

Maternity and Adoption Policy

Human Resources

Issued by HR Policy Team

Effective from 20 May 2019

MATERNITY and ADOPTION POLICY

# 1 Introduction

## **Purpose**

* 1. The purpose of the Maternity and Adoption Policy is to:
* assist with the management of leave for those who are pregnant or seeking to adopt a child within the UK
* provide information about statutory rights
* provide information about additional benefits the Council provides in addition to its statutory obligations.

	1. Where a child is being adopted from overseas employees should consult the HR Team for information on their entitlement to adoption leave and pay.
	2. An employee is entitled to only one period of maternity or adoption leave at a time, irrespective of how many children are born to them or placed with them.

1.4 An employee who is about to become a parent or has recently become a parent may also be interested in the following policies: Paternity Leave, Parental Leave, and Shared Parental Leave. These offer additional rights to working parents; full details of each policy are available on the intranet.

## **Scope**

1.5 This policy applies to all employees of the Council, irrespective of length of service, except those employed in schools under the control of Governing Bodies, for whom procedures adopted by the Governing Body will apply. Employees are as defined in section 230 of the Employment Rights Act 1996 or any substituting or amending legislation.

**Pension Administrator**

1.6 There are references in this policy to the Council’s pension administrator. Further information can be found on the intranet under ‘Pensions’.

**2 Maternity**

## **Provision for Ante-natal Care**

* 1. All pregnant employees are entitled to take paid time off work for antenatal care and are not expected to make this time up.
	2. Antenatal care may include a reasonable amount of parent craft and relaxation classes that the employee’s doctor or midwife has advised her to attend, in addition to medical examinations.
	3. Apart from the first appointment, the employee must produce evidence of appointments if requested to do so by her line manager.
	4. The employee should endeavour to give her line manager as much notice as possible of antenatal appointments and, wherever possible, try to arrange them as near to the start or end of the working day as possible.

Maternity Leave

* 1. There is no qualifying service required to take maternity leave.
	2. A maximum of 52 weeks’ maternity leave can be taken.
	3. Maternity leave can commence no earlier than the beginning of the 11th week before the expected week of childbirth or from the day following childbirth if that is earlier.
	4. An employee is prevented by legislation from carrying out any work (including Keeping In Touch days – see paragraph 4.13) in the first two weeks after the birth of her baby (compulsory maternity leave).

**Maternity Pay**

* 1. For employees who are eligible, see paragraphs 2.14 and 2.17, maternity pay is payable for up to 39 weeks.
	2. Maternity pay will start on the day that maternity leave commences.
	3. Tax, national insurance and employee pension contributions are deducted from maternity pay.
	4. Any salary increments which occur while an employee is on maternity leave will affect the amount of statutory or occupational pay received.
	5. Employees who are not eligible for either occupational maternity pay or statutory maternity pay will usually be able to receive maternity allowance, which is an alternative statutory payment. Further information is available on the gov.uk website.

**Statutory Maternity Pay**

* 1. To be eligible for statutory maternity pay an employee must have been continuously employed by the Council for at least 26 weeks into the 15th week before the expected week of childbirth (the ‘qualifying week’), and be earning, before tax, an amount above the Lower Earnings Limit.
	2. Statutory Maternity Pay is paid as follows:
* First 6 weeks at 90% of average weekly earnings with no upper limit
* Remainder of the statutory maternity leave period (up to 33 weeks) at the standard rate or a rate equal to 90% of average weekly earnings, whichever is lower.
	1. An employee will continue to be entitled to statutory maternity pay even if her contract with the Council is terminated, providing that her employment with the Council continued into the qualifying week (see paragraph 2.14).

## **Occupational Maternity Pay**

* 1. An employee, who has completed one year’s continuous local government service, at the 11th week before the expected week of childbirth, is entitled to receive occupational maternity pay if they declare an intention to return to work following their leave and subsequently return to work for a minimum period of 13 weeks.
	2. Occupational maternity pay is paid as follows:-
* For the first six weeks of leave an employee is entitled to 90% of their average weekly salary offset against any entitlement they may have to statutory payments (statutory maternity pay / maternity allowance)
* Where an employee declares an intention to return to work following their leave and subsequently returns to local authority employment for a minimum period of 13 weeks they will receive 12 weeks’ half pay plus any statutory pay due (total payments cannot exceed full pay)
* The remaining 21 weeks’ is paid at the standard rate of statutory maternity pay, where the employee qualifies for SMP.
* An employee who does not have 26 weeks’ continuous service with the council, up to the 15th week before the expected week of childbirth, will not receive statutory maternity pay even if they do qualify for occupational maternity pay. In this situation they will receive the OMP set out above but will not receive any of the statutory payments.
	1. If an employee does not subsequently return to local authority employment for at least 13 weeks, they will be required to repay the 12 weeks’ half pay.
	2. An employee does not have to repay statutory maternity pay if they do not return to work.
	3. Where an employee returns to work on a part-time basis the period of employment required to retain occupational maternity pay remains at 13 weeks.
	4. An employee may defer receipt of the 12 weeks’ half pay occupational element of maternity pay until their return to work.

