

# **Helping Your Business**

## **Maternity/Paternity/Adoption Leave**

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## **1. Overall philosophy**

1.1 This document outlines the legal rights, entitlements and procedures (applicable as at May 2013) regarding maternity leave, maternity pay, paternity leave, paternity pay, adoptive parents leave/pay and other issues relating to pregnancy and childbirth.

1.2 This document is designed to inform only and updates to legislation still need to be monitored alongside this guide.

## **2. Eligibility**

These procedures apply to all permanent employees. Individuals on fixed term contracts may also qualify for leave and pay.

## **3. Responsibility**

3.1 All Companies have a responsibility to adhere to procedures and to ensure that all employees who are eligible are aware of their rights and how to apply for leave and the options available.

3.2 All employees who become pregnant / or who wish to take paternity/ adoption leave have a responsibility to comply with procedural aspects and must notify their Company of their pregnancy/wishes as soon as possible.

# **Maternity**

## **1. Legislation**

1.1 Various UK legislation sets out the rights of all full-time and part-time female employees regardless of length of service to:-

- Protection from dismissal, detriment or discrimination by reason of pregnancy or maternity the right to up to 52 weeks' maternity leave
- the right to maternity benefit (Statutory Maternity Pay or Maternity Allowance subject to qualifying criteria)
- the right to return to the same job after maternity leave
- Priority for alternative employment in redundancy cases.
- The right to request flexible working conditions on return to work (subject to qualifying criteria).
- the right to paid time off for antenatal care
- the right to health and safety protection during pregnancy and when breastfeeding

## **2. Eligibility**

These procedures apply to employees who are pregnant or have recently given birth. It does not apply to agency workers or the self-employed.

## **3. Responsibility**

3.1 All Companies have a responsibility to adhere to procedures and to ensure that all employees who are eligible are aware of their rights and how to apply for leave and the options available.

3.2 All employees who become pregnant have a responsibility to comply with the procedural aspects and must notify their Company of their pregnancy as soon as possible.

## **4. During / Before pregnancy**

### **4.1. Health and safety**

4.1.1. All employers are under a duty to protect the health and safety of their employees. There are special duties that apply in respect of new or expectant mothers in the workplace.

4.1.2. New and expectant mothers may be particularly at risk from different physical, biological and chemical agents, processes and working conditions. These risks will vary depending on the employees' health, stage of pregnancy or post natal.

4.1.3. Every Company is under a duty to make a suitable and sufficient assessment of the risks to health and safety which its employees are exposed to while at work. A Company that employs any women of child-bearing age to do work of a kind that could involve risk to the health and safety of a new or expectant mother or her baby from any processes, working conditions or physical, chemical or biological agents, must include an assessment of those risks in its risk assessment. The Company should not wait until an employee becomes pregnant before it carries out this assessment. Once the Company has been notified in writing of the pregnancy, birth or the fact that the employee is breastfeeding however, the Company is under an obligation to do all that is reasonable to remove or prevent exposure to any significant risk that has been found, and must give information to the employee about the risk and what action has been taken.

4.1.4 The Company should notify their local Health and Safety Representative who will undertake the required risk assessment.

4.1.5. If a risk assessment identifies potential risks to a new or expectant mother or her baby the Company should explain what these are and what action will be taken to make sure that new and expectant mothers are not exposed to risks that could cause them harm.

4.1.5. If despite taking all practicable measures there are still risks that could jeopardize the health or safety of a new or expectant mother or her baby the Company should follow a sequence of steps to remove any employee from the risk.

This could mean:

- temporarily adjusting the working conditions and/or hours of work
- the offer of alternative work if available (of a kind which is both suitable and appropriate for the employee to do in the circumstances)
- the suspension of the employee from work as long as is necessary to avoid the risk. Any period of suspension under this clause would be paid.

## **4.2 Antenatal care**

4.2.1 All employees are entitled to a reasonable amount of paid time off to attend appointments for antenatal care made on the advice of a registered medical practitioner, registered midwife or registered health visitor.

4.2.2 Where possible appointments should be arranged at the start or end of the working day/shift and the employee should advise her Company as soon as possible of any appointments scheduled. The employee may be asked to produce an appointment card or some other confirmation of the appointment.

4.2.3 The employee will be paid for time off at her normal rate of pay. If working hours vary from week to week, these will be averaged over the previous twelve (12) complete working weeks. Overtime is only taken into account if it is compulsory and part of the normal working pattern.

## **4.3 Illness and sick pay**

4.3.1 A pregnant employee who is absent from work due to non-pregnancy related illness will normally be able to take sick leave in the normal way until she commences maternity leave on the date previously notified to the Company.

