

Adoption Leave



This document forms part of Somerset County Council's HR&OD Policies and Guidance.

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1. What the policy covers

This policy outlines statutory rights as well as Somerset County Council's position in relation to prospective and new adoptive parents at work.

2. Principles

Adoption leave provisions are designed to allow adoptive parents to take extended leave of absence from work to undertake responsibilities associated with childcare and to encourage their return to work with the Council.

It also covers the period when individuals are looking to become adopters and the training and assessment they must go through.

3. Responsibilities

- Managers are responsible for ensuring that applications for adoption leave are treated in accordance with this policy and in a way that does not discriminate.
- Employees wishing to take adoption leave should comply with the application process and timescales specified in this policy.
- Employees are responsible for reporting any changes to the adoption process or leave dates.

4. Policy in practice

4.1 General Guidance

Adoption leave and pay is available in the following circumstances:

- newly matched with an adoptive parent by an adoption agency or if overseas have official notification from the relevant domestic authority,
- placed with a carer in a "foster to adopt" situation,

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- a 'parental order' is issued in relation to a child under a surrogacy arrangement.

It does not apply to:

- Where a private adoption is arranged
- When an individual becomes a special guardian or kinship carer
- Where a stepchild is adopted

Leave for Kinship Carers are covered by the Fostering Policy.

Time off work for Special Guardianships will be agreed on a case by case basis and will be dependant on the individual circumstances.

The rights to adoption and paternity leave and pay will entitle eligible employees to take paid leave when a child is newly placed for adoption. Adoption leave and pay will be available to:

- individuals who adopt
- one member of a couple where a couple adopt jointly (the couple may choose which partner takes adoption leave)

The partner of an individual who adopts, or the other member of a couple who are adopting jointly, may be entitled to Paternity Leave and pay and Shared Parental Leave and Pay. For further information please refer to the Maternity and Paternity Leave Policy and the Shared Parental Leave Guidance.

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

Maternity Support Leave is not available to adopters.

Leave can start on any day of the week.

An employee can change their mind about the date they want their leave to start but must tell their employer at least 28 days before the new date. If this is not possible they must tell their employer as soon as is reasonably practical.

4.2 Pre-approval for adoption training and assessment

Employees who are considering adoption will have to go through a period of up to six months of training and assessment. They will then attend an approval panel to decide if they are suitable to be an adoptive parent. A training plan will be devised

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for each individual depending on their circumstances. This will include mandatory training which may or may not be during working hours. They will also have meetings and home visits by a Social Worker throughout the process. Services should be sympathetic and allow the employee the necessary paid time off to undertake the training and assessment required. Managers may ask for evidence of the training and meetings attended.

4.3 Post approval and pre-adoption meetings and time off

Eligible employees are able to take time off to attend adoption appointments in the period between being notified of a match and the child being placed with the family for adoption:

- Single adopters are entitled to attend up to 5 adoption appointments
- In the case of joint adoptions (where couples have been jointly matched to adopt the child and are both employees of the Council) both adopters will be entitled to paid time off to attend up to 5 adoption appointments.

Up to 6.5 hours is allowed for each appointment. Managers should establish whether the employee wishes to take time off using annual leave or flexible working arrangements as an alternative to unpaid time.

HR Admin and Payroll must be informed of any periods of unpaid time off in relation to pre-adoption appointments so that the appropriate pay is deducted where applicable. This can be done by recording the absence directly on SAP as leave type 'Unpaid leave' or by contacting HR Admin and Payroll to input unpaid absence.

Time off will not normally be authorised to allow parents to travel abroad in relation to overseas adoptions; annual leave should be used to cover this.

4.3 Adoption leave entitlement

Adopters are entitled to 26 weeks Ordinary Adoption Leave (OAL) followed immediately by up to 26 weeks Additional Adoption Leave (AAL), i.e. a total of 52 weeks leave.

4.4 Qualification for leave when adopting a child from the UK

To qualify for Statutory Adoption Leave, a member of staff must:

- be an employee

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- be newly matched with a child by an adoption agency ('matched' means that the adoption agency gives the employees details of the child they think is suitable for them to adopt)

Employees must provide proof to show that matching with a child has taken place through an approved adoption agency within the UK. This will usually be in the form of a matching certificate. Adopt South West is available to provide advice on what constitutes an approved agency, should there be any queries.

Employee's need to tell their employer that they want to take Statutory Adoption Leave within 7 days of being told that they have been matched with a child for adoption. If it is not possible to tell their employer within 7 days, they must tell them as soon as possible. The employee must complete Adoption Leave Application Form and return to their line manager.

Employees will also be asked to give a non-binding indication as part of the Adoption Leave Application as to whether they are considering Shared Parental Leave which is intended to start a discussion between the manager and employee.

Employees can choose to start their leave:

- from the date of the child's placement (whether this is earlier or later than expected), or
- from a fixed date which can be up to 14 days before the expected date of placement

4.5 Qualification for leave when adopting a child from overseas

To qualify for Statutory Adoption Leave a member of staff must:

- be the child's adopter
- have received official notification confirming the central authority has, or is prepared to, issue a certificate confirming they are eligible to adopt and have been assessed and approved as being a suitable adoptive parent

An employee will need to be able to confirm to their employer that they have received official notification.