Notification of Maternity Leave

* 1. By the end of the 15th week before the expected week of childbirth (or as soon as is reasonably practicable) an employee must provide formal written notification of her pregnancy including the date on which her baby is due and the date on which she would like her maternity leave to start.
	2. The employee must complete and return the Maternity Leave and Pay Options form and attach their MATB1 form.

Acknowledgement of Notification of Intention to take Leave

* 1. Within 28 days of receipt of the notification, the HR team should write to the employee confirming their leave entitlement and informing them of the date on which they are expected to return to work if this leave is taken in full.

Changing the Date of Leave

* 1. Should an employee wish to bring forward or postpone their leave they must notify their line manager in writing at least 28 days before the new start date or as soon as is reasonably practicable. The HR team must be informed of any change of date.
	2. Where a baby is born early, the employee must inform the HR team as soon as is reasonably practicable.

## **Maternity Risk Assessment**

* 1. The Council must ensure that a risk assessment of the working environment is carried out to identify any potential risks to an employee while she is pregnant. Any potential risks should be removed, or if this is not possible, alternative temporary working arrangements made.
	2. If it is not possible to alter the employee’s working conditions to remove any risk, and there is no suitable alternative work available, the employee may be suspended from work on maternity grounds until such time as there is no longer a risk or she goes on maternity leave.
	3. This suspension does not affect an employee’s statutory or contractual rights. The employee will be entitled to her normal salary and contractual benefits during the suspension unless she has unreasonably refused an offer of suitable alternative employment.

**Pregnancy Related Health and Safety Implications**

* 1. Where an employee is absent from work with a pregnancy related illness she will receive sick pay in accordance with the sick pay allowance until either she is well enough to return to work or her maternity leave commences.
	2. Where an employee is absent from work because of a pregnancy related illness in the four weeks before her expected week of childbirth, her maternity leave and pay will commence from the day following the first day of her absence.
	3. Pregnancy related illness is excluded from the Management of Absence Policy, but in line with the general ethos of the policy employees will be supported through their illness and absence from work.
	4. Where an employee is intending to breastfeed her baby at work the Council must carry out a risk assessment to identify any potential risks to the mother or baby and consider the provision of suitable accommodation and facilities. This does not include a nursery or crèche facilities.

Still births and miscarriages

* 1. In the case of a stillbirth or miscarriage, an employee retains her entitlement to leave and pay if this occurs 24 weeks or more into the pregnancy. A stillbirth or miscarriage prior to this date means that the employee will not have the right to maternity leave or pay. She will however, be entitled to sick pay. An employee who gives birth to a live baby is entitled to maternity leave, regardless of the point at which the baby is born. This applies even if the baby lives for only a short period of time.
	2. It is important for managers to be supportive of employee’s during this stressful time. If necessary, and if the employee wishes, arrangements can be made for the employee to seek free confidential advice and counselling via the Employee Assistance Programme.

Premature birth

* 1. If, at any point in her pregnancy, an employee gives birth to a living child, even in cases where a child subsequently passes away, she will be entitled to Maternity Leave, Statutory Maternity Pay, Occupational Maternity Pay or Maternity Allowance in the usual way.

Smallest Things

* 1. [The Smallest Things](https://thesmallestthings.org/) is a charity that campaigns for premature babies and their families.
	2. The council supports the aims of the Smallest Things campaign and recognises the special needs of premature babies’ parents through the provision of premature baby leave and pay.

Premature Baby Leave and Pay

* 1. Parents of babies born at or before 37 weeks will be entitled to receive a day’s Premature Baby Leave and Premature Baby Pay for each day between the baby’s date of birth and their due date.
	2. Premature Baby Leave is added to the employee’s Maternity Leave period after the occupational / statutory maternity entitlement has been exhausted.
	3. Premature Baby Pay consists of full pay for the applicable days and is paid to the employee at the beginning of her maternity leave period. The employee’s normal entitlement to occupational / statutory maternity pay will continue to apply and will not be affected by the premature baby leave or pay.
	4. It is important that employees notify their line manager of the premature birth so that the necessary arrangements can be made by Human Resources for implementation.