4.3.2 However if the illness is pregnancy-related her maternity leave period will commence automatically on the day after the first day of absence following the beginning of the fourth (4th) week before the Expected Week of Childbirth ('EWC' the week, measured from Sunday to Saturday, in which childbirth is expected to occur, as confirmed on a certificate (MAT B1) given to the employee by her doctor or midwife). This applies even if the first day of absence is before the date the employee has notified as the date on which she intends her maternity leave to commence. If this situation occurs, please remember to inform your Payroll department of this change.

4.3.3 Time off for attending ante-natal appointments in the four (4) weeks prior to the expected week of childbirth will not trigger the start of maternity leave.

## **4.4 Termination of employment before commencement of maternity leave**

4.4.1 Where the employee leaves her employment before the date identified in her notice, but after the start of the eleventh week before the Expected Week of Childbirth, the Statutory Maternity Pay period starts on the day after the date on which she leaves.

4.4.2 If an employee terminates her employment or is dismissed before the start of the eleventh week before the Expected Week of Childbirth, then the employee loses her right to Statutory Maternity Pay.

4.4.3 It is automatically unfair however to dismiss a woman (at any time) or to select her for redundancy when the reason (or principal reason) for the dismissal (or selection for redundancy) is connected to her pregnancy or statutory maternity leave. A Company must therefore seek advice before any decision is made to dismiss an employee that is pregnant.

## **5 Statutory Maternity Leave**

5.1. All employees, regardless of length of service, are entitled to take up to 26 weeks Ordinary Maternity Leave (OML) and up to 26 weeks' Additional Maternity Leave (AML), making a total of 52 weeks.

5.2 Ordinary Maternity Leave can commence at any time after the beginning of the eleventh (11th) week before the Expected Week of Childbirth (as above: the week, measured from Sunday to Saturday, in which childbirth is expected to occur, as confirmed on a certificate (MAT B1) given to the employee by her doctor or midwife)). If the child is born prematurely before that date, or is absent from work for pregnancy-related reason, maternity leave will commence earlier. The employee should give the Company notice of the intended start date by the end of the 15th week before the EWC. If compliance with this time limit is not reasonably practicable, the notice must be given as soon as is reasonably practicable thereafter.

5.3 Maternity Leave will start on whichever date is the earlier of:

- the employee's chosen start date
- the day after the employee gives birth or
- the day after any day on which the employee is absent for a pregnancy-related reason in the four weeks before the expected week of childbirth.

5.4 If the employee gives birth before her maternity leave was due to start, she must notify the Company in writing, of the date of the birth as soon as is reasonably practicable.

5.5 If an employee wishes to change the start date of her maternity leave, she must give her employer at least 28 days' notice before the date she originally intended to start her leave, or 28 days' notice before the new date, whichever is the earlier. A shorter period of notice can be given if 28 days is not reasonably practicable

## **6.0 Compulsory Maternity Leave**

6.1 An employee may not work for the Company immediately after childbirth. There is a period of compulsory maternity leave which lasts for two (2) weeks from the date of childbirth. This is extended to four weeks for factory workers. An employer will be guilty of a criminal offence if it allows an employee to work during compulsory maternity leave.

## **7.0 Terms and conditions during maternity leave**

7.1.1 During the periods of Ordinary and Additional Maternity Leave, the employee's contract of employment remains in force unless the employee or the Company expressly ends the contract or it expires. The employee is entitled to receive all her contractual benefits, save those relating to 'remuneration' (wages or salary) which will be replaced by Maternity Pay if the employee is eligible for it.

7.1.2 In particular annual leave and bank holiday entitlement will continue to accrue and the Company is expected to discuss annual leave options with the employee. One option that could be discussed is the possibility of using annual leave tagged on immediately at the end of the unpaid period of maternity leave.

The Company should agree with the employee any arrangements regarding annual leave and inform the relevant department so that the correct payments can be made through Payroll.

7.1.3 Any other benefits in kind (for example health club membership, private use of a company car or mobile phone and so on) will continue subject to the duration of the Maternity leave.

### **7.2 Pension contributions**

Entitlement to employer contributions to a money purchase pension scheme, or to the accrual of pensionable service under a final salary scheme, depends on two factors: whether the employee is in receipt of maternity pay, and whether she is in a period of Ordinary Maternity Leave or Additional Maternity Leave.

If the terms of the scheme require the employee to make a minimum contribution, or stipulate that the employer will match contributions up to a certain percentage of salary, then the employee will have to continue to make these contributions out of her maternity pay in order to be eligible. Therefore, if the employment contract or scheme rules require the employee to contribute 5% of her salary and the employer contributes a further 5%, the position during paid maternity leave is that she will have

to contribute 5% of her maternity pay, whereas the employer's contributions will still be 5% of her normal salary. If the employee is eligible for a pay rise during maternity leave this must also be taken into account in the employer's contributions. It is good practice to remind the employee that she has the option to make greater contributions, or to make up the loss of contributions when her salary is back to normal.