If an employee is adopting a relative from overseas they can also qualify for Statutory Adoption Leave and Pay if they have been assessed and approved as being a suitable adoptive parent.

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There are three stages to the notice an employee must give when adopting a child from overseas.

First notification stage – informing the employer that official notification has been received

An employee should tell their employer both:

- the date on which they received official notification in relation to the child that they will be adopting
- the date on which their child is expected to enter the UK

An employee must give their employer notice of their intention to take adoption leave within 28 days of receiving official notification if they have worked for the employer for 26 weeks.

If an employee has worked for their employer for less than 26 weeks, they must give notice within 28 days of completing 26 weeks' service.

Second notification stage – informing the employer of the intended start of adoption leave

An employee must give their employer at least 28 days' notice of the actual date they want their Statutory Adoption Leave and Statutory Adoption Pay to start. The employee can give this notice at the first notification stage if they know the date. Statutory Adoption Leave and Pay cannot start before the child enters the UK.

Employees can choose to start their leave:

- on the day on which the child enters the UK (Statutory Adoption Leave and Pay cannot start before the child enters the UK)
- on a chosen date no later than 28 days after the child enters the UK

Third notification stage - after the child has entered the UK

An employee must tell their employer the date their child actually entered the UK. They must do this within 28 days of the child's date of entry. If they are also claiming Statutory Adoption Pay they need to give evidence of the entry date. This could be a copy of a passport stamp or visa.

The employee must complete Adoption Leave Application Form and return to their line manager who will send it to HR Admin and Payroll.

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4.6 Pay

Statutory Adoption Pay

Statutory Adoption Pay (SAP) will be paid for up to 39 weeks. To be eligible for SAP the employee must be on adoption leave and have:

- average weekly earnings in the 8 weeks ending with the notification week equal to or greater than the lower earnings limit for NI
- 26 weeks continuous service with the Council for 26 weeks by the end of the notification week
- elected to receive adoption pay
- or expect to have a child placed with them for adoption

SAP will be payable for the first 6 weeks at the Statutory Adoption Pay rate or at 90% of the employee's average weekly earnings if this is less than the SAP rate.

Contractual Adoption Pay

Employees with one year's continuous service at the time of adoption will be entitled to Contractual Adoption Pay (CAP). The Contractual Scheme provides adoption pay for 18 weeks. The first six weeks are paid at 90% of a week's pay. However, the CAP due will be offset by any SAP paid during the first 6 weeks of adoption leave

For each of the next 12 weeks, half a week's pay will be received plus SAP (provided that the combination of these two elements does not exceed the normal weekly pay) on condition that the employee has previously declared their intention to return to work for 3 months following adoption leave. The return to work is inclusive of agreed holidays and is unaffected by any change to the hours worked on return.

If the employee is unsure whether or not they will return to work, they can opt to receive the 12 weeks half pay on their return to work. In which case the employee will receive SAP only and upon returning to work the half pay element of CAP will be paid.

If an employee fails to return to work for a minimum of 3 months, HR Admin and Payroll Services will take the appropriate steps to recover the 12 weeks half pay element of CAP as necessary.

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The debt resulting from the enforcement of these conditions will automatically be collected unless HR Admin and Payroll Services receives written authorisation from the service area/school concerned stating the reasons not to do so.

Service areas have the discretion to reduce the 3 months period of return to work, if they can demonstrate a good reason for doing so.

4.7 Pension

If an employee wishes, they can elect to pay contributions for the unpaid period of additional adoption leave when they return to work in order that the period of additional adoption leave can be counted for pension purposes. If they elect to do this within 30 days of receipt of written communication of this option or within 30 days of returning to work, whichever is the later then the employer will pay two thirds of the cost of the lost pension. If the employee elects to do this more than 30 days after returning to work or more than 30 days after receipt of written communication, the full cost of the lost pension is borne by the employee. The contributions payable will be based on the cost of paying for the pension lost during the unpaid period. Peninsula Pensions can be contacted for further advice or see the Peninsula Pensions Buying Lost Pension fact sheet.

4.8 Annual leave

An employee's annual leave entitlement, including Bank Holidays, will accrue throughout their adoption leave. If an employee does not return to work, they will be paid in lieu for any leave accrued but not taken, subject to the carry over policy.

Where an employee's adoption leave runs across the end of a leave year, annual leave can only be carried across to the new leave year in exceptional circumstances and at the discretion of the Senior Leadership Team. It is useful for the manager and the employee to discuss and agree in writing prior to adoption leave starting, how leave can be best taken.

4.9 Employees on term-time only contracts

Staff on a term-time contract are receive an extra payment incorporated into their salary which is paid in lieu of holiday entitlement. Consequently, instead of accruing holiday during adoption leave (where entitled) this element of salary will be paid on a pro-rata basis according to the period of adoption leave taken.

