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# **Parental Leave Policy**

## **Introduction**

The following policy covers:

all Council employees (excluding teaching staff)

maternity pay & leave  
ordinary paternity & nominated carers leave  
additional statutory paternity leave and pay  
adoption pay and leave  
parental leave (unpaid)

The statutory regulations applicable to an employee who is pregnant or employed during the post confinement period, and the variety of rights for parents are complex. The Council's policy aims to ensure these are fulfilled and any variance from these must therefore be robust to potential legal challenge. Where statutory obligations are not met the employee will have the right to make a claim to an Employment Tribunal.

## **What will be done for you**

Maternity pay and maternity leave is set by the National Joint Council for the relevant employee group. Corporate Human Resources will review any changes to legislation or NJC policy.

The Occupational Health Service can give assistance to managers in identifying sickness absence that is pregnancy related and providing information on an employee's medical fitness in undertaking specific tasks e.g. night duty.

## **What you must do**

Be familiar with an employer's responsibilities and an individual's rights during pregnancy and the post confinement period. These are detailed in the Council's policy and include the following:

- a) paid time off to receive ante-natal care
- b) protection from dismissal by reasons of pregnancy
- c) maternity pay\*
- d) maternity leave
- e) return to work after her confinement, within a specified time-scale
- f) special protection on health and safety matters.

\* Entitlements vary according to length of continuous service.

Be familiar with individual rights afforded to parents and carers, these include:

- a) paternity leave
- b) adoption leave
- c) unpaid parental leave
- d) the right to request flexible working. These are statutory rights that are additional to the Council's arrangements to promote good work life balance and give parents and carers who meet defined criteria particular entitlements that their request is considered in a defined timescale with the right of appeal outside the Council.

Allow people's statutory entitlement to unpaid parental leave, in accordance with the relevant regulations.

Ensure that the business unit notifies individuals of their entitlements and maintains appropriate payroll records for the administration of any statutory payments.

Maintain reasonable contact with the employee during a period of leave and ensure that arrangements are in place to facilitate an employee's re-induction to the workplace. Particular arrangements will apply during a period of re-organisation and potential redundancy.

### **What you must not do**

Treat any employee (or potential employee) less favourably due to pregnancy / maternity. Dismissal on the grounds of pregnancy / maternity will be deemed as automatically unfair.

An employee must not suffer victimisation or dismissal on the grounds of taking parental leave, within the statutory provisions.

Allow the employee to commence maternity leave any earlier than 11 weeks before the expected week of childbirth (EWC). The latest maternity leave can commence is the birth date, though special conditions exist where absence is through a pregnancy related illness at any time after four weeks before the EWC.

Allow the employee to return sooner than two weeks after the birth.

Cause the employee to suffer detriment under the performance management scheme because of her absence on maternity leave.

## **What you can do**

Continue to apply the performance management scheme in the lead up to maternity leave and on the employee's return.

Award special leave arrangements where a miscarriage is suffered.

Allow people to take up one of the Council's flexible working options introduced to improve work life balance, outside the statutory framework and in accordance with the criteria of the work life balance schemes, e.g. homeworking.

## **Key Information**

Management action that may impact on an employee who is pregnant / on maternity leave should be scrutinised to ensure that no detriment results to the individual because of her pregnancy or maternity leave. Advice on the proper application of parental leave policies may be sought from Human Resources staff.

## **Reference Section**

In addition to parental leave, (unpaid) dependent carers leave and other special leave arrangements are described in the topic "Leave". The Council's specific flexible working options can be found in the topic Flexible Working.

## **Parental Leave Policy & Management Guidelines**

### **1. Ante Natal Care**

- 1 Any pregnant employee has the right to paid time off to attend antenatal care arranged on the advice of a registered medical practitioner, midwife or health visitor. This is subject to the production of an appointment card or other such documentation confirming that an appointment has been made. Time off must take account of any necessary travelling arrangements.
- 2 The employee's right to paid time off to attend relaxation classes, or other classes in preparation for the birth, (e.g. parent craft), is less clear in employment law. If the employee can show evidence that attendance is on the recommendation of a registered medical practitioner, midwife or health visitor, paid time off would be reasonable. If, however, attendance is simply a matter of personal choice there is no obligation to give paid leave. In such circumstances, and where attendance is necessary during working hours, it would be reasonable for the Manager to agree annual/flexi leave, or a separate arrangement allowing attendance with lost time made up at a later date.
- 3 An employee must be pregnant to qualify for the right to ante natal care. There is no requirement to give paid leave to an employee who wishes to accompany their partner attending ante natal care, though sympathetic consideration should be given to allow people to use annual leave or flexi leave for example. Expectant fathers, and partners of pregnant women, have a statutory right take unpaid time off to attend up to two ante-natal appointments with the expectant mother. The time to attend each appointment is limited to 6.5 hours. A request to attend the appointment should be put in writing, confirming that the purpose of the time off is to attend the ante-natal appointment and that they qualify on the basis of their relationship with the mother or child.

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## 2. Maternity Leave & Maternity Pay

### 1. Application

This policy applies to all employees whose babies are born or are expected to be born on or after 1<sup>st</sup> April 2007 and is applicable to all pregnant employees regardless of hours worked per week.

