



## ADOPTION LEAVE AND PAY

Think Business, Think Equality

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## Introduction

This guidance is for businesses that want to improve gender diversity in their workplace. It accompanies the *Think Business, Think Equality* online self-assessment tool. The free online tool enables you to assess your current employment practice, and provides tailored advice and guidance on how your business can benefit from gender diversity.

It provides information on what the law says on Adoption Leave and Pay. It also provides advice on how to improve your workplace practice before an adoption takes place, and on supporting staff during the adoption process, including information on policies and good practice. It covers birth parents and partners of staff members who are recognised as a main adopter. There is a glossary of key terms on page 9 of this guidance.

It makes sound business sense to have good practice around Adoption Leave and Pay. Supporting staff during this time in their lives will demonstrate that you value your people. This improves retention, and will enable you to recruit from a wider talent pool.

**The Think Business, Think Equality online tool is available at:**

[www.thinkbusinessthinkequality.org.uk](http://www.thinkbusinessthinkequality.org.uk)

### LEGAL DISCLAIMER

While every effort has been made to ensure that the explanations given here are accurate, only the courts or tribunals can give authoritative interpretations of the law.

## Before the adoption takes place: Time off for adoption placement meetings

It's good practice to support staff from the start of the adoption process. The law says that an adoptive parent is entitled to paid time off to attend five pre-adoption appointments. Having an adoption policy in place will help both staff and line managers understand their roles and responsibilities.

## What is Adoption Leave?

Qualifying employees who have been matched with a child are entitled to take up to 52 weeks of Adoption Leave, and may be entitled to 39 weeks of Statutory Adoption Pay. If a couple jointly adopt a child, one may take Adoption Leave and the other parent may be able to take Paternity Leave or Shared Parental Leave.

There are two types of Adoption Leave:

- **Ordinary Adoption Leave** is the first 26 weeks of leave; and,
- **Additional Adoption Leave** is the second 26 weeks of leave.

## Who can take Adoption Leave?

Any staff member who qualifies is entitled to take Adoption Leave. If **same sex partners** are adopting a child, one may take Adoption Leave and Pay, and the other may take Paternity Leave and Pay, if they meet the qualifying conditions. Both may be able to take **Shared Parental Leave**, if they meet the qualifying conditions.

If a couple are adopting, only one of the couple is entitled to take Adoption Leave and Pay. The other person (including same sex couples) may be entitled to Paternity Leave and Pay if they meet the qualifying conditions.

## Qualifying for Adoption Leave

To qualify for Adoption Leave you must be an employee, and be matched with a child for adoption by an approved adoption agency.

The matching week is the week in which the staff member is notified of having been matched with a child by an adoption agency. The matching week begins on the Sunday immediately before the date the employee received notification from the adoption agency, or the same day if it was a Sunday.

A staff member who has taken **Ordinary Adoption Leave** is also legally entitled to **Additional Adoption Leave** if:

- the child was placed with them for adoption;
- they have already taken Ordinary Adoption Leave; or,
- their Ordinary Adoption Leave did not end prematurely, either because they were dismissed or because the placement did not in fact take place.

If the adoption placement comes to an end, or the child dies, the staff member is legally entitled to continue on Adoption Leave for a further eight weeks. If the adoption placement comes to an end or the child dies within eight weeks before the end of Ordinary Adoption Leave, the staff member can continue to take Additional Adoption Leave up to eight weeks after the placement comes to an end. If the placement comes to an end or the child dies within eight weeks before the end of Additional Adoption Leave, the Adoption Leave will still end after 52 weeks, as it otherwise would have.

## Good practice: Communication and forward planning

It's good practice to talk to your staff member early about what they'll be entitled to during Adoption Leave once you know they are planning to adopt. This can help with planning annual leave as well as how best to cover their work during the leave period.

Because annual leave continues to accrue throughout the 52 week Adoption Leave period, a staff member who is planning to take the full amount of Adoption Leave may accrue a large amount of leave. Your normal rules on carrying forward annual leave will apply, so the staff member will need to consider when to take annual leave so that they are able to take most of it in the leave year in which the adoption takes place. Annual leave should be agreed in the normal way.

