**MATERNITY AND ADOPTION POLICY**

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**Maternity and Adoption Policy**

**Introduction**

The Maternity and Adoption policy is intended 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 and provide information about additional benefits the Council provides in addition to its statutory obligations.

Where adoption, or, surrogacy adoption is being sought overseas employees should consult their ER team.

Irrespective of how many children are born or placed an employee is only entitled to one period of maternity or adoption leave at a time.

**Ante-natal care**

All pregnant employees are entitled to take paid time off work for antenatal care and are not expected to make this time up. In addition to medical examinations, this may include a reasonable amount of relaxation classes and parent craft classes that a doctor or midwife has advised the employee to attend. Employees should arrange appointments as near to the start or end of the working day wherever possible. The employee may be required to produce evidence of appointments.

If you are a father, partner or civil partner of a pregnant woman, you are entitled to take unpaid leave off work for up to two appointments. This includes the intended parents if you are adopting or having a baby through surrogacy arrangements.

**Maternity**

Employees are entitled to take maternity leave, totalling a maximum of 52 weeks regardless of their length of service or hours worked. Employees must take two weeks compulsory maternity leave from the date of childbirth.

Maternity leave can begin no earlier than the beginning of the 11th week before the expected week of confinement (EWC) or from the day following childbirth if that is earlier.

**Qualifying Criteria**

You qualify for maternity pay if you meet the following conditions.

* still be pregnant, or, have given birth, 11 weeks before your expected date of childbirth, and;
* have stopped work

Maternity pay is payable for a maximum of 39 weeks and can be made up of two elements;

1. Statutory Maternity Pay (SMP)
2. Occupational Maternity Pay (OMP)

dependant on meeting the eligibility criteria of each element.

1. Statutory Maternity Pay (SMP)

SMP is a statutory entitlement, where the eligibility criteria is met

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| --- | --- |
| Eligibility | An employee must have been continuously employed by the Council for at least 26 weeks into the 15th week before the EWC (the ‘qualifying week’), and be earning before tax, an amount above the Lower Earnings Limit. |
| How much is paid | 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% average weekly earnings, whichever is lower |
| For employees not returning to work after maternity leave | SMP does not have to be repaid |

If you do not qualify for SMP, the IBC will issue you with an SMP1 form which explains why you do not qualify. You should present the SMP1 to the Department for Work and Pensions who will determine whether you qualify to receive maternity allowance. The Council will in these circumstances pay you two weeks pay.

1. Occupational Maternity Pay (OMP), is an element that the Council pays over and above the statutory amount, where the eligibility criteria is met

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| --- | --- |
| Eligibility | An employee who has 26 weeks or more local government service into the 15th week before your baby is due |
| How much is paid | First 6 weeks full pay |
|  | The next twenty weeks at half pay plus SMP)  |
|  | Remainder of the maternity leave up to a maximum of thirteen weeks at the current SMP rate |
| For employees not returning to work for a period of three months after maternity leave | Will be required to pay back the OMP that is received |
| Where employees return on a part time basis | They **retain their OMP if they remain in post for three months** |

Statutory maternity pay is subject to tax and NI. Pensions contributions will continue whilst you receive pay.

Half pay and SMP must not exceed the equivalent of your full pay.

For most staff ‘a weeks pay’ during maternity leave is the normal amount you receive under your employment contract.

If you do not have fixed or normal working hours, then a week’s pay is the average remuneration over the twelve weeks before your maternity leave starts.

**Notification of Maternity Leave**

We encourage employees to advise their line manager as soon as they feel comfortable and able to do so.

By the end of the fifteenth week before the EWC (or as soon as is practically possible) an employee must provide formal notification of her pregnancy including the date her baby is due and the date on which she would like her maternity leave to start.

The employee must complete enter their maternity leave using ESS, and attach their MATB1 which will be issued by their healthcare professional.

**Changing the Date of Leave**

Should an employee wish to bring forward or postpone their leave they must notify their line manager in writing as soon as practically possible and update any ESS entries that have been made.

Where a baby is born early, the employee must inform their line manager and HR as as soon as is practically possible.

**Maternity Risk Assessment**

The Council must ensure that a risk assessment of the working environment is carried out to identify any potential risks to an employee, whilst she is pregnant. Any potential risks should be removed, or, if this not possible, alternative temporary working arrangements made.

