

Adoption Leave Policy

This policy details the time off that employees are entitled to when having a child through adoption or surrogacy. Employees may also wish to consider more flexible leave arrangements available through the Shared Parental Leave Policy on the [extranet](#).

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Where the headteacher is the employee concerned, any reference to the headteacher in this policy should be replaced with the chair of governors.

1 Eligibility

All employees have the right to take adoption leave, regardless of their length or service. It can be taken by the primary adopter for any child placed for adoption up to the age of 18 via an official adoption agency, however, only one period of adoption leave can be taken at any time, regardless of the number of children being adopted.

Adoption leave is not available in circumstances where the child is not newly placed for adoption i.e. a step-parent adopting a partner's child.

Adoption leave can also be taken by the primary parent in a legal surrogacy arrangement where they have applied, or intend to apply, for a Parental Order in respect of the child under the Human Embryology and Fertilisation Act 2008.

Only one person in a couple is eligible to take adoption leave. The other parent may be entitled to Paternity Leave and/or Maternity Support Leave instead. Employees may wish to consider more flexible leave arrangements available through the Shared Parental Leave Policy.

2 Entitlement

All employees are entitled to 52 weeks adoption leave, regardless of their length of service. This leave is made up of 26 weeks Ordinary Adoption Leave (OAL) and 26 weeks Additional Adoption Leave (AAL).

It is up to each individual to decide when to start their adoption leave and how long to stay off work, subject to the following conditions:

- For UK adoptions, adoption leave can start no earlier than 14 days before the date the child is expected to be placed and up to the date the child is placed with the family;
- For overseas adoptions, adoption leave can start when the child arrives in the UK or within 28 days of this date;

- For surrogacy arrangements, adoption leave can start no earlier than 14 days before the baby's due date and up to the date the child is born;
- An employee cannot return to work during the first 2 weeks of adoption leave – this is compulsory adoption leave.

2.1 Fostering to adopt

Employees who are fostering to adopt, known as dual approved prospective adopters, can take statutory adoption leave or paternity leave (if eligible) when the fostering for adoption placement is made.

If a dual approved prospective adopter chooses not to take adoption leave/paternity leave at the point the placement is made, they can take adoption leave at the point the child is matched for adoption, however, adopters are only eligible for one period of adoption/paternity leave per placement.

Please note, taking adoption leave at the matching date may affect statutory adoption pay if the employee takes unpaid leave while fostering, as this is based on the salary received 8 weeks' before taking leave.

3 Pay

3.1 Statutory adoption pay (SAP)

SAP is paid for up to 39 weeks during an employee's adoption leave and is the same for all employees, whether teaching or support. In order to qualify for SAP, an employee must have:

Adoption	Surrogacy
<ul style="list-style-type: none"> • 26 weeks continuous service by the week they are notified of being matched with a child; • Given proof of the placement e.g. letter from the adoption agency; • Provided a copy of the matching certificate; • Provided proof of the date the child arrives in the UK (overseas adoptions only) 	<ul style="list-style-type: none"> • 26 weeks continuous service by the 15th week before the baby's due date; • Given proof of the pregnancy e.g. copy of birth mother's MATB1 certificate; • Applied for, or intend to apply for, a Parental Order and expect to obtain this; • Provided a copy of the parental order within 6 months of the child's birth; • If requested, provide a statutory declaration confirming you have applied or will apply for a parental order in the 6 months after the child's birth.

Employees will receive:

- 6 weeks at 90% of average weekly earnings;
- 33 weeks at SAP (or 90% of average weekly earnings, whichever is the lower).

The current rate of SAP is £151.97 per week (as at April 2021).

3.2 Occupational adoption pay (OAP)

OAP is an enhanced adoption pay package available to employees, in addition to SAP, if they meet certain qualifying conditions.

3.2.1 Teaching staff

Employees who are employed on teaching terms and conditions are entitled to the first 4 weeks at full pay (offset against SAP) and 12 weeks half pay in addition to SAP, usually paid during weeks 7-18 of their adoption leave. However, employees cannot exceed their normal rate of full pay and if this occurs, the OAP element will be reduced.

To qualify for OAP, the employee must have:

- More than one year of continuous service as a teacher (with one or more Local Authority) by:
 - The date notice is given that they are matched with a child (adoption);
 - The date notice is given that a child will be placed with them under section 22C of the Children Act 1989 (foster to adopt);
 - the 11th week before the baby's due date (surrogacy); and
- Agreed to return to work for at least 13 weeks (including periods of school closure).

Employees can choose not to respond to the question of whether they intend to return to work but OAP will not be paid unless an agreement to return to work has been signed. If an employee signed an agreement but later decides not to return to work, any OAP paid will need to be repaid to the school.

Employees who qualify will receive payment as follows:

	Weeks 1 – 4	Weeks 5 – 6	Weeks 7 – 18	Weeks 19 – 39
SAP	90% salary	90% of salary	Lower SAP rate	Lower SAP rate
OAP	+ top up to full salary		+ 12 week half pay	

3.2.2 Support staff

Employees who are employed on Green Book terms and conditions are entitled to 12 weeks half pay in addition to their SAP. This is usually paid during weeks 7-18 of their maternity leave. However, employees cannot exceed their normal rate of full pay and if this occurs, the OAP element will be reduced.

To qualify for OAP, the employee must have:

- More than one year of continuous local government service by:
 - The date notice is given that they are matched with a child (adoption);
 - The date notice is given that a child will be placed with them under section 22C of the Children Act 1989 (foster to adopt);
 - the 11th week before the baby's due date (surrogacy); and
- Agreed to return to work for at least 3 calendar months.

