notice of entitlement and intention to take SPL and ShPP. Evidence must be provided within 14 days (or within 14 days of the birth of the child if your request was made before the child was born).

The school will not, other than in exceptional circumstances, provide any employee data to third party employers in relation to entitlement to SPL or ShPP.

KEEPING IN TOUCH DURING SHARED PARENTAL LEAVE

KIT Days

Employees may be asked to attend work on occasional days during the SPL period. These days could be for training, to attend department meetings, or just for keeping in touch (KIT).

Up to 20 days may be worked without bringing the SPL to an end, however, this will not extend the SPL period. If worked, normal rate of pay will be made, inclusive of any ShPP entitlement. An employees is under no obligation to work during SPL, and the school is under no obligation to offer work.

The 20 KIT days available during SPL are in addition to the 10 KIT days available during maternity and adoption leave.

Contact During SPL

The school reserves the right in any event to maintain reasonable contact with employees from time to time during SPL.

TERMS AND CONDITIONS DURING SHARED PARENTAL LEAVE

Contractual benefits

During SPL, terms and conditions of employment remain the same, with the sole exception of salary.

Holidays

Annual Leave continues to accrue whilst on SPL and the normal rules relating to the carry-over of annual leave from one financial year to another still apply, i.e., annual leave must be taken in the financial year that has accrued, and up to five days can be carried over with line management

permission.

If annual leave cannot be taken before the start of SPL due to the early birth of the child or pregnancy related sickness absence, or where SPL is close to, or overlaps, with the end of the annual leave year, an exception may be made to allow you to take the annual leave in the next year.

Employees are also entitled to accrue leave for any bank holidays falling within the SPL period.

Returning to Work from SPL

Returning early from SPL, or extending the period of SPL is possible, providing notification is given to the school at least eight weeks' before both the original end date and the new end date.

If the total leave which taken amounts to 26 weeks or less, there is an entitlement to return to the same job, on the same terms and conditions, as if there had been no absence.

If the total leave taken totals more than 26 weeks, an employee will normally be entitled to return to the job in which they were employed before the absence, unless it is not reasonably practicable for the employer to return them to that job. In this situation the entitlement is to return to another job which is both suitable and appropriate in the circumstances.

The exception to this is where a redundancy situation has arisen, and the employee's original job no longer exists, in which case the council will follow its normal procedures.

The right to return means that the employee will return on terms and conditions no less favourable than those that would have been applied if they had not been absent and with the same level of seniority, pension rights and other similar rights.

Surrogate Parents

Provided they meet the eligibility criteria, parents which a have a child through surrogacy are permitted to take paternity leave and pay, adoption leave and pay and shared parental leave and pay. Both parents are entitled to take unpaid time off to attend two antenatal appointments with the woman carrying the child.

QUESTION AND ANSWERS

1. What is shared parental leave?

Shared parental leave provides eligible parents with the opportunity to choose to share between them the care of their child during the first year following the child's birth or adoption. Its purpose is to give parents greater flexibility in considering how to best care for their child.

2. How do I know if I am eligible to take Shared Parental Leave?

There are specific criteria regarding your pay and service and that of your partner. You can check the Shared Parental Leave Guidance to make sure you qualify.

3. How can shared parental leave be taken?

You and your partner may choose to take shared parental leave at the same time or at different times (as long as the total leave taken does not exceed what is jointly available to you, up to a maximum of 50 weeks).

Example One:

If you are the mother of the child / main adopter of the child, you may choose to take 8 weeks' maternity leave. Then you and your partner both take a period of 12 weeks' shared parental leave, so you can care for your child together. Your partner returns to work, and you take a further 16 weeks' shared parental leave

Example Two:

Your partner takes 16 weeks' adoption leave. Following their return to work, you take a period of 12 weeks' shared parental leave. You then return to work, and your partner takes a final period of 16 weeks' shared parental leave.

4. What is the difference between shared parental leave and additional paternity leave?

Additional paternity leave has been abolished and replaced by shared parental leave. Shared parental leave will apply in relation to babies due on or after 5 April 2015 or children matched for adoption on or after this date.

5. Can same sex couples take shared parental leave?

Yes. You can take shared parental leave with your spouse, civil partner or partner. Partner is defined as someone (whether of a different sex or the same sex) who lives with you in an enduring family relationship (but who is not your child, parent, grandchild, grandparent, sibling, aunt, uncle, niece or nephew).