For final salary schemes, the employer's contributions are not directly linked to the employee's salary, but to actuarial calculations, and should be maintained as if the employee was not absent. Again, any requirement for employee contributions will be calculated on the basis of her maternity pay not her actual salary.

### **7.3 Salary reviews & Bonuses**

Employees on maternity Leave are entitled to be included in any salary review that is conducted whilst they are on leave. If an increase is awarded, their pay will need to be adjusted to include this.

Performance-related bonuses (whether based on individual, team or company targets) and other regular bonuses such as a Christmas bonus can often be seen as deferred pay for past work. Consideration should therefore be given as to whether there is a need to pro rate entitlement to employees on maternity leave to take into account any time:

- Before maternity leave.
- When an employee is absent on compulsory maternity leave.
- After she returns to work following statutory maternity leave.

## **8. Notification of intention to take maternity leave**

8.1 To take advantage of the right to maternity leave an employee must notify their Company. The employee must then confirm their intentions by completing the maternity leave Notification Form no later than the end of the fifteenth (15th) week before the week the baby is due. The information should include the following:

- that she is pregnant
- the expected week of childbirth, by means of a medical certificate  
MATB1
- when they intend to commence their maternity leave. This may not be earlier than the eleventh (11th) week before the Expected Week of Childbirth but the

employee may work up to be beginning of the week of childbirth provided she is fit to do so. Leave dates may be altered as long as the employee provides 28 days' notice of the revised start date in writing.

## **8.2 Acknowledgement**

16.2.1 The Company must acknowledge the employee's request and confirm details of her maternity leave within the next twenty-eight (28) days of receiving her notification and inform her of the date on which she must return to work after her full 52-week maternity leave entitlement.

NB - If maternity leave is triggered automatically by pregnancy-related absence in the four weeks before the EWC or by premature birth, the employer must notify the employee of the new end date within 28 days of receiving notification of the absence or birth.

16.2.2 The Company should ensure that the Payroll department or Payroll Company is informed of the date on which the employee is intending to commence maternity leave and the date on which she intends to return together with any other relevant information. The employee must also ensure that they inform the Company of any amendment to the original dates at least 28 days' before the date they originally intended to start her leave, or 28 days' notice before the new date, whichever is the earlier).

## **9. Contact during Maternity leave**

Shortly before an employee's Maternity Leave starts, the Company should discuss the arrangements for her to keep in touch during her maternity leave. The Company has the right to maintain reasonable contact with the employee from time to time during her maternity leave to enable the employer and employee to discuss arrangements for the employee's return to work and to keep the employee informed of important developments at work, however it would be good practice to seek her view as to how much contact she would like and how she would like to be contacted, for example, by telephone, e-mail or post. She should also be included on the distribution list for workplace news bulletins, vacancies, information about social events and even training courses, unless she requests otherwise.

## 10. Keeping in touch days

10.1. Except during the first two weeks after childbirth, an employee can agree (although cannot be forced) to work for the Company or to attend training for up to 10 days during maternity leave without that work period bringing the period of maternity leave to an end and without loss of a week's SMP. These are known as 'keeping in touch' days.

10.2 Any work carried out on one of these days (for example attending a conference, undertaking training or attending a team meeting) shall constitute a day's work for these purposes and shall therefore be paid as a normal day's work. This means that if the SMP rate is lower than the employee's normal salary, the difference will be paid alongside the SMP to bring the total for that day's work to the normal salary.

10.3 N.B. Remember to inform your payroll department of all keeping in touch days and keep a record of the number of KIT days undertaken

10.4 Although an employee is entitled to 10 KIT days they are not legally obliged to undertake any work during their maternity leave. Any work undertaken is entirely a matter for agreement between the Company and the employee. Any keeping in touch days worked should not extend the period of maternity leave. Once the employee works over the 10 keeping in touch days, they will lose a week's SMP for every week that they agree to work above this maximum regardless of how many days are worked.

## 11. Statutory Maternity Pay (SMP)

11.1.1 SMP is paid and runs for a maximum of 39 weeks. Employees are entitled to SMP whether or not they intend to return to work. The standard rates of SMP are attached at **Appendix A**.