### 2. Initial Obligations on the Employee & the Council

2.1 The employee must notify the Council of her intention to take maternity leave by the end of the 15<sup>th</sup> week before her EWC, unless this is not reasonably practicable. She must tell them:

- That she is pregnant.
- Of the expected week of childbirth
- Confirm in writing the date that she wants her absence to begin at least 28 days before leave commences - this cannot be earlier than 11 weeks before the EWC.

AND

Provide a certificate from a registered medical practitioner or a certified midwife, confirming the expected week of childbirth.

2.2 The Council must within 28 days reply to the employee in writing confirming the expected date of return if she takes her full entitlement. The 28-day timescale is counted from receipt of the notification described in 2.1 above.

2.3 An employee will be able to change her mind about when she want to start her leave providing that she tells her employer at least 28 days in advance (unless this is not reasonably practical).

### 3. Maternity Leave

3.1 Maternity leave cannot start earlier than the 11<sup>th</sup> week before the EWC.

3.2 All employees will be entitled to 52 weeks **maternity leave**, regardless of their length of service, i.e.

- 26 weeks ordinary maternity leave

PLUS

- a further 26 weeks additional maternity leave.

### 4. Commencement of Maternity Leave

4.1 Employees may not commence maternity leave earlier than 11 weeks before the EWC.

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- 4.2 Normally a woman's maternity leave can commence on any day of the week that she has specified in her notice to her manager. However, if she has not already started her leave this will be triggered by the birth of her child or a pregnancy related absence from the beginning of the 4<sup>th</sup> week before the EWC. Maternity leave and maternity pay will start on the following day.

## 5. Maternity Pay

Three different levels of payment apply dependent on an employee's service. To qualify for Statutory Maternity Pay (SMP) an employee must have been employed without a break for at least 26 weeks by the 15<sup>th</sup> week before the baby is due and be earning an average of £84 per week before tax. If the employee does not qualify for SMP they may be able to claim Maternity Allowance (MA) using form MA1 obtainable from Jobcentre Plus.

- 5.1 An employee with **less than 26 weeks continuous service** at the end of the 15th week before the EWC will receive:

- two weeks Parental Leave.

Plus

- up to two weeks special paid leave.

- 5.2 An employee with **26 weeks continuous service** as at the end of the 15th week before the EWC, **but less than 1 year's service as at 11 week before the EWC** will receive:

Week 1-6

9/10ths of normal pay, offset against any SMP received or MA received.

Week 7-39

Standard rate of SMP or 9/10<sup>th</sup> of normal pay if this is less.

Week 40-52

Unpaid leave

- 5.3 An employee with **1 year's continuous service as at 11th week before the EWC** will receive:

Week 1-6

9/10ths of normal pay, offset against any SMP received or MA received.

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week 7-18

- a) If the employee has declared in writing that she intends to return to work. She will receive:

Half pay without deduction (note that the sum of half pay plus any SMP (or MA) cannot exceed the employee's full pay).

This is subject to the employee returning to local authority employment for at least three months.

- b) Any employee not intending to return to work for at least three months will receive:

Standard rate SMP (or MA) or  $9/10^{\text{th}}$  of normal pay if this is less.

Week 19-39

Standard rate SMP (or MA) or  $9/10^{\text{th}}$  of normal pay if this is less.

Week 40-52

Unpaid leave

5.4 Payments made to an employee should also take account of the following:

- 'Normal pay' is used to describe the amount payable under the employee's existing contract of employment. Where there are no normal contractual hours worked, the average pay is calculated over the last eight weeks proceeding the final complete week - excluding any week in which no earnings occurred.
- Pay awards received by Council employees.
- Employees on maternity leave are to be treated as though they were at work in respect of all other contractual benefits, e.g. car allowances.
- For the purpose of the maternity scheme, previous continuous service will include service with any public authority to which the Redundancy Modifications Order 1999 applies.
- Women whose expected week of childbirth begins on or after 5 October 2008 are entitled to the same non-cash contractual benefits during additional maternity leave as they would have received during ordinary maternity leave. The employee may voluntarily opt out of receiving non-cash benefits under salary sacrifice schemes.



### **3. Right to Return to Work**

#### **1. The Right to Return**

The employee has the right to return to the job in which she was employed under her original contract on terms and conditions not less favourable than those that would have been applicable to her if she had not been absent.

The employee is required to return to local government employment for a minimum of three months. In circumstances where the employee leaves before the expiry of the three month period, the 12 weeks maternity pay at half pay (where this entitlement exists), will be repayable. In other circumstances where the contract ceases during this period advice should be sought from HR staff on the requirement for repayment (in redundancy or dismissal situations for example).

#### **2 Exercising the Right to Return to Work**

- 2.1 It will be assumed that an employee will be returning at the end of the Additional Maternity Leave period. If an employee wishes to return earlier than this they must give 21 days notice.
- 2.2 In accordance with the conditions of service, a delay in the return to work date may occur where there is an interruption of work (due to industrial action, or some other reason).
- 2.3 An occasion where an employee is sick on the expected date of return is however classed as a return to work under the maternity leave regulations. The period of sickness should be notified in the same way as any other period of sickness and the absence will be recorded against the individual employee's sickness record.