**Supporting employees dealing with premature birth**

* 1. A premature birth is a stressful experience for a new parent and additional support from managers will be required. It is therefore important that the line manager acknowledges the birth of the baby and approaches all conversations regarding the situation with compassion and sensitivity.
	2. During this difficult time, Managers are asked to:
* Ensure that employees have provided the documents required to commence their maternity leave payments. In the circumstances the employee may have forgotten. If this is the case remind the employee of the requirements to ensure that statutory and occupational maternity payments can commence as quickly as possible after the birth.
* Discuss the best method of and regularity of contact with the employee or their nominated representative during this time. It may be that the employee would initially prefer to be left alone, if so this should be respected.
* Agree with the employee what information that they would like to be conveyed to their colleagues about the situation
* Understand that parents of premature babies are likely to experience a range of emotions caused by their babies’ health; these can include anxiety, depression, isolation, stress and fear. Remind the employee of the Employee Assistance Programme which offers free confidential advice and counselling and provide them with the contact details

3 Adoption

**Eligibility**

* 1. Employees who are matched with a child for adoption by an approved adoption agency or are one of a couple who have been jointly matched with a child for adoption, are entitled to adoption leave and pay in accordance with this policy.
	2. The right to adoption leave and pay is only available to one member of a couple who have had a child placed with them for adoption. Adoptive parents must decide which of them takes this entitlement. The partner of an individual who adopts, or the other member of a couple who are adopting jointly, may qualify for other leave entitlements, see 1.4.

**Provision for time off to attend adoption appointments**

* 1. [[1]](#footnote-1)Prospective adoptive parents have the right to time off for the purpose of having contact with the child or to attend adoption appointments and will not be expected to make this time up.
	2. The main adopter will be able to take paid time off for up to five adoption appointments.
	3. The secondary adopter will be entitled to take unpaid time off for up to two appointments.

**Adoption Leave**

* 1. There is no qualifying service required to take adoption leave.
	2. A maximum of 52 weeks’ adoption leave can be taken.
	3. An employee’s adoption leave can start from the date on which the child is expected to be placed with them, or from a specific date up to 14 days before this date.

**Adoption Pay**

* 1. For employees who are eligible, see paragraphs 3.1 and 3.2, adoption pay is payable for up to 39 weeks.
	2. Adoption pay will commence on the day the adoption leave commences.
	3. Tax, national insurance and employee pension contributions are deducted from adoption pay.
	4. Any salary increments which occur while an employee is on adoption leave will affect the amount of statutory or occupational pay received.

**Statutory Adoption Pay**

* 1. To be eligible for statutory adoption pay an employee must have at least 26 weeks’ continuous service with the Council at the end of the week in which they are notified of being matched with the child for adoption and be earning an amount equal to or above the Lower Earnings Limit.
	2. Statutory adoption pay is paid as follows:
* First 6 weeks at 90% of weekly earnings with no upper limit
* Remainder of the statutory adoption pay period (up to 33 weeks) at the standard rate or a rate equal to 90% of average weekly earnings, whichever is lower

	1. The period of statutory adoption pay remains the same regardless of how many children are placed for adoption as part of the same arrangement.

## **Occupational Adoption Pay**

* 1. An employee who has completed one year’s continuous local government service, at the 11th week before the week in which they are notified of being matched with the child for adoption, is entitled to receive occupational adoption pay if they declare an intention to return to work following their leave and subsequently return to work for a minimum period of 13 weeks.
	2. Occupational adoption pay is paid as follows:-
* For the first six weeks of leave an employee is entitled to 90% of their average weekly salary offset against their statutory payments
* Where an employee declares an intention to return to work following their leave and subsequently returns to local authority employment for a minimum period of 13 weeks they will receive 12 weeks’ half pay plus any statutory pay due (total payments cannot exceed full pay)
* The remaining 21 weeks are paid at the statutory adoption pay rate.
	1. If an employee does not subsequently return to local authority employment for at least 13 weeks, they will be required to repay the 12 weeks’ half pay.
	2. An employee does not have to repay statutory adoption pay if they do not return to work.
	3. Where an employee returns to work on a part-time basis the period of employment required to retain occupational adoption pay remains at 13 weeks.
	4. An employee may defer receipt of the 12 weeks’ half pay occupational element of adoption pay until their return to work.