11.1.2 To qualify for SMP the employee must:

- have at least twenty-six (26) weeks continuous service by the end of the fifteenth (15th) week before the Expected Week of Childbirth
- have received average gross weekly earnings in the eight (8) weeks up to and including the qualifying week (or equivalent period if monthly paid) not less than the lower earnings limit for National Insurance Contributions
- be still pregnant 11 weeks before the start of the expected week of childbirth (or has already given birth)
- provide the Company proper notification of her pregnancy in accordance with this procedure and supporting procedure (i.e. at least 28 days' notice or, if

that is not reasonably practicable, as much notice as is reasonably practicable)

- provide a form MAT B1 stating her expected week of childbirth (either before the birth, no more than three weeks after the birth or, if she has good cause for delay, as soon as reasonably practicable)

## **11.2 Payment of SMP**

11.2.1. SMP is paid into the employee's bank account on the same date salary is normally paid and is subject to the usual deductions for tax and National Insurance. SMP is payable whether or not the employee intends to return to work after maternity leave.

11.2.2. For the first 6 weeks, SMP is paid at the higher rate, which is equivalent to 90% of the employee's average weekly earnings calculated over a period of eight weeks up to and including the qualifying week.

11.2.3. The standard rate of SMP is paid for the remaining 33 weeks (or less if the employee returns to work sooner). This is paid at a rate set by the Government for the relevant tax year, or 90% of the employee's average weekly earnings calculated over the period of eight weeks up to and including the qualifying week if this is lower than the Government set weekly rate.

11.2.4. Should the employee become eligible for a pay increase between the start of the original calculation period and the end of her maternity leave, the higher or standard rate of SMP will be recalculated to take account of the employee's pay increase, regardless of whether SMP has already been paid.

11.2.5 The employee will be paid a lump sum to make up any difference between SMP already paid and the amount payable as a result of the pay increase.

10.2.6 Payment of SMP cannot commence prior to the 11th week before the employee's Expected Week of Childbirth. SMP can commence from any day of the week in accordance with the date the employee commences her maternity leave.

11.2.7 Statutory Maternity Pay (SMP) may not be payable:

- if the employee does not have the requisite length of service
- for any week the employee is in legal custody
- if the employee was not employed by the Company during the qualifying week
- if the employee's average weekly earnings are below the Lower Earnings Limit

- if the employee provides late notification of her intention to take maternity leave
- if after the birth but within the maternity pay period, the employee commences work for another employer
- if the employee exceeds the allowable 'Keep In Touch' days.

## **12. Maternity Allowance**

12.1 If an employee does not qualify for SMP she may be able to claim Maternity Allowance (MA) which is paid by the government.

12.2 The employee should obtain an SMP1 form which explains why she does not qualify for SMP (form available from Jobcentre Plus/Social Security Offices) and obtain an MA Claim Pack from her Jobcentre Plus/Social Security office or maternity clinic.

## **13. Childbirth - Special circumstances**

### ***13.1 Miscarriage or stillbirth***

13.1.1 Should an employee suffer a miscarriage or stillbirth after week twenty four (24) of the pregnancy the Company will still be obliged to pay SMP in the same way as for a live birth. The employee will also be able to take their full entitlement of maternity leave should she wish to do so.

13.1.2 Should an employee suffer a miscarriage before week twenty four (24) of the pregnancy she will not have the right to maternity leave or maternity pay. Companies may want to consider and be sympathetic to special leave requests and the normal rules and payment for any period of sickness absence will apply.

### ***13.2 Premature births***

12.2.1 If the employee gives birth before her Ordinary Maternity leave has started, her maternity leave starts automatically on the day after the date of the birth

### ***13.3 Twins or multiple births***

13.3.1 All maternity pay and leave arrangements remain the same. There is no entitlement to extra maternity leave or additional payments.

## **14. Decision to return to work**

14.1 The Company will formally advise the employee, in writing, of the date on which she is expected to return to work if she takes her full 52-week entitlement to maternity leave. The employee is expected to return on this date, unless she notifies the Company otherwise.

14.2 The employee is under no obligation to give her employees prior warning of whether or not she will be returning to work at the end of her maternity leave.

14.3 If the employee wishes to return to work earlier than the expected return date, she must give the Company at least 8 week's notice of her earlier date of return in writing. If she fails to do so, the Company may postpone her return to such a date as will give the Company eight week's notice, provided this is not later than the original expected return date.

14.4 If the employee decides not to return to work after maternity leave, she must give notice of her resignation as soon as possible and in accordance with the terms and conditions of her contract of employment. If the maternity leave ends during the notice period, the Company can reserve the right to request the employee to return to work for the remainder of this period.

#### ***14.5 Illness following maternity leave***

14.5.1 Where an employee is unable to attend work following the end of her Ordinary or Additional maternity leave due to illness, the normal contractual arrangements regarding sickness absence will apply.