#### **3. Reorganisations and Redundancy**

In certain circumstances it is not possible for an employee to return to her original job after maternity leave because of re-organisation or redundancy. Case law has however improved protection for women on maternity leave and it is essential that any re-organisation, or potential redundancies, affecting an employee on maternity leave take account of the following:

- Appropriate consultation on proposed re-organisations or redundancy must still be undertaken with employees on maternity leave. This will normally require special arrangements to ensure that an individual is not disadvantaged through her isolation from the normal communication systems;
- Where selection is used for either re-organisation or redundancy it is essential that the criteria be critically examined so that it does not disadvantage the person on maternity leave. For example, sickness absence in the pre maternity leave period or involvement in occupational assessment when the employee has been on long term absence through maternity;

- Where an employee is made redundant while on maternity leave she retains her right to return to work and must be informed of suitable vacancies during the maternity leave period. In employment law, redundancy before a return to work is automatically unfair dismissal. It is suggested therefore that where redundancies occur during maternity leave termination is suspended until such time as the return to work date at which time the person must again be offered any suitable vacancies before redundancy is confirmed.

- where redundancy occurs before maternity leave commences but after the qualifying week for SMP purposes, (i.e. the end of the 15th week before the EWC), statutory maternity pay as well as any redundancy is payable.

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#### **4. Premature Births and Miscarriages**

1. Where a baby is born prematurely, special paid leave arrangements will be granted to cover the period up to the 11th week before the expected date of confinement. The Council's normal maternity scheme will apply thereafter.
2. If the baby dies or is still born after 24 weeks' pregnancy the maternity scheme applies, as noted above. Where this occurs before the 24 weeks, (miscarriage), sympathetic consideration should be given to the award of special leave.
3. In the event of the mother's or co-adopter's death before the child's first birthday or during the first year of the placement, special terms apply for additional statutory paternity leave. Please speak to your HR section for more information.

## **5. Performance Management**

1. All employees participate in the Council's performance management scheme and the achievement of stated objectives and targets by an individual over an agreed period might lead to financial rewards, e.g. the award of an increment or other positive outcome (participation in particular training). It is essential that pregnant employees and those who have taken maternity leave in any particular financial year should not be disadvantaged. In applying the scheme therefore:

The period over which targets and objectives are assessed may be reviewed; this is in common with new recruits where similarly the assessment period may be less than a year.

Targets must be realistic. For example, following maternity leave the manager and employee should work together on re-inducting the employee to the workplace and outputs may differ during this period.

Where practical the manager and employee may complete an assessment immediately prior to her commencement of maternity leave where it is known that her absence will span the normal assessment period (typically February – April).

On occasions, the award of an increment may be dependent or influenced by the achievement of an overall team target, it is essential that the employee is not treated less or more favourably than other employees within the team through a period of absence that is pregnancy or maternity related.

Pregnancy related sickness absences should be discounted when considering an employee's sickness absence in the award of an increment.

## **6. Health & Safety**

1. Regulations three and 16 of The Management of Health & Safety Regulations 1999 place on the employer the responsibility to assess the risks to their workers and others who may be affected by their work or business. These assessments must also consider risks to women employees of childbearing age and to the baby.
2. Furthermore, once an employee has notified the employer in writing that she is pregnant, has given birth within the previous six months or is breast-feeding, the employer must take the following steps:
  - i. Review the risk assessment and advise her of all hazards identified and the preventative and protective measures to be taken.
  - ii. Ensure the worker is not exposed to risks that would present a danger to her health and safety.
  - iii. If the risk remains, alter the woman's conditions of work, if it is reasonable to do so.
  - iv. If it is not possible to either remove the risk or, where necessary, alter the working conditions the person should be offered alternative work on terms and conditions no less favourable than would normally apply. In extreme cases it may be necessary to 'suspend' the employee on full pay for as long as necessary to protect her health and safety.

It should be noted that the risk assessment should be reviewed as per step i. and ii. above regularly, including when a woman returns from maternity leave and if they are intending to work a keeping in touch day.

If the employee works at night and has a medical certificate stating that it is necessary for her health and safety that she should not be at work for any period of such work identified in the certificate, the employer will need consider certain steps to assure her health and safety. A transfer to another post, or suspension, may need to be pursued immediately as a short-term temporary measure in response to the circumstances presented. An urgent referral should, however, be made to the Occupational Health Service for advice upon the employee's fitness to undertake the specific circumstances of her employment before continuing these arrangements for an extended period.

Please refer to the Council's Health and Safety manual for more information or contact your departmental Health and Safety Adviser.

## 7. Contact During Maternity Leave

### 1. Reasonable Contact

An employer and employee are encouraged to make reasonable contact during maternity leave to discuss issues such as the return to work. It should be ensured that an employee is kept informed of other issues such as job vacancies, significant workplace developments and training opportunities. This degree of contact would not constitute 'work'.

### 2. Keeping In Touch Days

A woman can do ten days' work during her maternity leave without bringing her maternity leave to an end. **Working for part of the day will count as one day towards this entitlement.**

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 workplace. An employer cannot insist that a woman carries out any work and she is protected from suffering a detriment for refusing to do so. Equally, a woman cannot insist on being given any work to do.

The SMP regulations previously governed that where an employee worked during the week in which she was entitled to SMP she would bring her maternity leave to an end. This will continue to apply if a woman works any days above and beyond the ten days allowed.

### 3. Establishing Keeping In Touch Days

An employee cannot carry out any work during the first two weeks following the birth of the child. However, at any other point during a period of maternity leave the employee and line manager may wish to reach an agreement that keeping in touch days will be worked. The ten-day entitlement can be both broken up and taken as individual days, or as a period of days depending on the activity to be completed and local arrangements. It should be noted that a woman's maternity leave would not be extended due to the fact that she has carried out some work during this period.