It's good practice to arrange a pre Adoption Leave interview with your staff member to discuss what will happen during Adoption Leave. The discussion could include:

- Confirming whether the staff member will receive Statutory Adoption Pay and/or contractual Adoption Pay;
- Contact during Adoption Leave, and options around Shared Parental Leave;
- Keeping-In-Touch days and Shared-Parental-Love-In-Touch days;
- Informal indication of whether the staff member will be requesting flexible work when they come back;
- Notice of an early return to work;
- Notice required for Shared Parental Leave and Pay; and,
- Notice required if they decide not to return to work.

## The start of Adoption Leave

The staff member can choose to start their leave on the date the child is placed with them, or up to 14 days before the date the child is expected to be placed with them. If they have decided that their Adoption Pay should begin on the date the child is placed for adoption, they must also inform you of the actual date of placement as soon as possible.

The staff member can vary the start of leave provided they give you at least 28 days' notice or give notice as soon as they are able to.

Adoption placements don't always take place on the expected date and can sometimes happen with very little notice, so it's good practice to allow some flexibility. It's also good practice to put a contingency plan in place in case the placement date is sooner than expected. If the placement starts when the staff member is at work, adoption leave and pay will start the following day.

## Notice requirements for Adoption Leave and Pay

The staff member must inform you (in writing if you ask them to) of the date they would like to start their Adoption Leave and Pay, and when the child is expected to be placed with them. They can give notice for Statutory Adoption Pay at the same time as for leave, or at least 28 days before they want Statutory Adoption Pay to start, or as soon as it is reasonably possible to after that.

Once they have told you that they wish to take Adoption Leave, you must write back to the employee within 28 days confirming the date on which their leave will end. In terms of planning, it makes good business sense to assume that the staff member will take their full leave entitlement.

## Documentary evidence of adoption

If your staff member is claiming Statutory Adoption Pay, you must ask for the evidence of the adoption. If your employee is only claiming Adoption Leave, you don't have to ask for evidence but you may find it useful. This is usually contained in a matching certificate or letter from the adoption agency confirming that the staff member has been matched with a child for adoption. It must show:

- the adoption agency's name and address;
- the employee's name and address;
- the date the child is expected to be (or was) placed for adoption; and,
- the date the adopter was told by the adoption agency that they'd been matched with a child.

The staff member must also give a declaration that they have chosen to receive Statutory Adoption Pay and not Statutory Paternity Pay.

## Early end to Adoption Leave

Adoption Leave can come to an end early if the placement doesn't take place, the child is returned to the adoption agency, or the child dies. In these circumstances Adoption Leave and Pay will end eight weeks after either the notification, or the return of the child to the adoption agency, or the death of the child. Where possible, the staff member should give eight weeks' notice that they will be returning to work early, but in such circumstances it's good practice to be as flexible as possible.

## Statutory Adoption Pay

Statutory Adoption Pay is paid for 39 weeks. The earliest it can be paid is 14 days before the date a child is expected to be placed with their adoptive family.

Statutory Adoption Pay will be paid at 90% of average earnings for the first six weeks in the same way as Statutory Maternity Pay. After six weeks, Statutory Adoption Pay is paid at a flat rate of £140.98 per week<sup>1</sup>, or 90% of average weekly earnings if that is less, for the remaining 33 weeks. Tax and National Insurance contributions are deducted in the normal way.

To qualify for Statutory Adoption Pay, the staff member must have worked for you for 26 weeks by the week in which they are given notice that they have been matched with a child. They must also have average earnings of at least £113 per week<sup>2</sup> in the eight weeks (if paid weekly), or two months (if paid monthly), ending with the week in which they are notified that they have been matched with a child.

Any tax and National Insurance contributions that are due are deducted as normal. If a staff member receives a pay rise at any time from the start of the calculation period up to the end of Adoption Leave, the amount of Statutory Adoption Pay they receive (or has already received) must be adjusted to reflect the pay rise.