### **15. Additional Paternity Leave**

15.1 If an employee proposes to resume work by giving proper notification in accordance with the rules set above, her spouse, civil partner or partner may be eligible to take up to 26 weeks' additional paternity leave (and additional statutory paternity pay) on her return to work. The earliest that additional paternity leave may commence is 20 weeks after the date on which the employee's child is born and it must end no later than 12 months after the date of birth. The minimum period of additional paternity leave is two consecutive weeks and the maximum period is 26 weeks. The employee must therefore have at least two weeks of her maternity leave left. Further details should be obtained from the employee's spouse's or partner's employer. She will be required to submit a written and signed declaration form to that employer, which may also make additional enquiries of the organisation to verify its employee's entitlement to additional paternity leave and pay.

## **16. On return to work**

16.1.1 An employee who resumes work after Ordinary Maternity leave is entitled to return to the same job that she occupied before commencing maternity leave on the same terms and conditions of employment as if she had not been absent.

16.1.2 An employee who resumes work after Additional Maternity Leave is also entitled to return to the same or a job of similar calibre on terms and conditions that are no less favourable than those that applied to her previous job. This means that the employee may not necessarily return to the same job (if there is a it is a good reason why it is not reasonably practicable for that to happen) but is entitled to be offered suitable alternative work.

### ***16.2 Flexible working***

16.2.1 An employee who wishes to alter their working pattern or change their hours on return to work has the right to request this change. The employee should put her request into writing at least 28 days before the intended date of return to work. The Company should arrange a meeting where the proposed arrangements are discussed. Each request will be considered on an individual basis and applied for in accordance with the Flexible Working Procedure.

### ***16.3 Childcare Voucher Scheme***

Employees should contact their Human Resources Dept to see whether they run a childcare voucher scheme. An employee can purchase up to £55 worth of vouchers a week, if they are a standard tax payer. The amount for higher rate earners is £28 and for additional rate earners is £22; this will be increased to £25 in April 2013. If an Employer doesn't already offer a Childcare Voucher scheme an employee may approach their Company to see whether it is a benefit that they would look to introduce. The potential savings for both employee and employer are significant. Employees should be aware that getting childcare vouchers may reduce their eligibility to tax credits.

## **Paternity Procedure**

Certain employees can take paternity leave in relation to the birth or adoption of a child. However, in adoption cases paternity leave is not available to an employee who decides to take adoption leave.

### **1. Eligibility.**

1.1 Individuals are entitled to Ordinary Paternity Leave (OPL) if they meet all the following conditions:

- (a) They have been continuously employed for at least 26 weeks ending with:
  - (i) in birth cases, the 15th week before the Expected Week of Childbirth.
  - (ii) in adoption cases, the week in which the individual or their Partner (someone (whether of a different sex or the same sex) with whom the individual lives in an enduring family relationship, but who is not their parent, grandparent, sister, brother, aunt or uncle) are notified by an adoption agency that they have been matched with a child.
- (b) They:
  - (i) are the biological father of the child;
  - (ii) have been matched with a child by an adoption agency;
  - (iii) are the spouse, civil partner or Partner of the child's mother; or
  - (iv) are the spouse, civil partner or Partner of someone who has been matched with a child by an adoption agency.
- (c) They:
  - (i) expect to have main responsibility (with the child's mother, co-adopter or adopter) for the child's upbringing; or
  - (ii) are the child's biological father and expect to have some responsibility for the child's upbringing.
- (d) Their intended leave is for the purpose of caring for the child, or supporting the child's mother, adopter or co-adopter in caring for the child.

1.2 Individuals are entitled to additional paternity leave (APL) if, in addition to the conditions in 1.1 above:

- (a) They remain employed by the company until the week before the first week of their APL;
- (b) The child's mother or their co-adopter, as the case may be, has been entitled to statutory leave:

- (i) in birth cases, the child's mother has been entitled to maternity leave, statutory maternity pay or maternity allowance in respect of her pregnancy, or
  - (ii) in adoption cases, the child's adopter has been entitled to one or both of adoption leave or statutory adoption pay in respect of the child's adoption; and
- (c) The child's mother or their co-adopter, as the case may be, has returned to work.

## **2. Timing and Length of Paternity Leave**

2.1 OPL must be taken as a period of either one week or two consecutive weeks. It cannot be taken in instalments.

2.1 OPL can be taken from the date of the child's birth or adoption placement, but must end:

- (a) In birth cases, within 56 days of the child's birth, or if they were born before the first day of the Expected week of Childbirth, within 56 days of the first day of the Expected Week of Childbirth.
- (b) In adoption cases, within 56 days of the child's placement.

5.3 APL must be taken as multiples of complete weeks and as one period. The minimum amount of APL that can be taken is two weeks and the maximum is 26 weeks.