### 4. Pay for Work Undertaken During Maternity Leave

An employee will be paid normal pay for the keeping in touch days worked offset against any remaining entitlement to maternity pay.

## **8. Ordinary Paternity Leave & Nominated Carers Leave**

1. Employees will need to satisfy the following conditions to qualify for ordinary paternity leave. They must:
  - have or expect to have responsibility for the child's upbringing
  - be the biological father of the child or the mother's husband or the mother's partner
  - have 26 weeks continuous service by the end of the 15<sup>th</sup> week before the expected week of childbirth
2. The employee must give the following information to their manager by the end of the 15<sup>th</sup> week before the EWC: -
  - Confirmation of the EWC, (supported by a copy of the MAT B1 maternity certificate) or if the birth has already occurred the date of birth (supported by the birth certificate).
  - The length of the leave requested.
  - The date that the leave will start.
  - A declaration that he or she is in an enduring relationship with the mother, will be responsible for the child's upbringing and will be taking time off to support the child's mother or care for the child.

An employee will be able to change their mind about when they want to start the leave providing that they tell their manager at least 28 days in advance (unless this is not reasonably practical).

3. Eligible employees will be entitled to take either one week or two consecutive weeks ordinary paternity leave (not odd days).

They can choose to start their leave:

- From the date of the child's birth (whether this is earlier or later than expected), or;
- From a chosen number of days or weeks after the date of the child's birth (whether this is earlier or later than expected)

Leave can start on any day of the week on or following the child's birth but must be completed:

- Within 56 days of the actual date of birth, or;
- If the child is born early, within the period from the actual date of birth up to 56 days after the expected week of birth.

Only one period of leave will be available to employees irrespective of whether more than one child is born as a result of the same pregnancy.

4. Ordinary Paternity pay will be two weeks paid leave.

5. An entitlement of one weeks paid leave is provided for the mother's nominated carer. A nominated carer is defined as: the person nominated by the mother as the primary provider of support where the mother identifies circumstances which mean this role cannot be fulfilled by the father of the child. To qualify for nominated carer's leave the mother must be a Southwark employee.
6. Requests for nominated carers leave must be made as early as reasonably practicable and supported by a copy of the mother's form MAT B1. Leave shall be taken at or around the time of the birth and therefore must be within the 26 week period which includes the confinement date of the mother.
7. The right to unpaid parental leave is described later in this document.

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## **9. Additional Statutory Paternity Leave and Pay**

The right to additional statutory paternity leave (ASPL) applies to parents of babies born on or after 3 April 2011 or notified as being placed for adoption on or after 3 April 2011.

If a baby is due on or after 3 April 2011 but is born earlier, the employee is still entitled to additional statutory paternity leave.

This leave and pay is only available to qualifying employees if the mother, or co-adopter, has returned to work. Special provisions apply if the mother or co-adopter dies during their maternity or adoption leave or pay period.

The right to ASPL is in addition to the existing two-week ordinary paternity leave and pay entitlement on the birth or adoption of a child.

Employees can start their additional paternity leave any time from 20 weeks after the child is born. The leave must have finished by the child's first birthday.

The minimum period of ASPL is two weeks and the maximum period of ASPL is 26 continuous weeks. The leave must be taken in multiples of complete weeks and must be taken as one continuous period.

### **Entitlement to Additional Statutory Paternity Leave (ASPL) - Births**

- 1.0 Employees will be entitled to 26 continuous weeks ASPL for the purpose of caring for a newborn child if **all** of the following criteria apply:
  - 1.1 The baby's mother must be entitled to statutory maternity leave, statutory maternity pay or maternity allowance
  - 1.2 The baby's mother must return to work no earlier than two weeks after the child's birth, but with at least two weeks of unexpired statutory maternity leave entitlement remaining
  - 1.3 The baby's mother has ended her statutory maternity leave and has stopped receiving statutory maternity pay
  - 1.4 The employee has been continuously employed by the Council for at least 26 weeks by the end of the 15th week before the EWC and is still employed by the Council
  - 1.5 The employee must continue to work for the Council from the qualifying week into the week before they wish to take additional paternity leave - weeks run Sunday to Saturday
  - 1.6 If the employee's contract ends before ASPL starts they do not qualify for leave or pay - unless they go on to work for an associated employer.
  - 1.7 The employee should be treated as having the necessary length of service if both:

- the baby is born earlier than the qualifying week
- the birth hadn't occurred early, the employee would have been employed continuously for the 26 weeks ending with the qualifying week

1.8 The employee has, or expects to have main responsibility for the upbringing of the child apart from any responsibility of the mother

The employee:

- 1.9 Must be the father of the baby and/or the husband or partner (including same-sex partner or civil partner) of a woman who is due to give birth on or after 3 April 2011 (a partner is someone who lives with the mother of the baby in an enduring family relationship but not an immediate relative)
- 1.10 Has produced evidence of his or her entitlement to ASPL, such as information concerning the child's mother (e.g. the date on which she intends to return to work from maternity)
- 1.11 Has given notice in accordance with the notification requirements for taking ASPL
- 1.12 Be taking the time off to care for the baby

### **Multiple births**

- 2.0 An employee can only get one period of additional paternity leave regardless of the number of children resulting from a single pregnancy.
- 3.0 Where more than one child is born as a result of the same pregnancy, the additional paternity leave period must start after the first child is 20 weeks old and end before that child's first birthday.