**Employees** and **workers**, such as agency workers, casual workers and freelance staff who are paid through PAYE, with tax and National Insurance deducted at source, can qualify for Statutory Adoption Pay if they meet the normal qualifying conditions.

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<sup>1</sup>This correct at the time of writing. Please check [www.gov.uk/employers-adoption-pay-leave](http://www.gov.uk/employers-adoption-pay-leave) for current payment amounts.

<sup>2</sup>As above.

## Length of payment of Statutory Adoption Pay

Once a staff member qualifies for Statutory Adoption Pay, the law says that you must pay it for 39 weeks even if they subsequently resign, are dismissed or made redundant, or advise you that they will not be returning to work from Adoption Leave.

Employers can usually reclaim 92% of Statutory Adoption Pay, and smaller businesses can reclaim 103%. More information is available on the UK Government website [www.gov.uk/recover-statutory-payments/reclaiming](http://www.gov.uk/recover-statutory-payments/reclaiming).

If your staff member's job ends within 14 days before the expected date of placement, their Statutory Adoption Pay will begin 14 days before the expected date of placement or the day after their last day at work.

If an adoptive parent starts work for a new employer, their Statutory Adoption Pay will stop unless they were working for that employer in the week they were matched with a child for adoption.

HMRC Statutory Pay Guidance with detailed guidance on Statutory Adoption Pay can be found at [www.gov.uk/government/collections/statutory-pay](http://www.gov.uk/government/collections/statutory-pay).

## Failure to qualify for Statutory Adoption Pay

If a staff member does not qualify for Statutory Adoption Pay, you must complete form **Statutory Adoption Pay: Non-payment explanation (SAP1)** stating why they are not legally entitled to Statutory Adoption Pay, and give the completed form to your employee, together with their Matching Certificate. They may be able to get help from the adoption agency or may be able to claim income support or tax credits, depending on their household income.

The SAP1 form is available on the HMRC website:

[www.gov.uk/government/collections/statutory-pay-forms](http://www.gov.uk/government/collections/statutory-pay-forms)

## When a staff member doesn't have to repay Statutory Adoption Pay

A staff member doesn't have to repay any Statutory Adoption Pay if they don't return to work after Adoption Leave for any reason including dismissal, redundancy or resignation. This is because Statutory Adoption Pay is reimbursed to the employer by HMRC.



## Good practice: Contractual Adoption Pay

It's good practice to offer enhanced Adoption Pay over and above the statutory minimum. For example, you may offer Adoption Pay at full or half pay for some or all of the leave period. Providing enhanced Adoption Pay demonstrates that you value your people, improves your reputation as an employer, and will make your business more attractive to a wider pool of talent.

If a staff member doesn't return to work for a reasonable period e.g. three months, you can ask for any contractual Adoption Pay (over and above the Statutory Adoption Pay element) to be repaid. Make sure you that this is included in your Adoption Policy, and that the staff member is aware of this.

A staff member should be allowed to repay any contractual Adoption Pay in small instalments. They will be considered to be back at work once their Adoption Leave period has ended, even if they are on sick leave, annual leave or unpaid leave or have reduced their hours of work.

## Adopting a child from overseas

If a staff member is adopting a child from overseas, they have the same right to 52 weeks of Ordinary and Additional Adoption Leave and Pay, as long as they meet the qualifying conditions. A partner has the same legal right to Paternity Leave if they meet the qualifying conditions. See our guidance **Parental Leave, and Fathers and Partners** for more information.

The staff member must meet the normal qualifying conditions for Adoption Leave and Pay as well as the following differences that apply to overseas adoptions:

- Where the adoption is from overseas, the staff member must have been continuously employed for at least 26 weeks ending with the week in which they give official notification that they have been approved for adoption. If they changed employer after official notification was received, they can qualify for Adoption Leave after they've completed 26 weeks' service with their new employer.
- Because the official notification for an adoption from overseas can often be received over a year before the child enters the UK, the 26 week qualifying period can be completed either before the staff member receives the official notification or afterwards, as long as they've completed 26 weeks' service before Adoption Leave is due to begin.