6. Can I take shared parental leave if my partner is self-employed?

Yes, you may be eligible to take shared parental leave if your partner is self-employed, as long as your partner meets the relevant Employment and Earnings test.

7. What pay will I receive during shared parental leave?

Statutory shared parental pay is paid for periods of shared parental leave. Up to 37 weeks' shared parental pay is available for parents to share between them while on shared parental leave. The mother must take the first 2 weeks following the child's birth / placement as mandatory maternity leave which is payable for council employees who are entitled to maternity pay as 9/10 of a week's pay, offset against payment made by way of SMP or Maternity Allowance.

8. If I take shared parental leave with my partner, who is responsible for paying my partner?

If you take shared parental leave your partner's employer is responsible for paying them.

9. How much notice must I give?

If you meet the eligibility tests, you must give at least eight weeks' notice of your intention to take shared parental leave.

10. Will I be asked for evidence that I am entitled to shared parental leave?

You may be requested to provide a copy of the child's birth certificate and the name and address of the other parent's employer. In the case of adoption, you may be requested to provide the name and address of the other parent's employer, together with further evidence about the adoption.

11. What happens if my requested pattern of leave is not approved?

If your requested pattern of leave is not in one continuous block, your manager may not be able to approve it for business reasons which will be explained to you. Your manager will work with you to try to agree an alternative pattern of leave.

12. What happens if my pattern of leave was approved before my baby was born, or before my child was placed with me for adoption, and my baby arrives earlier than expected, or the placement begins earlier than expected?

In these circumstances, you must notify your manager of the new start date for your shared parental leave as soon as reasonably practical.

13. Can employees on shared parental leave have keeping in touch days?

Yes. You may be asked to attend work on occasional days during your shared parental leave period. These could be for training, to attend department meetings, or just for keeping in touch. You may work for up to 20 days without bringing shared parental leave to an end, however, this will not extend your shared parental leave period. You are under no obligation to work during shared parental leave, and your employer is not under any obligation to offer work.

14. How will I be paid for any time spent on a shared parental leave keeping in touch day?

You will be paid your normal rate of pay inclusive of any shared parental pay entitlement.

15. Do I have the right to return to the same job after taking a period of shared parental leave?

If the total leave taken amounts to 26 weeks or less, you will be entitled to return to your same job, on the same terms and conditions, as if you had not been absent.

If the total leave taken totals more than 26 weeks, you will normally be entitled to the job in which you were employed before your absence unless it is not reasonably practicable for the employer to return you to that job. In this situation you will be entitled to return to another job which is both suitable and appropriate in the circumstances.

The exception to this is where a redundancy situation has arisen, and your original job no longer exists, in which case normal procedures will be followed.

16. If I am made redundant while on shared parental leave, do I have any special rights?

If you are selected for redundancy during our shared parental leave, you are entitled to be given priority consideration for suitable alternative employment before the end of your existing contract. If suitable alternative employment is found your new contract will take effect as soon as your old contract comes to an end and your continuity of employment will continue.

17. Will the council contact me during my shared parental leave?

The school reserves the right in any event to maintain reasonable contact with employees from time to time during shared parental leave.

18. Do I accrue annual leave during a period of shared parental leave?

Yes. You continue to accrue annual leave during shared parental leave if you are employed to work full year (i.e. not term time only).

19. Can I still take paternity leave once shared parental leave is in force?

Yes. If you are eligible, you will still be able to take up to two weeks' paid paternity / partner's leave within the first eight weeks following the child's birth. Paternity leave must always be taken prior to any shared parental leave.

Section 4 MATERNITY SUPPORT LEAVE (Support Staff Only)

Who Is Eligible?

Maternity Support Leave (MSL) is only available to employees who are covered by the National Joint Council (NJC) Conditions of Service and either:

An employee who is a 'nominated carer' of an expectant mother, e.g. a sister, where the expectant mother does not have the support of a 'partner' on or around the time of the birth of the child; or

The child's father or partner who does not qualify for Paternity leave due to insufficient continuous service.

A partner is defined as "a person (whether of a different sex or same sex) who lives with the mother and the child in an enduring family relationship".

Leave Entitlement

The employee is entitled to one week off. If the employee does not wish to take a full week they are not obliged to do so.

MSL can be taken at or around the time of the birth.

The leave can start on any day of the week and then usually runs on a rolling basis through the Maternity Support Leave.

Maternity Support Leave Pay

Maternity Support Leave is paid at the rate of normal pay.