### **Entitlement to Additional Statutory Paternity Leave (ASPL) - Adoptions**

- 4.0 Employees can take their ASPL any time between 20 and 52 weeks after:
  - 4.1 the child starts living with the adopter (is placed for adoption) - for UK adoptions
  - 4.2 arrives in Great Britain from overseas - for overseas adoptions
  - 4.3 A minimum of two weeks and a maximum of 26 continuous weeks' leave can be taken.

An employee qualifies for additional paternity leave when adopting a child if:

- 4.4 they are married to or the partner or civil partner of the child's co-adopter (the co-adopter is the adopter who has chosen to take adoption leave)
- 4.5 for UK adoptions, they have been matched with a child for adoption on or after 3 April 2011 - the qualifying week is the week they are matched for adoption

- 4.6 for overseas adoptions, the child must have entered Great Britain on or after 3 April 2011 - the qualifying week is the later of either the week official notification was received, or the week the employee had been employed by you for 26 weeks
  - 4.7 they did not take statutory adoption leave or pay
  - 4.8 they have been continuously employed by you for at least 26 weeks ending with their qualifying week - for overseas adopters this must be before the child entered Great Britain
  - 4.9 they continue to work for you from the qualifying week into the week before they wish to take additional paternity leave (which runs Sunday to Saturday)
  - 4.10 they will be taking time off to care for the child
  - 4.11 The child's co-adopter must also be entitled to adoption leave or pay and will return to work no earlier than two weeks after the child's placement for adoption. A return to work means the co-adopter has resumed working - a period of annual or parental leave directly after the adoption leave is not a return to work. Once the co-adopter has returned to work any subsequent period of leave does not affect entitlement to additional paternity leave or pay.
- 5.0 For overseas adoptions, the employee must also:
- 5.1 have received official notification relating to the adoption
  - 5.2 have, or expect to have, main responsibility for the child's upbringing (apart from the co-adopter)

### **Official notification for overseas adoptions**

- 5.3 Official notification is written notification issued by, or on behalf of, the relevant domestic authority (usually the Department for Education in England or the Welsh or Scottish Ministers) that the authority:
- is prepared to issue a certificate to the overseas authority dealing with the adoption of the child and/or has issued a certificate and sent it to that authority
  - confirms that the co-adopter who is taking adoption leave is eligible to adopt and has been approved as being a suitable adoptive parent

### **Multiple adoptions**

- 6.0 An employee can only get one period of additional paternity leave regardless of the number of children matched with them at the same time or adopted from overseas as part of the same arrangement.
- 7.0 Where more than one child is placed for adoption as part of the same arrangement, the additional paternity leave period must start after the 20th week of the first child's adoption and end before the first anniversary of that child's adoption.

## **Entitlement to Additional Statutory Paternity Pay (ASPP)**

- 8.0 In addition to satisfying the eligibility criteria for ASPL, the following conditions must also be satisfied in order for an employee to be entitled to additional statutory paternity pay:
- 8.1 The child's mother or adopter must have been entitled to statutory maternity pay, statutory adoption pay or maternity allowance.
  - 8.2 The child's mother or adopter must have a certain amount of entitlement to statutory maternity pay, statutory adoption pay or maternity allowance remaining prior to the start of the additional statutory paternity pay period, i.e. they are taking time off to care for their child during their partner's 39 week statutory maternity pay, maternity allowance or statutory adoption pay
  - 8.3 The child's mother or adopter has returned to work. A return to work means the mother has resumed working. A period of annual, sick or parental leave directly after the maternity leave but during the mother's statutory maternity pay or maternity allowance period is not a return to work. However, once the mother has returned to work any subsequent period of leave does not affect entitlement to additional statutory paternity leave or pay.
  - 8.4 The employee's average weekly average weekly earnings are at or above the lower earnings limit for National Insurance contributions in force at the end of the qualifying week
  - 8.5 At least two weeks of the mother's or adopter's statutory maternity pay or maternity allowance period is remaining
  - 8.6 The qualifying week is either:
    - the 15th week before the expected date of birth
    - the week the adopter was matched with a child for adoption (for UK adoptions)
    - the later date of either: the end of the week in which official notification is received or the end of the week in which they complete 26 weeks' continuous employment with you (for overseas adoptions)
  - 8.7 An employee will be entitled to 26 weeks unpaid additional paternity leave if he or she fails to satisfy the additional statutory paternity pay conditions.

## **Notification Requirements for Additional Statutory Paternity Leave and Pay and Evidence of Entitlement**

- 9.0 To qualify for additional paternity leave and pay an employee must give notice, in writing, at least eight weeks before the start of the leave. This may be provided on the application form for Additional Statutory Paternity Pay / Additional Paternity Leave when becoming a parent, becoming an adoptive parent in the UK, or when adopting a child from abroad, which is available on the Source.
- 10.0 Within 28 days of receiving the employee's written notification, the Council will request a copy of either:

- 10.1 the child's birth certificate
- 10.2 the notification from the adoption agency, including the name and address of the agency; the date on which the employee was notified of having been matched for adoption and the date that the agency was expecting the placement to begin
- 10.3 the official notification from the relevant domestic authority (usually the Department for Education in England or the Welsh or Scottish Ministers) and documentation proving that the child entered Great Britain.
- 10.4 The Council will also request the name and address of the mother's or co-adopter's employer, or their business address if they are self-employed.
- 11.0 When the Council requests this information, the employee must provide it within 28 days of the request in order for the claim to be valid
- 12.0 The Council will confirm the dates of the employee's additional paternity leave and additional statutory paternity pay (if applicable) within 28 days of receiving a completed notice from the employee.
- 13.0 If the employee applies for additional statutory paternity pay but is not eligible, they should be given an ASPP1 form.
- 14.0 The Council must be given at least six weeks notice if an employee wishes to change the date of their additional paternity leave or if they no longer wish to take it. If the employee fails to do so, the Council does not have to accept the notice if it cannot reasonably accommodate the requested changes. However, the Council will need to check that the employee still meets the qualifying conditions for additional statutory paternity pay during this period.
- 15.0 The Council will respond to a change of dates, confirming the dates of leave and pay, within 28 days of receiving notice.
- 16.0 If an employee is no longer eligible for additional paternity leave - for example because their partner has not returned to work or because they will not be caring for the child - they must tell inform the Council as soon as possible.
- 17.0 The father's/partner's employer is responsible for checking that the father/partner is entitled to ASPL but they are not be required to carry out checks with the mother's employer to verify the information provided by the mother (e.g. the dates on which the statutory maternity pay period started and finished).
- 18.0 The **HMRC checklist** should be used to enable the Council to check whether the father/partner is entitled to additional statutory paternity pay. The completion of the checklist by employers is not mandatory.

## **Employment terms and conditions during Additional Statutory Paternity Leave**

- 19.0 During ASPL the employee's employment terms and conditions are protected. They keep their normal employment rights and benefits (excluding wages) throughout all their ASPL.

## **Keeping in touch during your Additional Statutory Paternity Leave**

- 20.0 An employee may work for the Council during their Additional Statutory Paternity Leave and Pay period for up to 10 days (also known as keeping-in-touch (KIT) days) without bringing his or her Additional Statutory Paternity Leave and Pay period to an end or losing his or her additional statutory paternity pay.
- 21.0 The keeping in touch days may only be worked if both the employee and the Council agree. The Council does not have to allow the employee to work during their ASPL period and the employee does not have to accept any work offered.
- 22.0 An employee's Additional Paternity Leave and Pay period will end if they work more than ten days for the Council during their ASPL.

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## **10. Adoption Leave and Adoption Pay**

### **1. Application**

Children may be adopted by couples who are married, civil partners or unmarried as well as by individuals. Where a couple are jointly adopting they can choose which of them will take adoption leave and pay and the other may take paternity leave and pay. If an individual is adopting they may take adoption leave and pay and their partner may be eligible for paternity leave and pay.

To qualify for adoption leave and pay an employee must be 'newly matched' with a child for adoption by an approved adoption agency. Adoption leave and pay is not available in circumstances where a child is not newly matched for adoption, for example when a stepparent is adopting a partner's child.

The employee must have been continuously employed for at least 26 weeks ending with the week in which they are notified of having been matched with the child. The week in question starts on a Sunday and ends on a Saturday.

### **2. Initial Obligations on the Employee and the Council**

Adopters will be required to inform the Council of their intention to take adoption leave within seven days of being notified by their adoption agency that they have been matched with a child for adoption, unless this is not reasonable practicable. They will need to tell their manager:

- When the child is expected to be placed with them
- When they want their adoption leave to start

AND

Provide documentary evidence – a "matching certificate" – from their adoption agency as evidence of their entitlement to adoption leave and pay. Employees should ask their adoption agency for a matching certificate, which will include basic information on matching and expected placement dates.

2.2 The Council must within 28 days reply to the employee in writing confirming the expected date of return if the full entitlement to adoption leave is taken.

2.3 Adopters will be able to change their mind about the date on which they want their leave and (if applicable) adoption pay to start, providing they tell their manager at least 28 days in advance, unless this is not reasonably practicable.

### **3. Adoption Leave**

3.1 Adoption leave can commence on any day of the week and be from either:

- 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 the placement

3.2 Employees who are adopting and who have been continuously employed for the required 26 week period are entitled to 52 weeks' adoption leave i.e.

- 26 weeks' ordinary adoption leave

PLUS

- a further 26 weeks additional adoption leave

3.3 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.

If the child's placement ends during the adoption leave period, the adopter will be able to continue adoption leave for up to eight weeks after the end of the placement.

#### 4. Adoption Pay

Two different levels of payment apply dependent on certain conditions. To qualify for Statutory Adoption Pay an employee must have been employed without a break for at least 26 weeks ending with the week in which they are notified of having been matched with the child and be earning an average of £84 per week before tax. They must have also confirmed in writing their intention to return to work for a period of three months to receive occupational pay.

4.1 An employee who has **between 26 and 51 weeks continuous service ending with the week in which they are notified of having being matched with a child, and/or someone who is adopting a child over the age of five years** will receive:

Week 1-2

Parental leave, offset against any SAP received

Week 3-4

Special paid leave, offset against any SAP received

Week 5-39

Statutory Adoption Pay or 9/10<sup>th</sup> of normal pay if this is less.

Week 40 – 52

Unpaid leave



4.2 An employee with **one years' continuous service ending with the week in which they are notified of having being matched with a child and who are also adopting a child under the age of five years** will receive:

Week 1-6

9/10<sup>th</sup> of normal pay, offset against any SAP received

Week 7-18

Half pay without deduction (note the sum of the half pay plus any SAP cannot exceed the employee's full pay)

Week 19 – 39

Statutory Adoption Pay (SAP) or 9/10<sup>th</sup> of normal pay if this is less.