- Staff adopting from overseas are entitled to begin Adoption Leave from the date of the child's entry into the UK or from a pre-determined date up to 28 days after the date of entry.

Staff can use form **SC6 Statutory Adoption Leave: adopting a child from abroad** to give notice for Adoption Leave and Pay when adopting a child from overseas. This is available on the HMRC website: [www.gov.uk/government/collections/statutory-pay-forms](http://www.gov.uk/government/collections/statutory-pay-forms).

## Parental Leave

Staff members who have worked for you for at least a year are entitled to take **Parental Leave**. To qualify they must have, or expect to have, parental responsibility for the child and be taking the time off to look after them. An adoption order gives parental responsibility to the adoptive parents. Find out more in our guidance **Parental Leave, and Fathers and Partners**.

## Time off for dependants

The law says that staff are entitled to take time off for dependants if a partner, child or parent needs urgent care or assistance.

## Glossary

**Additional Adoption Leave:** The second 26 weeks of Adoption Leave.

**Additional Maternity Leave:** The second 26 weeks of Maternity Leave, which follows on immediately from Ordinary Maternity Leave.

**Adoption Leave:** A period of 52 weeks leave that employees are entitled to once they have been matched with a child.

**Compulsory Maternity Leave:** The two weeks immediately following childbirth are compulsory leave (this increases to four weeks for factory workers).

**Continuity of Employment Test:** Measures an employee must meet to qualify for Shared Parental Leave.

**Contractual Adoption Pay:** Enhanced Adoption Pay over and above the statutory minimum. The payment amount is set by the employer.

**Contractual Maternity Pay:** Enhanced Maternity Pay over and above the statutory minimum. The payment amount is set by the employer.

**Employment and Earnings Test:** Measures an employee's partner must meet to qualify for Shared Parental Leave.

**Expected Week of Childbirth:** The week in which the baby is due.

**Matching Certificate:** A certificate from the adoption agency confirming the staff member has been matched with a child for adoption.

**Matching Week:** The week in which the staff member is notified of having been matched with a child by an adoption agency.

**Maternity Allowance:** A state allowance which is paid to a woman if she doesn't qualify for Statutory Maternity Pay. The amount paid depends on individual eligibility.

**Maternity Leave:** The amount of time that a woman is legally allowed to be absent from work in the weeks before and after she has a baby. All pregnant staff are entitled to 52 weeks' Maternity Leave.

**Ordinary Adoption Leave:** The first 26 weeks of Adoption Leave.

**Ordinary Maternity Leave:** The first 26 weeks of Maternity Leave, which includes the period of Compulsory Maternity Leave.

**Parental Leave:** Leave which allows parents take time off work to look after a child. This leave is normally unpaid, and is available for each child up to their 18th birthday.

**Paternity Leave:** A maximum of two weeks' leave following the birth of a child or the adoption of a child, taken to support the mother or care for the new child.

**Qualifying Week:** The 15th week before the expected week of childbirth.

**Shared Parental Leave:** Leave which allows mothers to end Maternity Leave/Pay early so that one or both parents can take leave in a more flexible way during their child's first year. Parents can take leave at the same time or separately.

**Shared Parental Pay:** Weekly payments for parents on Shared Parental Leave who meet both the Continuity of Employment Test and whose partner meets the Employment and Earnings Test.

**Statutory Adoption Pay:** Weekly payments for people on Adoption Leave set by the Government.

**Statutory Maternity Pay:** Weekly payments for women on Maternity Leave set by the Government.

**Statutory Paternity Pay:** Weekly payments for people on Paternity Leave set by the Government.

The content of this guidance is based on Equality and Human Rights Commission campaign materials and resources. Find out more at:  
[www.equalityhumanrights.com/en/our-work/managing-pregnancy-and-maternity-workplace](http://www.equalityhumanrights.com/en/our-work/managing-pregnancy-and-maternity-workplace)

Close the Gap works in Scotland on women's participation in the labour market. We work with employers, trade unions and policymakers to enable and encourage action to address the causes of women's inequality at work.

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