5.4 APL must be taken in the period beginning 20 weeks after the child's date of birth, or adoption placement, and ending 12 months after that date of birth or adoption.

## **3. Notification (Birth)**

3.1 If an individual wishes to take OPL in relation to a child's birth, they must give notice in writing of their intention to do so and confirm:

- (a) The Expected Week of Childbirth;
- (b) Whether they intend to take one week's leave or two consecutive weeks' leave; and
- (c) When they would like to start their leave. They can state that their leave will start on:
  - (i) the day of the child's birth;
  - (ii) a day which is a specified number of days after the child's birth; or
  - (iii) a specific date later than the first date of the Expected Week of Childbirth.

3.2 They must give notice under 3.1 by the end of the 15th week before the Expected Week of Childbirth (or, if this is not possible, as soon as they can).

3.3 The Company may require a signed declaration from the individual that they are taking OPL for a purpose for which it is intended; namely, to care for the child or to support the child's mother in caring for the child.

3.4 If the individual wishes to take Additional Paternity Leave (APL) in relation to a child's birth, they must provide the following at least eight weeks before the date on which they would like to start their leave:

- (a) A written "leave notice" stating:
  - (i) the Expected Week of Childbirth;
  - (ii) the child's date of birth; and
  - (iii) the dates on which they would like their APL to start and finish.
- (b) A signed "employee declaration" confirming that:
  - (i) they are either the child's father or that they are the spouse, Partner or civil partner of the child's mother;
  - (ii) apart from the child's mother, they have or expect to have the main responsibility for the upbringing of the child; and
  - (iii) they wish to take APL in order to care for the child.
- (c) A written "mother declaration" from the child's mother stating:
  - (i) her name, address and National Insurance number;
  - (ii) the date she intends to return to work;
  - (iii) their relationship with the child;
  - (iv) that, to their knowledge, they are the only person exercising an entitlement to APL in respect of the child; and
  - (v) that they consents to the Company processing the information they have provided.

3.5 The Company should write to the individual to confirm the start and finish dates of their APL within 28 days of receiving their leave notice, their employee declaration and the child's mother's declaration.

6.6 The Company may also require the individual to provide a copy of the child's birth certificate and the name and address of the mother's employer or, if she is self-employed, her business address.

## **4. Notification (Adoption)**

4.1 If an individual wishes to take OPL in relation to the adoption of a child, they must give the Company notice in writing of their intention to do so and confirm:

- (a) The date on which they and/or their spouse, civil partner or Partner were notified of having been matched with the child, together with the Expected Placement Date;
- (b) Whether they intend to take one week's leave or two consecutive weeks' leave; and
- (c) When they would like to start their leave. They can state that their leave will start on:
  - (i) the day on which the child is placed with them or the adopter;
  - (ii) a day which is a specified number of days after the child's placement; or
  - (iii) a specific date later than the Expected Placement Date.

4.2 They must give notice under paragraph 4.1 no more than seven days after they and/or their spouse, civil partner or Partner were notified of having been matched with the child (or, if this is not possible, as soon as they can).

4.3 The Company may require a signed declaration from them that they are taking OPL for a purpose for which it is intended; namely, to care for the child or to support their spouse, civil partner or Partner in caring for the child.

4.4 If an individual wishes to take APL following a child's adoption, they must provide the Company with the following at least eight weeks before the date on which they would like to start their leave:

- (a) A written "leave notice" stating:
  - (i) the date on which they were notified that they had been matched with the child;
  - (ii) the date on which the child was placed with them; and
  - (iii) the dates on which they would like their APL to start and finish.
- (b) A signed "employee declaration" confirming that:
  - (i) they have been matched for adoption with the child;
  - (ii) they are either the spouse, Partner or civil partner of the child's co-adopter; and
  - (iii) they wish to take APL in order to care for the child.
- (c) A written "adopter declaration" from the child's adopter stating:
  - (i) their name, address and National Insurance number;
  - (ii) the date they intend to return to work;
  - (iii) that the individual is their spouse, Partner or civil partner; and
  - (iv) that they consent to the Company processing the information they have provided.

4.5 The Company should then write to the individual to confirm the start and finish dates of their APL within 28 days of receiving their leave notice, their employee declaration and the adopter's declaration.

4.6 The Company may require the individual to provide the following:

- (a) The name and address of the adopter's employer or, if they are self-employed, their business address.
- (b) Documentary evidence issued by the adoption agency that matched the individual with the child which confirms:
  - (i) the name and address of the adoption agency;
  - (ii) the date on which the individual was notified that they had been matched with the child; and
  - (iii) the date on which the agency expected to place the child with the individual.