Week 40 – 52

Unpaid leave.

## 5. Contact During Adoption Leave

Regulations provide that reasonable contact between the employer and employee is permitted and will not bring the adoption leave to an end.

The provisions for keeping in touch days mirror those set out for maternity leave.

## 6. Return to work after adoption leave

6.1 Adopters who intend to return to work at the end of their full adoption leave entitlement will not have to give any further notification to their employers.

6.2 Adopters who want to return to work **before** the end of their adoption leave period, must give their employers eight weeks notice of the date they intend to return.

## 7. Parental leave & pay (adoption)

Following the placement of a child for adoption employees have the right to take paid leave to care for their new child or support the adopter. The principles applied to ordinary paternity leave and pay apply, (including an entitlement to two weeks paid leave) except:

- To be eligible the employee will be the adopter's spouse or partner (criteria related to the child's upbringing and service requirements still apply)
- Dates of leave will be determined by the child's placement.

Employees must provide a self-certificate which includes a declaration that the employee meets certain eligibility conditions and provide the information specified above as part of the notice requirements.

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## **11. Parental Support Leave (Unpaid)**

1. Unpaid parental leave of thirteen weeks shall be granted to employees having or expecting to have responsibility for a child as defined in the Maternity and Parental Leave Regulations 13 (2) 1999. An additional five weeks shall be granted to those with responsibility for a child for whom a Disability Living Allowance has been awarded.
2. Parental leave shall be granted to others with parental responsibilities including; foster parents, adoptive parents prior to placement, grandparents with a significant parenting role, special guardianship and stepparents.
3. This leave shall be granted for the purposes of caring for a child up to the age of 8; or for eight years following placement for adoption or up to the age of 18, whichever is the soonest; or for up to the age of 18 for children for whom disability living allowance has been awarded.
4. The employee must make every attempt to give as much notice as possible with a minimum of seven days' notice in writing before the day on which s/he proposes to take the leave.
5. Parental leave may be granted to employees who have not given the required notice in special circumstances at the discretion of the employing authority. Such discretion shall not be unreasonably withheld.
6. Every attempt will be made by the Council to avoid postponement. In any event leave shall not be postponed for more than three months, apart in exceptional circumstances, and cannot be where employees in the particular circumstances outlined below have requested parental leave:
  - Following maternity support leave.
  - Following maternity leave, if a block of parental support leave is taken as one block of leave following maternity leave, an employee should not be required to refund monies paid under this section unless she does not return to local authority employment for a period of at least three months after the end of the parental leave period.
  - At the time of adoption.
7. The taking of parental leave may be postponed in circumstances where the service would be unduly disrupted if the employee took leave during the period identified in his/her notice. In this case, the employing authority must permit the employee to take a period of leave of the same duration and beginning on a date determined in consultation with the employee no later than three months after original start date notified. Managers should discuss the request for leave with the employee with a view to coming to agreement over an alternative. This could be:
  - A different pattern of leave – e.g. part time rather than full time.
  - A shorter or longer period of leave.
  - Alternative dates within the three-month period.

Following consultation and not more than seven days after the employee's notice was given to the Council, the manager must give the employee notice in writing of the postponement which states the reason for it and specifies the date on which the agreed period of leave will begin or end.

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8. Managers shall be sympathetic to flexible parental leave-taking arrangements requested by employees. Parental leave may be taken:
  - As a single block of 13 weeks (or 18 weeks for a child with disabilities).
  - As a number of shorter periods of a minimum of half day.
  - In patterns which provide a part time or reduced hours working arrangement for a period of time equivalent to taking 13 weeks as a single block (or 18 weeks for a disabled child)
9. Employees on parental leave shall have the right to return to the job as provided to those on maternity leave. Appropriate arrangements for re-induction and training should be made to those employees who return to work after a period of extensive parental support leave.
10. Time taken, as parental leave shall be treated as continuous service for the purpose of the employment contract and for the accrual of benefits.
11. Employees who fall sick during a period of parental leave and who give the employing authority the relevant notification shall be entitled to pay under the sickness scheme and this period shall not count towards their parental leave entitlement.

## 12. Questions & Answers

### Recruitment

**Q. An applicant informs me after her successful interview that she is pregnant. Assuming it may be 8 more weeks before all clearances are received she is unlikely to work for more than 4 weeks before her maternity leave. Can I withdraw the offer of employment on the basis of her non-availability for work and the cost to my business unit?**

A. No. You may however discuss with the applicant her entitlements to maternity leave and pay to resolve whether the first day of service should practically commence after the birth of her child.

### Employment status

**Q. A member of my staff on an 18 months limited engagement contract has notified me of her intention to go on maternity leave. Her current contract will be due to expire 5 weeks into her maternity leave. Do I terminate her contract at the end of the 18 month limited engagement?**

A. You are advised to seek advice from your HR staff to look at the specific circumstances and employee's contractual position. The decision whether to extend the contract must, however, be separate from the employee's absence on maternity leave. Difficulties will result where the contract of the employee is not extended and you engage another on a limited engagement basis.

### Commencement & Return from Maternity Leave

**Q. An employee has submitted a sickness certificate, 3 weeks before her expected week of childbirth. Do I record this as sickness absence?**

A. If the sickness absence is pregnancy related then maternity leave is deemed to have commenced. If you are in doubt of whether this may be pregnancy related seek advice from the Occupational Health service.