Notification of Adoption Leave and Pay

* 1. An employee must provide at least 28 days’ written notification of when they wish their adoption leave and adoption pay to start and the date on which they expect the child to be placed with them for adoption.
	2. The employee must complete and return the Adoption Leave and Pay Options form and attach their matching certificate.
	3. In the case of surrogacy adoptions (see paragraph 3.27) the employee should attach their parental statutory declaration (or parental order).

Acknowledgement of Notification of Intention to take Leave

* 1. Within 28 days of receipt of the notification the HR team should write to the employee confirming their leave entitlement and informing them of the date on which they are expected to return to work if this leave is taken in full.

Changing the Date of Leave

* 1. Should an employee wish to bring forward or postpone their leave they must inform their line manager in writing at least 28 days before the new start date or as soon as is reasonably practicable. The HR team must be informed of any change of date.

Surrogacy Adoption

* 1. Where an employee becomes the parent of a baby born to a surrogate mother, they, either through adoption or a Parental Order, will be entitled to statutory adoption leave and pay in accordance with this Policy. This will apply only to surrogate parents for whom a court has made a Parental Order[[2]](#footnote-2) in accordance with s.54 of the Human Fertilisation and Embryology Act 2008 and parents who intend to make an application for a Parental Order and have completed the parental statutory declaration (see 3.28).
	2. The Council is sympathetic to an employee wishing to take leave to care for the child at or soon after its birth and will therefore allow employees who become the parents of a baby born to a surrogate mother, and who qualify, to take occupational adoption pay and leave (see 3.16-3.21). This is dependent on the employee providing a copy of their parental statutory declaration[[3]](#footnote-3) (or Parental Order) and satisfying the requirements as set out in 3.16-3.21.
	3. An employee who fails to provide the necessary documentation may be required to repay the payments made to them as occupational adoption pay.

**4 Terms and Conditions of Employment during Maternity and Adoption Leave**

* 1. Employees are entitled to all contractual benefits, apart from remuneration, during their maternity or adoption leave period.
	2. An employee is entitled to receive non-cash benefits (e.g. use of a bicycle provided via a salary sacrifice scheme) during the maternity or adoption leave period.
	3. The employee’s contract of employment remains in force throughout their maternity or adoption leave as follows:-
* The employee is entitled to benefit from the Council’s implied obligation of trust and confidence.
* The employee is entitled to receive their contractual notice if their employment is terminated.
* The employee is entitled to receive a redundancy payment in the event of redundancy.
* The terms and conditions in the employee's contract of employment relating to disciplinary and grievance procedures will continue to apply.
* The employee is bound by their implied obligation of good faith to the Council.
* The employee must give the Council the notice provided for in their contract if they wish to terminate their employment.

## **Annual Leave**

* 1. Employees will continue to accrue rights to annual leave during periods of maternity/adoption leave periods and be able to take day(s) in lieu (pro-rata for part timers) for any Bank Holidays that occur during the maternity/adoption leave period.
	2. An employee should discuss when their leave can be taken with their line manager before maternity or adoption leave begins and also how they will manage any leave it is not possible to take within their personal leave year.
	3. Leave should normally be taken within an employee’s personal leave year and in accordance with the Council’s annual leave guidance.
	4. Where an employee is intending to return to work on reduced hours, any outstanding leave based on their full time contract should be taken before they commence their part-time role.

## **Pension**

* 1. Where an employee is a member of the Local Government Pension Scheme, employer pension contributions will continue to be made and employee contributions will continue to be deducted from an employee’s maternity or adoption pay.
	2. An employee who is intending to take a period of unpaid maternity or adoption leave should consult the Council’s pension administrator for advice about the possible effects on their pension.

## **Continuous Service**

* 1. The taking of maternity or adoption leave does not constitute a break in service. An employee’s service is regarded as continuous for the calculation of annual leave, sickness payment, and redundancy compensation.
	2. Where an employee returns to local government service following a break for maternity reasons, or reasons concerned with caring for children or other dependants, they are entitled, under paragraph 14.2 of the Green Book[[4]](#footnote-4), to have previous service taken into account in respect of maternity schemes provided that the break in service does not exceed eight years and that no permanent paid full time employment has intervened.
	3. Under provisions of the Green Book, employees who transferred under the TUPE Regulations, and subsequently return to local government service, may be entitled to have any continuous service taken into account for maternity and adoption entitlements. Further information is available in paragraph 14.3 of the Green Book.