If it is not possible to alter the employee’s working conditions to remove any risk, and there is no suitable 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. During which, no statutory or contractual rights will be affected and she will continue to her normal salary and contractual benefits unless she has unreasonably refused an offer of suitable alternative employment.

**Pregnancy Related Illness**

Pregnancy related illness will not count towards sickness triggers and formal management processes will not be used.

Where an employee is absent from work because of a pregnancy related illness in the four weeks before her EWC her maternity leave and pay may commence from the day following the first day of her absence.

Once maternity leave has ended any special protection will cease and subsequent illness will be handled in the normal way.

**Premature Births, Still Births and Miscarriages**

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.

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.

The Council wants to take a proactive step to assist its employees in dealing with the premature birth of their baby which is why it has adopted the ‘Smallest Things’ campaign. <https://thesmallestthings.org/>

We therefore agree to;

1. Extend maternity leave for mothers who give birth prematurely (before 37 weeks gestation) by the number of days a baby was born prior to their due date. We will pay extended leave at full pay and this may be classed as compassionate leave.
2. Give partners the time they need to be with their baby in hospital, by granting up to two weeks’ paid compassionate leave on the birth of their premature baby. Partners may wish to save or split their parental leave, being there when their baby comes home from hospital. We understand that plans may change depending upon the baby’s medical needs, that additional compassionate leave may be required and that the date a baby will come home from hospital is rarely set in stone.

 Any queries regarding this scheme or extending an employee’s entitlement can be discussed with HR

 It is important to note that the employee’s normal entitlement to Maternity Leave will continue to apply and will not be affected by this scheme.

This also applies to same sex relationships.

 **Full term Hospitalised Baby Leave and Pay**

Monthers of babies who are hospitalised immediately following full term birth due to illness will be entitled to receive Full Term Hospitalised Baby Leave and Pay for a period of up to 4 weeks. This leave entitlement will be added to the end of the employees Maternity Leave period, after the Maternity Leave entitlement has been exhausted. Full term hospitalised baby pay is equivalent to full pay and will be paid to applicable employees at the beginning of their Maternity Leave period.

**Adoption**

**Eligibility**

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. The right to adoption leave and pay is only available to one member of a couple who have had a child placed with them. Adoptive parents must decide which of them takes this entitlement.

**Time Off to attend adoption appointments**

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. The main adopter will be able to take paid time off for up to five adoption appointments.

The secondary adopter will be entitled to take unpaid time off for up to two appointments.

**Adoption Leave**

There is no qualifying service required to take adoption leave.

A maximum of fifty two weeks adoption leave can be taken and can start from the dates on which the child is expected to be placed with them, or, or on a specific date up to 14 days before this date.

**Adoption Pay**

Adoption pay is payable for a maximum of 39 weeks and can be made up of two elements;

1. Statutory Adoption Pay (SAP)
2. Occupational Adoption Pay (OAP)

dependant on meeting the eligibility criteria of each element

1. Statutory Adoption Pay (SAP)

SAP is a statutory entitlement, where the eligibility criteria is met

|  |  |
| --- | --- |
| Eligibility | An employee must have been continuously employed by the Council for at least 26 weeks ending with the week in which you are notified of the match, and be earning before tax, an amount above the Lower Earnings Limit. |
| How much is paid | First 6 weeks at 90% of average weekly earnings with no upper limit |
|  | Remainder of the statutory adoption leave period (up to 33 weeks) at the standard rate or a rate equal to 90% average weekly earnings, whichever is lower |
| For employees not returning to work after adoption leave | SAP does not have to be repaid |

If you do not qualify for SAP, the IBC will issue you with an SAP1 form which explains why you do not qualify. You should present the SAP1 to the Department for Work and Pensions who will determine whether you qualify to receive maternity allowance. The Council will in these circumstances pay you two weeks pay.

1. Occupational Adoption Pay (OAP), is an element that the Council pays over and above the statutory amount, where the eligibility criteria is met

|  |  |
| --- | --- |
| Eligibility | An employee who has 26 weeks or more local government service into the 15th week before employee is advised of the match |
| How much is paid | First 6 weeks full pay |
|  | The next twenty weeks at half pay plus SMP)  |
|  | Remainder of the adoption leave up to a maximum of thirteen weeks at the current SAP rate |
| For employees not returning to work for a period of three months after maternity leave | Will be required to pay back the OAP that is received |
| Where employees return on a part time basis | They retain their OAP if they remain in post for three months |

Statutory adoption pay is subject to tax and NI. Pensions contributions will continue whilst you receive pay.