**Q. An employee has advised me that she is fit enough to continue working until her expected week of childbirth. Can I insist that she must leave before her expected week of childbirth?**

A. No, if an employee remains fit and well you cannot trigger her maternity leave. If, however, the employee suffers from a pregnancy related illness at any time after the 4th week before the expected week of childbirth her maternity leave will be deemed to have commenced.

**Q. I have received no contact from my employee during her maternity leave, and I wish to confirm whether to extend the temporary member of staff. Can I require her to confirm her date of return?**

A. It is recommended that before an employee goes on maternity leave the manager & employee agree what and how to communicate during her absence, indeed reasonable contact during maternity leave is permissible. It must be assumed, however, that the employee will return at the end of her additional maternity leave. The only requirement on the employee is that she must confirm her date of return, if she intends to return before taking her full entitlement to maternity leave. Consideration may therefore need to be given to extend the temporary member of staff up to the possible date of return.

**Q. An employee has advised me that she wants to work for a number of days during her maternity leave period without bringing her entitlement to SMP to an end or ending her maternity leave? Is this possible?**

A. Yes. A woman is allowed to work for ten days during her maternity leave period. This can be broken up or taken as a period of days depending on the arrangement you make with each other. She cannot however, insist on being given any work to do. Please remember to review her risk assessment when she returns for a keeping in touch day.

**Q. What should I do if an employee wishes to return to work before the end of the period of her unpaid maternity leave?**

A. In these circumstances the employee must give at least 21 days notice of her return,

**Q. How soon after the birth can an employee return from maternity leave?**

A. While it is difficult to envisage that difficulties will occur, under employment law an employee is prohibited from returning to work within two weeks from the date of childbirth (note, this also applies where a child is still born after 24 weeks of pregnancy).

Terms & Conditions

**Q. How do I calculate the annual leave entitlement for an employee on maternity leave?**

A. The employee is entitled to benefit from the terms and conditions she would have received if she had not been absent through maternity leave, excluding pay. A woman continues therefore to accrue annual leave during her absence in the same way as if she was at work.

**Q. How does maternity leave and maternity pay effect the employee's participation in the Local Government Pension Scheme?**

A. The employee will continue to make the normal contribution rate during her period of paid leave, e.g. she will make the normal contribution rate based on half pay, etc. This period is then counted as full time service for the calculation of future pension entitlements.

No contributions are paid where the employee is on unpaid maternity leave. On return to work employees are given the option to buy back the service. If this option is pursued, payments will be at the normal contribution rate, i.e. the level received immediately prior to the commencement of nil pay. This period would then be counted as full time service for the calculation of future pensions entitlements.

**Q. Do special conditions apply on calculating continuous service where an employee terminates her employment for maternity reasons?**

Where an employee returns to local government service following a break for maternity reasons, the previous service is taken into account when calculating: sickness entitlements and maternity leave. This is provided that the break in service does not:

- i) exceed eight years, and;
- ii) no permanent full time paid employment has intervened.

The same rule exists for calculating annual leave except the eight years time limit does not apply.

**Q. Can I continue with salary sacrifice schemes when I am on reduced or nil pay?**

You may only continue to participate in salary sacrifice schemes whilst there is sufficient occupational pay to cover the face value cost of the vouchers ordered. Should your occupational pay fall below statutory minimum levels then your salary sacrifice arrangements will be suspended.

Nominated Carer's Leave

**Q. I have received an application for nominated carer's leave, in respect of another member of my staff who is due to go on maternity leave. Should I agree this?**

- A. The pregnant employee must provide appropriate justification to you in writing why the carer's role needs to be provided by this specific employee.

Performance Management

**Q. A member of my staff will only return from maternity leave for the last 3 months of the financial year. Shall we wait until 1 April to set a work plan?**

- A. No, all staff are included in the performance management scheme. Council procedures have established over many years the need to discuss with an employee returning from maternity leave the resumption of her duties and any training/ development she requires as part of re-induction to the workplace. The performance management system enables this to be completed in a structured and comprehensive way.

## Appendix 1: Parental Leave Policy & Guide-lines

### Employment Break Scheme

An employment break is an extended break that begins with an intention to resume work at an agreed date in the future. To qualify for an employment break an individual must have one year's continuous service as at 11th week before the expected week of confinement.

The employment break scheme allows for a break of up to three years, but for maternity reasons this can be extended to four or five years from the date that the maternity leave commences.

For payroll and taxation purposes, the person will be considered a leaver (not returning after maternity leave) and be sent a P45 in the normal way. Payment during maternity will however be as described in section 2, Maternity Leave & Pay i.e.

Week 1-6

9/10ths of normal pay, offset against any Statutory Maternity Pay received.

Plus week 7-39

Statutory maternity pay.

An employment break does not count as reckonable continuous service and will not count in length-of-service pensions calculations. People may, however, 'buy back' service for pension purposes on their return, under the Local Government pension scheme a break of up to 36 months can be bought back. Where individuals decide to take a break for more than 3 years they **must** seek advice from the Pensions Service on the impact to them and their future pension entitlements before any final decision is taken. **This will be the individual's responsibility.**

On return from an employment break, previous Southwark service will be recognised along with a future service for the purposes of annual leave, sick pay and maternity leave, as long as **no paid employment has been undertaken in the intervening period.**

See the Council's [Guide to Flexible Working](#) for more information.