## **5. Changing the dates of OPL or APL**

5.1 Where an individual is to take OPL in respect of a child's birth, they can give written notice to vary the start date of their leave from that which they originally specified in the notice. This notice should be given:

- (a) Where they wish to vary their leave to start on the day of the child's birth, at least 28 days before the first day of the Expected Week of Childbirth.
- (b) Where they wish to vary their leave to start a specified number of days after the child's birth, at least 28 days (minus the specified number of days) before the first day of the Expected Week of Childbirth.

(c) Where they wish to vary their leave to start on a specific date (or a different date from that they originally specified), at least 28 days before that date.

5.2 Where they are to take OPL in respect of a child's adoption, they should give written notice to vary the start date of their leave from that which they originally specified in the notice. This notice should be given:

(a) Where they wish to vary their leave to start on the day that the child is placed with them or the adopter, at least 28 days before the Expected Placement Date.

(b) Where they wish to vary their leave to start a specified number of days after the child's placement, at least 28 days (minus the specified number of days) before the Expected Placement Date.

(c) Where they wish to vary their leave to start on a specific date (or a different date from that you originally specified), at least 28 days before that date.

5.3 If they are unable to give 28 days' written notice of the wish to vary the start of their leave as set out above, they should give written notice of the change as soon as they can.

5.4 Where they are to take APL, following either the birth or adoption of a child, they are entitled to give written notice to cancel or vary the start and/or finish dates that they previously notified. They need to do this:

(a) At least six weeks before the date they originally told the Company was the date on which they wanted to start their APL; or

(b) If they want to start their APL earlier than that original start date, at least six weeks before the date on which they now wish their APL to start.

5.5 If they are unable to give six weeks' notice they should give written notice of their wishes as soon as possible. However, in these circumstances, if the Company is unable to accommodate their request they may require the individual to take a period of APL of up to six weeks starting on either their original or revised start date.

## **6. Statutory Paternity Leave and Ordinary Paternity Pay.**

In this section, 'Relevant Period' means:

(a) In birth cases, the eight-week period ending with the 15th week before the Expected Week of Childbirth.

(b) In adoption cases, the eight-week period ending with the week in which the individual or their spouse, civil partner or Partner were notified of being matched with the child.

6.1 An individual will be entitled to ordinary statutory paternity pay (OSPP) if, during the Relevant Period, their average weekly earnings are not less than the lower earnings limit set by the government.

6.2 If an individual takes APL, then they may be entitled to additional statutory paternity pay (ASPP). Whether and, if so, for how long you may be entitled to ASPP will depend on:

(a) Their average weekly earnings being not less than the lower earnings limit set by the government during the Relevant Period; and

(b) The child's mother or the individual's co-adopter, as the case may be, having returned to work with at least two weeks of their maternity allowance, maternity pay or adoption pay period remaining. The individual's entitlement to ASPP will equate to the number of weeks of unexpired maternity allowance, maternity pay or adoption pay that remained when the child's mother or the co-adopter returned to work.

6.3 OSPP and ASPP are paid at a prescribed rate which is set by the government for the relevant tax year, or at 90% of the individual's average weekly earnings calculated over the Relevant Period if this is lower.

## **7. Terms and conditions during OPL and APL**

7.1 All the terms and conditions of an individual's employment remain in force during OPL and APL, except for the terms relating to pay. In particular:

- (a) Benefits in kind such as life insurance, health insurance, gym membership and use of a company vehicle if applicable shall continue;
- (b) Annual leave entitlement under the individual's contract shall continue to accrue; and
- (c) Pension benefits shall continue;

7.2 During OPL and APL the Company must continue to make any employer contributions that they usually make into a money-purchase pension scheme, based on what the individual's earnings would have been if they had not been on paternity leave (provided that they continue to make contributions based on the paternity pay they are receiving).

7.3 In the event that the individual's post is affected by a redundancy situation occurring during paternity leave, then employees on APL will be among those given priority with regard to suitable alternative vacancies that are appropriate to their skills.

## **8. Keeping in touch during APL**

8.1 The Company can make reasonable contact with an individual from time to time during their APL.

8.2 The individual may work (including attending training) for up to ten days during APL without bringing their paternity leave or their ASPP to an end (although an individual cannot be obliged to undertake any such work during paternity leave).

## **9. Returning to Work**

9.1 An individual is normally entitled to return to work following either OPL or APL to the same position they held before commencing leave. Their terms of employment should be the same as they would have been had they not been absent.

9.2 However, if an individual has combined their OPL or APL with a period of:

- (a) additional maternity leave;
- (b) additional adoption leave; or
- (c) parental leave of more than four weeks,

and it is not reasonably practicable for them to return to the same job, then the Company must offer a suitable and appropriate alternative position.