## **Keeping in Touch Days (KIT) days**

* 1. An employee on maternity or adoption leave is able to work for up to 10 days during their leave without losing any maternity or adoption pay and without bringing their leave to an end.
	2. For record keeping purposes working for part of a day will count as one day. Work is defined as “any work done under the contract of employment and may include training or any activity undertaken for the purposes of keeping in touch with the Council.”
	3. Such days could include staff or team meetings, occasional days of work etc. and should, where possible, be agreed in advance by the line manager and employee before the employee goes on leave.
	4. An employee will be paid for the hours actually worked on a KIT day, even though, for record keeping purposes, any part of a day worked will count as one day.
	5. KIT days are not compulsory.
	6. KIT days are paid at the employee’s basic contractual pay rate, at a rate of 1/365 x annual salary, less any Statutory Maternity / Adoption Pay or Occupational Maternity / Adoption Pay **or** an employee may be able to take the time as TOIL.

## **Reasonable Contact**

* 1. In addition to the provision for KIT days there may be reasonable contact between the line manager and employee during the employee’s leave. This contact does not count as work and does not bring the maternity leave period to an end.
	2. Such contact could include receiving team briefings, in-house magazines, information on departmental or organisational changes, information on job vacancies and training opportunities, phone calls etc.
	3. The level of contact and how it takes place should be agreed by the line manager and the employee before the employee takes their leave.
	4. In some instances, changing circumstances in the Council could mean additional contact may be necessary to ensure that adequate involvement and consultation on key issues takes place.

5 Returning to Work

* 1. An employee who takes the full 52 weeks’ leave entitlement is expected to return to work on the date previously confirmed to them by the HR team unless they notify the Council otherwise. If they are unable to return because of sickness or injury the Council’s Management of Attendance policy will apply.
	2. Where an employee returns to work at the end of the first 26 weeks’ maternity leave (ordinary leave) they have the right to return to their original job on the same terms and conditions as if they had not been away.
	3. Where an employee returns to work after a period of additional maternity leave (weeks 27 – 52 of maternity leave) they are entitled to return to their original job or, if this is not reasonably practical, to a suitable job on terms and conditions of employment at least as favourable as those of the original job.
	4. On returning to work an employee is entitled to benefit from any salary increases or improvements to terms and conditions which may have been introduced while they were on leave.

Phased Return

* 1. An employee may request to return to work from maternity or adoption leave on a phased return basis. Any request must be made and determined before the employee returns from maternity or adoption leave.
	2. The employee must make their request to their line manager who will consider each case taking into account the needs of the business and the employee’s wishes. A phased return will only be agreed where this can be accommodated within the needs of the service.
	3. Where a phased return is agreed, the terms will be as follows:
	4. The period of the phased return is a maximum of 3 months
	5. The revised working hours must be at least 18 hours per week, or at least half of the employee’s contracted hours if they are working less than full time.
	6. The number of hours worked must increase to the original contractual hours over the 3 month period
	7. During any period of phased return, pay and annual leave entitlement is pro-rated according to the number of hours worked per week.

Right to Request Flexible Working

* 1. The Council has a Flexible Working policy which enables eligible employees to request to reduce their hours, or change their working pattern. Any agreement to revised working arrangements under this procedure will constitute a permanent change to the employee’s contract.

NON RETURNERS

Resignation

* 1. If an employee decides not to exercise their right to return to work

following their leave, they are effectively resigning and must give the required contractual notice. Further guidance is available in the Leaving the Authority Policy.

Redundancy

* 1. Employees who are away from work will be included in any redundancy

consultation process. Further guidance is available in the Redundancy and Redeployment Policy.

## **6 Protection against Detriment and Dismissal**

6.1 An employee is protected by statute against being subjected to any detriment and/or dismissal because of pregnancy (or any reason connected with pregnancy) or from taking or intending to take maternity or adoption leave.

1. Prospective adopter parent means a person who has been approved as suitable to adopt a child and has been notified of that decision in accordance with regulation 30B(4) of the Adoption Agencies Regulations 2005 (7) [↑](#footnote-ref-1)
2. Where a Parental Order is issued, the child’s birth is re-registered and the parents who acquire the child are named as the child’s parents. [↑](#footnote-ref-2)
3. Parental statutory declaration is a statutory declaration that the person making the declaration has applied, or intends to apply, under section 54 of the Human Fertilisation and Embryology Act 2008 with another person for a parental order in respect of the child within the time limit for making such an application; and expects the court to make a parental order on that application in respect of the child. [↑](#footnote-ref-3)
4. The National Joint Council for Local Government Services National Agreement on Pay and Conditions of Service [↑](#footnote-ref-4)