Notification

The employee wishing to take Maternity Support Leave must request the leave from their manager and satisfy him/her that they are a 'nominated carer' to an expectant mother. Notification should ideally be by the 15th week before the Expected Week of Childbirth, or as soon as is practical.

The employee must produce the MAT B1 form for the expectant mother or the child's birth certificate.

After receiving the request management must notify the HR Administration and Payroll Provider service so that they may write to the employee within 28 days (where possible) to confirm the date of the leave

Returning Early From Maternity Support Leave

If an employee requests to return early approval would be at management's discretion.

Section 5 ADOPTION

ADOPTION LEAVE

NB: See also 'Dual Approved Prospective Adopters (page 47)

There is only one period of leave per adoption regardless of the number of children placed. Throughout the document where we refer to the child this therefore equally means the children, if more than one is being adopted.

Where a couple are jointly adopting a child, they must decide which one of them will take adoption leave as the primary adopter and which one will take ordinary and additional paternity leave (subject to eligibility).

Who is eligible?

Any male or female employee who has completed 26 weeks' continuous service, calculated at the week in which the 'match is made' with an adoptive child, is eligible to take Adoption Leave. The employee must also be assuming the role of 'main carer'. If the employee is not to be the main carer they will be eligible for paternity leave (see Paternity Leave Scheme).

Both Teachers and Support Staff are eligible and have the same entitlements.

An employee adopting a child from abroad is also eligible for adoption leave and pay but under different guidance. If adopting from abroad please consult your HR Advisor.

Who may be eligible to take adoption leave?

An employee who is adopting a blood relative may be eligible to take Adoption Leave, if they are formally adopting the child/children and have supporting documentation that satisfies Inland Revenue and, therefore, the Local Authority and have been placed by an approved agency.

Who is not eligible to take adoption leave?

An employee is not eligible to take adoption leave if they are a step-parent adopting a partner's child, or adopting through an agency that is not recognised in the United Kingdom.

Leave Entitlement

The qualifying employee is entitled to a maximum of 52 weeks off in total, broken down into:

39 weeks of Ordinary Adoption Leave (OAL)

13 weeks of Additional Adoption Leave (AAL)

The employee can take any portion of the 52 weeks.

The earliest the leave can start is 14 days before the 'placement' of the adoptive child. The latest day it can start is the date the child is placed.

The adoption leave can start on any day of the week and the leave then runs on a rolling basis through the adoption leave entitlement.

The adoption leave cannot be used to attend meetings, training sessions or court in relation to the adoption. For these instances the employee should refer to the Policy for Special Leave.

ADOPTION PAY

The rate of adoption pay is the same regardless of the age of the child, up to 18 years old.

Statutory Adoption Pay

Employees who qualify for adoption leave will also qualify for adoption pay provided that their average weekly earnings are not less than the lower earnings limit. The statutory entitlement is 39 weeks of Statutory Adoption Pay (SAP) (or 90% of normal earnings whichever is less). The council operates an enhancement to this provision, which is:

Employees are entitled to 39 weeks paid adoption leave

- 6 weeks @ 90% of normal earnings
- 12 weeks @ 50% of normal earnings plus SAP
- 21 weeks @ SAP Plus
- 13 weeks Additional Adoption Leave which is unpaid.

All adoption leave payments are subject to normal salary deductions.

The adoption pay of 6 weeks @ 90% and 12 weeks @ 50% (see above) is subject to a requirement for the employee to return to work for at least three months following the adoption leave. Employees who do not return will be required to repay the additional monies paid under the scheme that are above the statutory entitlements.

Notification

The employee wishing to take adoption leave must notify their manager of their intention within 7 days of being told a 'match' has been made with a child.

Ideally the notification should be at least 28 days before the 'placement date', if practical. If this is not practical the leave will start on the date the child is placed.

The employee will be required to produce the Matching Certificate, which is issued by the local authority or adoption agency (similar to a MAT B1 form) and must inform their manager:

- the expected date of the child's placement
- when they want the adoption leave to begin

After receiving the above information the manager must notify their payroll provider who will write to the employee within 28 days to inform them of when the additional adoption leave period will end, i.e. when they are expected back to work. If the employee has told you a specific return date you would confirm this in the letter

The start of the leave can be varied following notification to the employer. This should be at least 28 days before the date of the new start date wanted. If this is not possible managers will have to exercise appropriate discretion. If the employee does vary their start date a revised letter must be issued within 28 days.

Contractual position

During the period of adoption leave, the employee's contract of employment continues in force and he/she is entitled to receive all his/her contractual benefits, except for salary. In particular, any benefits in kind and contractual annual leave entitlement will continue to accrue.