Employees can choose not to respond to the question of whether they intend to return to work but OMP will not be paid unless an agreement to return to work has been signed. If an employee signed an agreement but later decides not to return to work, any OMP paid will need to be repaid to the school.

Employees who qualify will receive payment as follows:

	Weeks 1 – 6	Weeks 7 – 18	Weeks 19 – 39
SMP	90% salary	Lower SMP rate	Lower SMP rate
OMP		+ 12 week half pay	

3.3 Notification

Employees are encouraged to inform their Headteacher about the adoption as soon as possible. As a minimum, in order to qualify for adoption leave and pay, the notification requirements for adoption and surrogacy are detailed below.

The only exception to these requirements is where circumstances mean that it is not reasonable for the employee to give notice any earlier e.g. if the child is born or placed earlier than expected.

Adoption	Surrogacy
<p>Complete and return the adoption notification form within 7 days of being matched with a child. The following information should be provided:</p> <ul style="list-style-type: none"> • Confirmation of the adoption e.g. matching certificate; • Date the child is to be placed with the employee; • Date they wish to commence adoption leave. 	<p>Complete and return the adoption notification form at least 28 days' before they wish to commence adoption leave. The following information should be provided:</p> <ul style="list-style-type: none"> • Confirmation of the birth mother's pregnancy and due date e.g. MAT B1 certificate; • Date they wish to commence adoption leave. • A copy of the Parental Order within 6 months of the adoption leave commencing*

**The school reserves the right to reclaim any payment made and to be compensated for leave taken if the employee fails to provide this.*

It will be assumed that all employees are taking 52 weeks adoption leave and they will receive written confirmation of the end date of their adoption leave from Payroll and Employee Services within 28 days of their notification form being received.

If the employee wishes to change the start date of their leave, they must give 28 days' notice (support staff) or 21 days' notice (teaching staff).

4 Time off for appointments

All employees are entitled to paid time off for appointments as set out below. Employees must produce evidence of all appointments if requested to do so.

Adoption	Surrogacy
<p>The primary adopter is entitled to paid time off to attend:</p> <ul style="list-style-type: none"> • Up to 5 pre-adoption appointments after being matched with a child; • A maximum of 6.5 hours is allowed per appointment. 	<p>The primary parental order parent is entitled to paid time off to attend:</p> <ul style="list-style-type: none"> • Up to 2 antenatal appointments with the surrogate mother; • A maximum of 6.5 hours is allowed per appointment.

5 Sickness absence

Employees who are sick during their adoption leave are not entitled to contractual sick pay whilst receiving SAP.

Where an employee cannot attend work at the end of their adoption leave due to sickness, the normal contractual arrangements for sickness absence will apply and the Attendance Management Policy should be followed.

6 Keeping in touch days (KIT days)

All employees on adoption leave may be able to participate in up to 10 KIT days without bringing their adoption leave to an end. KIT days are not limited to the employee's normal job and can include attendance at training events, appraisals, meetings as well as enabling them to return to work gradually at the end of their leave.

KIT days must be mutually agreed, therefore an employer cannot insist that an employee participates in KIT days and an employee cannot insist on working without their employer's permission.

Working any part of a day will count as one day for the purpose of calculating the number of KIT days taken. If an employee has multiple posts in the school, only 10 KIT days can be taken in total. KIT days cannot be taken during the first 2 weeks following the birth.

6.1 Pay

The Headteacher should ensure that the work to be carried out on the day and the payment arrangements are clearly understood by the employee before any work is undertaken.

Teachers	Support
The employee will be paid their normal rate of pay, offset against any SMP and/or OMP they are receiving, for the number of hours actually worked on each KIT day.	The employee's normal rate of pay, offset against any SMP and/or OMP they are receiving, will be paid for each KIT day. Payment per day will be based on the number of days in the month the KIT day is worked i.e. 1/28 th , 1/29 th , 1/30 th or 1/31 st of the employee's monthly full time equivalent salary.

7 Returning to work

The school will assume that the employee will take their full 52 weeks of adoption leave and if the employee intends to return to work on this date, there is no requirement to provide formal notice of their return.

The Headteacher (or manager) should contact the employee prior to their return to ensure their return to work is as smooth as possible and to discuss any needs they may have.

If an employee wishes to return to work before the end of their adoption leave or change their return to work date, they must give at least 21 days' notice of the date they intend to return to work, in writing to the Headteacher.

If less than 21 days' notice is given, the school can postpone the employee's return by 21 days, although any postponement cannot go beyond the end of the 52 week adoption leave period.

8 Special circumstances

Event	Outcome
Adoption placement ends	If the adoption placement does not take place, breaks down or the child dies, the adoption leave will end 8 weeks later or at the end of the adoption leave, whichever is earlier.
Parental order is refused	The employee's entitlement to adoption leave will end 8 weeks later or at the end of the adoption leave, whichever is earlier.



HR Advice and Support

This policy has been developed by the HR Advice and Support team, based on current legislation and best practice. If you would like any advice on the application of this policy, please do not hesitate to contact the team:

Telephone	03000 266688
Email	hradvice@durham.gov.uk

Further support can be accessed by contacting (subject to SLA buy in):

Payroll and Employee Services	pesschools@durham.gov.uk
Occupational Health	occhealthadmin@durham.gov.uk
Health and Safety	hsteam@durham.gov.uk
Employee Assistance Programme	www.healthassuredeap.com Username: durham Password: council 0800 716017

Author	Version	Last review	Next review
LK	v 1.1	April 2021	April 2022

The school complies with all relevant statutory obligations. The school privacy notice provides more specific information on data collected and how it is handled, a copy of which can be accessed from the school. For more information please contact the school directly.

If you have any concerns about how your data is handled, please contact either the school Data Protection Officer (details available from the school office), or the Information Commissioner's Office.