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4.10 Keeping in touch

Whilst on Adoption Leave reasonable contact between the employee and the Council is permitted. In addition, the employee may request or be offered (without obligation) up to 10 days paid work. These are known as 'Keeping in Touch' days (KIT) and mirror the maternity KIT day provisions. The operation of these days is detailed in the Maternity Leave Policy.

4.11 Contractual rights

Full contractual rights (except remuneration) will be maintained throughout the adoption leave period for example, provision of a lease car and annual leave entitlement.

4.12 Return to work

Employees are entitled to return to work at the end of Additional Adoption Leave without giving prior notice; it is assumed that the employee will take their full entitlement unless they give written notice to the contrary, ie if the employee has stated in writing that they intend to return to work before the end of AAL, that is the expected return to work date. However, they should be encouraged to give an indication of their anticipated return to work date under the 'reasonable contact' arrangements, where possible.

Employees returning from OAL are entitled to return to the same job, on terms no less favourable than if they had not been away.

After AAL employees have the right to return to the job in which they were employed before their absence unless:

- there is a redundancy, in which case they are entitled to be offered employment in a suitable alternative vacancy, where one exists. The work must be both suitable in relation to the employee and appropriate for them in the circumstances, and the place and capacity in which they are employed, and the terms and conditions of employment must not be substantially less favourable than before, or,
- it is not reasonably practicable for the employer to permit this, in which case employees must be offered suitable alternative work, on terms and conditions that are no less favourable than would have applied if the employee had not been absent.

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4.13 Early return to work

Employees wishing to return to work before the end of OAL or AAL are required to give at least 8 weeks' notice. This notice is also required in circumstances where the adoption placement is disrupted and terminated.

Employers may postpone the return if the requisite notice is not given, until the earlier date of:

- the date that would have represented 8 weeks' notice, or
- the end of AAL

4.14 Other options at the end of adoption leave

Employees returning to work from Adoption Leave may request to work flexibly or pursue a Career Break.

4.15 Disrupted placement

In the case where a child is not placed after the adoption leave period has started, or following the placement the child dies or the placement is ended, the adoption pay period ends 8 weeks after the end of the week in which the disruption occurs.

If the disruption occurs after the end of the adoption pay period, the employee will not receive any additional pay, but they will be able to take a further 8 weeks leave or their remaining entitlement to adoption leave, if this is less.

The employee is required to give 8 weeks notice of an early return if the adoption placement is disrupted and terminated.

4.16 Fostering to adopt

If an employee is a Local Authority foster parent who is also a prospective adopter (dual approved) and a child is placed with them in a foster to adopt situation they will be entitled to adoption leave and pay. Somerset County Council requires notification of a child's placement in accordance with s.22C of the Children Act 1989, this will be in the form of a letter from the relevant Local Authority stating on what date the child will be placed. This is set out in the Paternity and Adoption Leave Regulations 2002 as amended by the Paternity and Adoption Leave (Amendment) (No.2) Regulations 2014 (SI 2014/3206). The amended Regulations affect the extension in relation to children matched with an adopter who is notified of the match on or after 5 April 2015. An employee is not entitled to take ordinary adoption

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leave in relation to a child in the capacity of his or her adopter if the employee has already taken ordinary adoption leave as a result of that child being placed, or being expected to be placed, with the employee under s.22C (i.e. as a foster parent). See the Fostering Policy.

4.17 Surrogacy

Adoption Leave and Shared Parental Leave are available to eligible employees who are, or expect to be, the parents of a child under a parental order, where the child's expected birth date is on or after 5 April 2015.

Where a child is born to a surrogate mother, the intended parents can become the child's legal parents by applying for a parental order. One of the intended parents must be genetically related to the child and the child must live with the intended parents.

The couple must elect which of them will take adoption leave. An employee who takes adoption leave in these circumstances can curtail his or her adoption leave and take Shared Parental Leave with the other parent, provided that the parents both meet the relevant eligibility requirements. See the Shared Parental Leave Guidance for further information.

In circumstances where employees who intend to apply for a parental order and expect to become the child's legal parents in a surrogacy situation the primary adopter has the right to unpaid time off from work to accompany the birth mother to up to two antenatal appointments. Managers should establish whether the employee wishes to take time off using annual leave or flexible working as an alternative to unpaid time off.

HR Admin and Payroll must be informed of any periods of time off in relation to antenatal appointments so that the appropriate pay is deducted. This can be done by recording the absence directly on SAP as leave type 'Unpaid Leave' or by contacting HR Admin and Payroll to input unpaid absence.

4.18 Shared Parental Leave

Shared Parental Leave is a legal entitlement for eligible parents of children placed for adoption on or after 5 April 2015. It enables both parents to choose how to share their time off work in the first year their child is placed. The first two weeks after the

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placement of the child are reserved for the primary adopter. The Council pay Shared Parental Leave at the relevant statutory rate.

Further information can be found in the Shared Parental Leave Guidance.

4.19 Review

Services are asked to inform the HR Service of all requests for adoption leave in order to enable an overall review of this type of leave.