SAP and OAP must not exceed the equivalent of your full pay.

For most staff ‘a weeks pay’ during adoption leave is the normal amount you receive under your employment contract.

If you do not have fixed or normal working hours, then a week’s pay is the average remuneration over the twelve weeks before your adoption leave starts.

Notification of Adoption Leave and Pay

An employee must provide at least 28 days’ written notification of when they wish they adoption leave and adoption pay to start and the date on which they expect the child to be placed with them for adoption.

The employee must complete and return the Adoption Leave and Pay Options form and attach their matching certificate.

In the case of surrogacy adoptions the employee should attach their parental statutory declaration (or parental order).

Acknowledgement of Notification of Intention to take Leave

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

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

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[[1]](#footnote-1) 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.

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. This is dependent on the employee providing a copy of their parental statutory declaration[[2]](#footnote-2) (or Parental Order) and satisfying the requirements..

An employee who fails to provide the necessary documentation may be required to repay the payments made to them as occupational adoption pay.

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

Employees are entitled to all contractual benefits, apart from remuneration, during their maternity or adoption leave period.

An employee is entitled to receive non-cash benefits (e.g. childcare vouchers, use of a bicycle provided via a salary sacrifice scheme) during the maternity or adoption leave period.

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**

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.

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.

Annual leave should normally be taken within the six months within the return from maternity/adoption leave.

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**

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.

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**

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.

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[[3]](#footnote-3), 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.

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**

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.

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.”

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.

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.

 KIT days are not compulsory.

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.

## **Reasonable Contact**

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.

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.

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.

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.

Returning To Work

An employee has a right to return to either exactly the same job, or in some cases, a similar one. Which right applies depends on when the employee returns. If the employee returns to work:

* after the first six months of leave, the employee is entitled to return to exactly the same job she was doing before her maternity leave
* after the second six months of leave, she is also entitled to return to exactly the same job, unless there is some reason why it is not reasonably practicable for the employer to take her back in that original job. If it is not reasonably practicable, the employee is entitled to suitable alternative work on similar terms and conditions.

If there are any proposed changes to the employee’s role prior to their return to work RBKC will consult with them.

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 Absence policy will apply.

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.

In relation to PRP, see question 4 under the FAQ’s;

[https://officesharedservice.sharepoint.com/:w:/r/sites/RBKCWCCHampshireHRPolices/\_layouts/15/Doc.aspx?sourcedoc=%7b071F4DF1-A4B9-40ED-81DB-F884915F69C7%7d&file=Annual%20Appraisal%20General%20Guidance%20%28RBKC%29%202018-19%20new.docx&action=default&mobileredirect=true&cid=3e50f9b9-df6b-4f65-8e62-9cd59fa4de62](https://officesharedservice.sharepoint.com/%3Aw%3A/r/sites/RBKCWCCHampshireHRPolices/_layouts/15/Doc.aspx?sourcedoc=%7b071F4DF1-A4B9-40ED-81DB-F884915F69C7%7d&file=Annual%20Appraisal%20General%20Guidance%20%28RBKC%29%202018-19%20new.docx&action=default&mobileredirect=true&cid=3e50f9b9-df6b-4f65-8e62-9cd59fa4de62)

Managers should ensure that all relevant correspondence is added to the employee’s personal file and IBC are notified in good time to reinstate the correct pay.

Phased Return

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.

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.

Where a phased return is agreed, the terms will be as follows:

* 1. The period of the phased return is a maximum of 3 months
	2. 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.
	3. The number of hours worked must increase to the original contractual hours over the 3 month period

During any period of phased return, pay and annual leave entitlement is pro-rated according to the number of hours worked per week.

NON RETURNERS

Resignation

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

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

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

**Protection against Detriment and Dismissal**

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.

**MATERNITY LEAVE – THE PROCESS**

ADOPTION LEAVE – THE PROCESS

1. 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-1)
2. 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-2)
3. The National Joint Council for Local Government Services National Agreement on Pay and Conditions of Service [↑](#footnote-ref-3)