Pension

Pension contributions will continue to be made during any period when the employee is receiving adoption pay but not during any period of unpaid adoption leave. Employee contributions will be based on actual pay, while employer contributions will be based on the salary that the employee would have received had he/she not gone on adoption leave.

During periods of unpaid adoption leave you will only pay contributions if you choose to. You have 30 days from returning to decide and the cost is your normal contribution rate of the last pay you received. If you choose not to, you will not build up any membership for this period, and this will affect your pension benefits.

Annual leave (NJC only)

NJC employees who are contracted to work full year are encouraged to take any outstanding annual leave due to them before the commencement of adoption leave. The normal rules relating to the carry over of leave from one financial year to another still apply i.e. it must be taken within the financial year in which it accrued with the facility to carry over up to 5 days with the prior agreement of the manager. However where an employee is unable to take their annual leave before he/ she starts their adoption leave e.g. where the placement is brought forward or where the leave is close to or overlaps with the end of the annual leave year to the extent that he/she cannot take all of their annual leave, an exception should be made to allow the leave that would otherwise be lost to be carried forward to the next year.

Working During Adoption Leave - Keeping In Touch Days

An employee may undertake up to 10 days' work ('keeping in touch' days) during your adoption leave, without bringing your leave to an end and without losing any SAP. Working for part of a day will count as one day i.e. if you work for 2 hours, you will receive payment for 2 hours work (please see below regarding the payment terms), but this will count as 1 full 'keeping in touch' day.

The purpose of these days is to help the employee keep in touch with any workplace developments, for example training, staff briefings etc.

Working these days must be by agreement with the line manager. There is no requirement to undertake work and nor is there any requirement for the Council to provide work.

If an employee wishes to undertake these KIT days and their line manager is in agreement, activity for these days will need to be agreed. Work undertaken during adoption leave may include training, attending meetings or any activity carried out for the purposes of keeping in touch with the workplace.

If an employee carries out some work under this provision, the period of adoption leave will not be extended.

SAP will be received for the week in which the employee works. In addition, pay will be received for work undertaken under the contract of employment. Payment will be made at the normal contractual hourly rate of pay. SAP for the day will not be offset against any pay due, unless the total payment exceeds normal contractual pay.

Line managers must notify their payroll provider of the name of the individual, the date the individual has undertaken the work and the numbers of hours worked. The payroll provider should record these details, to monitor the number of KIT days undertaken and ensure that the maximum 10-day limit is not exceeded. They will also ensure that the appropriate payment is made.

Contact During Adoption Leave

The employer has the right to make “reasonable contact” with an employee during their adoption leave. Such contact might be to keep an employee informed of any developments at school that might impact upon them when they return, any special events, job vacancies and training opportunities in addition to well wishes on the adoption.

Such contact would not constitute “work” as defined above and would not therefore count towards the 10 days.

Returning Early From Adoption Leave

If the employee wishes to return from adoption leave early during the or OAL or AAL period they must give at least 21 days notice in writing of the date on which they intend to return.

Returning to Work

Following Adoption leave an employee is entitled to return to the job in which he/she was employed under his/her original contract of employment and on terms and conditions no less favourable than those that would have been applicable to him/her had he/she not been absent. “Job” for this purpose means the nature of the work, which he/she is employed to do and the capacity and place in which he/she is so employed. (Special Conditions apply if redundancy or re-organisation has happened in between.)

Redundancy and Re-organisation

Where a redundancy situation arises during an adoption leave the employee on adoption leave must be treated like any other employee; that is to say they must be consulted in advance and objective and fair redundancy selection criteria must be applied by the employer. Where suitable alternative employment exists in terms of type of job, its location and the terms and conditions (not substantially less favourable than the previous job) the employee is entitled to be offered that job. If the employee unreasonably refuses the suitable alternative employment offered, there is no dismissal in law.

Contract of Employment

The contract of employment continues through both the ordinary and additional adoption leave. This does not include remuneration but does include the accrual of holidays where applicable.

Dismissal

Employees will be protected from suffering unfair treatment or dismissal for taking, or seeking to take their rights under the statutory adoption leave provisions. Employees who believe that they have been unfairly treated will be able to complain to an employment tribunal.

Right to Request Flexible working

It is now a statutory right for a parent of a child under the age of seventeen (eighteen if disabled) to apply for flexible working arrangements (including work on a part time basis) and for the employer to consider these requests seriously.

There is a specified framework to be followed by both parties, please refer to the Flexible Working and Special Leave Policies for Schools.

Transfer of adoption leave

If an employee proposes to return to work by giving proper notification of an early return, they may be eligible to transfer some adoption leave (and any outstanding statutory adoption pay) to his /her spouse, civil partner or partner to be taken as additional paternity leave (and additional statutory paternity pay) once the employee has returned to work.

The earliest that APL may commence is 20 weeks after the adopted child's placement and it must end no later than 12 months after the date of placement. The minimum period of APL is 2 weeks and the maximum period is 26 weeks.

If the employee does wish to transfer part of the adoption leave entitlement in this way, they will be required to submit a written and signed declaration form to that employer, which may also make additional enquiries of the employer to verify its employee's entitlement to additional paternity leave and pay.

Further details can be found in the Paternity Leave section of this guide.

What If The Adoption Fails?

Where after starting their leave, an employee is notified that the child will not be placed, or after the child is placed, the child dies or is returned to the adoption agency, the employee will not be entitled to full adoption leave. In this situation the adoption leave will end 8 weeks after the end of the week that the disruption occurred. There is no extension of AAL if the above occurs with less than 8 weeks to go.

Adoptions from overseas

If an employee has adopted a child from overseas, he/she may still be entitled to additional paternity leave provided again that the primary adopter has returned to work. Special rules apply in these circumstances. For further information, please contact the School's HR Advisor.

Surrogate Parents

Provided they meet the eligibility criteria, parents which a have a child through surrogacy are permitted to take paternity leave and pay, adoption leave and pay and shared parental leave and pay. Both parents are entitled to take unpaid time off to attend two antenatal appointments with the woman carrying the child.

Section 5A DUAL APPROVED PROSPECTIVE ADOPTERS

Dual approved prospective adopters (i.e. prospective adopters who have a child placed with them for fostering with a view to them adopting that child) may be eligible for adoption leave and pay where they have agreed to have a child placed with them with a view to them adopting that child, They can take this leave from up to 2 weeks before the child is placed with the family initially for fostering. The leave and pay must be taken within 52 weeks of this placement and will cease if the placement does not take place; if it breaks down; or if the child dies.

Adoption leave and pay is not available to other types of foster carers.

Who is Eligible?

- To be eligible for adoption leave the dual approved prospective adopter must be a local

authority foster parent who has been approved as suitable to adopt the child that they will initially foster.

- Have been notified by the local authority of its decision to place a child with him/her in accordance with section 22C of the Children Act 1989.
- Have notified the local authority that they agree to the placement (initially for fostering) and the date it will take place.
- Give the correct notice to their employer (this notice must be given within 7 days of the employee being notified by the local authority or as soon as practicable).

The adopter's partner may qualify for paternity leave and pay. In the case of joint adopters, if both of the dual approved prospective adopters are eligible they can decide between themselves who will take the adoption leave and pay and who will take the paternity leave and pay.

When a dual approved prospective adopter is eligible for pay

The dual approved prospective adopter will only be eligible for statutory adoption pay if they meet all of the conditions for adoption leave and also have:

- 26 weeks continuous employment with the same employer at the 'qualifying week'
- Earned, on average, at least the lower earnings level in the 8 weeks leading up to the date they were notified of a match with a child.
- Notified their employer that they are entitled to statutory adoption pay and when this is to begin.
- Stopped working for the employer.
- Elected to receive statutory adoption leave

The qualifying week

In the case of dual approved prospective adopters the qualifying week is the date that the dual approved prospective adopter is notified of a match with a child.

Notification requirements for dual approved prospective adopters

A dual approved prospective adopter must notify their employer of their intention to take adoption leave within 7 days of being matched with a child for adoption. If this is not possible the employee must give notice as soon as reasonably practicable.

The amount of notice an employer will have will depend on the period of time between when the employee is notified of being matched with a child and the child arrives – although the employee will know if they are being considered on this basis.

If the adoption doesn't go ahead

Where the local authority does not proceed to a formal adoption e.g. because the child or children are returned to their birth parents or will be cared for by a family member or friend, the dual approved prospective adopter's entitlement to adoption leave will end 8 weeks after the child is removed from their family or at the end of the adoption leave, whichever is earlier.

Entitlement to adoption leave and pay if the adoption goes ahead

If a dual approved prospective adopter was entitled to adoption leave and pay when the child was placed with the family i.e. when the child joined the family initially for fostering, they cannot access further adoption leave and pay in respect of the same child or children if the adoption goes ahead i.e. there can only be one entitlement to adoption leave and pay in respect of that child.

Section 6

PARENTAL LEAVE

Parental leave is a statutory right to take unpaid time off work to look after a child or make arrangements for the child's welfare. Parents can use it to spend more time with children and strike a better balance between their work and family commitments. The right also applies to adoptive parents.

Who is Eligible?

An employee who has one year's continuous service by the time the parental leave is taken is entitled to 13 weeks' unpaid leave. This is 18 weeks where the child has been awarded a Disability Living Allowance. In order to qualify for this leave, the employee must be able to show that they have parental responsibility for a child under the age of 18, and that the leave is being taken for the purpose of caring for the child. It covers:

- The mother of the child
- The father of the child if married to the mother at the time of the birth or if unmarried, is registered as the child's father
- A step parent who has acquired parental responsibility for their spouse or civil partner's child by means of an agreement with the child's natural parents
- A guardian appointed under Section 5 of the Children Act 1989
- Adoptive parents (from the date of placement of the child)

There is no requirement for the parent to live with the child as long as he or she has parental responsibility.

The right to parental leave generally lasts up till the child is eighteen years old.

Birth or adoption of more than one child

In the case of multiple births or the adoption of more than one child as part of the same placement, the employee has the right to take parental leave in respect of each child. Therefore in the event of twins being born, each parent would be entitled to take a total of 26 weeks' parental leave up to the twins eighteenth birthday.

Definition of a week

A week is defined as follows:

- Where an employee's working pattern does not vary, a week is the period which he/she normally works.
- Where the working pattern normally varies from week to week or over a longer period, or if the employee is normally required to work in some weeks and not others, a week is the total of all periods in which he/she works, divided by 52.

Leave Entitlement

The maximum amount of parental leave that may be taken in any one year is 4 weeks

Employees may only take 4 weeks' parental leave for each child during a particular year, beginning on the date upon which the employee becomes entitled to the leave. This will either be the date of the child's birth, or where an employee commences employment after the one year qualification period.

Employees can only take parental leave in blocks or multiples of a week. If the employee takes leave for a shorter period than a week it shall be counted as a week's leave.

The parents of a disabled child may take parental leave in multiples or blocks of a single day.

If the employee meets the qualifying conditions and gives the required notice, the employee is entitled to take the leave. It cannot be refused. (see postponement)

Notification

In general an employee is required to give at least 21 days notice, specifying when the leave is to begin and end.

If the leave is to be taken by a father immediately after a child is born the notice must specify the expected week of childbirth, the amount of parental leave to be taken and be given at least 21 days before the beginning of the expected week of childbirth (see also paternity leave and maternity support leave)

If leave is to be taken immediately after a child is placed for adoption the notice must specify the expected week of placement, the amount of parental leave to be taken and be given at least 21 days before the expected week of placement, or as soon as is reasonably practical (see also Paternity leave and Adoption Leave).

Evidence of employee responsibilities

The employer may request reasonable evidence, which may take the form of:

- Sight of the child's birth certificate in order to ascertain that the child is under 18 years old;
- Sight of a certificate of adoption
- Evidence of the child's entitlement to a Disability Living Allowance in relation to a disabled child; or
- Signed declaration from the employee that the purpose of the leave is to care for the child

Postponement of leave

Governing Bodies have the power to postpone leave for up to six months if it can be demonstrated that to take the leave at a particular time would be "unduly disruptive". An example of this would be leave taken during the run up to and sitting of SATs. However if the leave is to be taken immediately after a child is born or placed for adoption (subject to the notice provision) the Governing Body may not postpone the leave.

If the postponement is to be enacted, the Governors must notify the employee, in writing, within seven days of the request for leave, stating the reason for the postponement. In addition, the Governing Body must agree to grant the leave within a period of six months and suggest, in writing, the date upon which the leave may taken after consulting with the employee. If no agreement can be reached after consultation the Governing Body must determine the appropriate dates. Head Teachers / Chair of Governors are advised to contact their HR Adviser if they wish to

postpone leave.

If the postponement takes the leave past the child's 18th birthday, the leave can be taken after the birthday.

Rights during parental leave

Employees are protected by law against detriment from seeking or taking unpaid parental leave and can claim unfair dismissal for reasons relating to seeking or taking parental leave.

Record of document review and amendments		
Date	Amended by	Comments
Policy – April 2015	DT	
September 2017	AS	Addition of Dual Approved Prospective Adopters