9.3 If an individual wishes to return early from APL, then they must give the Company at least six weeks' prior notice.

9.4 If an individual wishes to postpone their return from APL, they should either:

- (a) Request unpaid parental, giving as much notice as possible; or
- (b) Request paid annual leave.

9.5 If an individual is unable to return to work from APL as expected due to sickness or injury, then this should be treated as sickness absence and the normal Sickness Absence Policy should apply.

## **Adoption Procedure**

### **1. Overall Responsibility**

1.1 This document outlines the legal rights, entitlements and the procedure and procedures regarding Adoption Leave, Adoption Pay and other issues relating to adoption.

1.2 Any amendment will be advised to employees and the date on which any amendment will come into effect.

1.3 . The following definitions apply.

- *Qualifying Week*: the week, starting on a Sunday, in which an individual is notified in writing by an adoption agency of having been matched with a child.
- *Expected Placement Date*: the date on which an adoption agency expects that it will place a child into an individual's care with a view to adoption.
- *Ordinary Adoption Leave (OAL)*: a period of up to 26 weeks' leave available to all employees who qualify for adoption leave.
- *Additional Adoption Leave (AAL)*: a further period of up to 26 weeks' leave immediately following OAL.

## **2. Entitlement to Adoption Leave**

2.1 Adoption leave is only available if an individual is adopting through an adoption agency. It is not available if there is no agency involved, for example, if an individual is formally adopting a stepchild or other relative.

4.2 An individual will be entitled to adoption leave if they meet all the following conditions:

- (a) An adoption agency has given written notice that it has matched the individual with a child for adoption and tells the individual the Expected Placement Date.
- (b) The individual has notified the agency that they agree to the child being placed with them on the Expected Placement Date.
- (c) The individual has been continuously employed by the Company for at least 26 weeks ending with the Qualifying Week.
- (d) The individual's spouse or partner will not be taking adoption leave with their employer (although they may be entitled to take paternity leave).

## **3. Notification of intention to take leave**

3.1 The individual must give notice in writing of:

- (a) the Expected Placement Date; and
- (b) their intended start date for adoption leave (Intended Start Date).

3.2 This notice should be given not more than seven days after the agency notifies them in writing that it has matched them with a child.

3.3 At least 28 days before the Intended Start Date (or, if this is not possible, as soon as they can), they must also provide the Company with:

- (a) A Matching Certificate from the adoption agency confirming:
  - (i) the agency's name and address;
  - (ii) the date the individual was notified of the match; and
  - (iii) the Expected Placement Date.
- (b) Written confirmation that the individual intends to take statutory adoption leave and not statutory paternity leave.

## **4. Starting Adoption Leave**

4.1 OAL may start on a predetermined date no more than 14 days before the Expected Placement Date, or on the date of placement itself, but no later.

4.2 Once the individual has given the proper notification then the Company must write to them within 28 days to inform them of the date they will expect the individual

to return to work if they were to take their full entitlement to adoption leave (Expected Return Date).

4.3 The individual can postpone their Intended Start Date by informing the Company in writing at least 28 days before the original date or, if that is not possible, as soon as they can.

4.4 The individual can bring forward their Intended Start Date by informing the Company in writing at least 28 days before the new start date or, if that is not possible, as soon as they can.

## **5. Statutory Adoption Pay**

5.1 Statutory adoption pay (SAP) is payable for up to 39 weeks. It stops being payable if the individual returns to work sooner or if the placement is disrupted. An individual is entitled to SAP if:

- (a) they have been continuously employed for at least 26 weeks at the end of the Qualifying Week and are still employed by the Company during that week;
- (b) their average weekly earnings during the eight weeks ending with the Qualifying Week (the Relevant Period) are not less than the lower earnings limit set by the Government; and
- (c) they have given us the relevant notifications to the Company.

5.2 SAP is paid at a Prescribed Rate which is set by the Government for the relevant tax year, or at 90% of the individual's average weekly earnings calculated over the Relevant Period if this is lower.

5.3 SAP accrues with each complete week of absence but payments should be made on the next normal payroll date. Income Tax, National Insurance and pension contributions should be deducted as appropriate.

5.4 If an individual leaves employment for any reason (for example, if they resign or are made redundant) they will still be eligible for SAP if they have already been notified by an agency that they have been matched with a child. In such cases, SAP starts:

- (a) 14 days before the Expected Placement Date; or
- (b) the day after the individual's employment ends,
- (c) whichever is the later.

5.5 If an individual becomes eligible for a pay rise before the end of their adoption leave, they are treated for SAP purposes as if the pay rise had applied throughout the Relevant Period. This means that their SAP must be recalculated and increased retrospectively (or that they may qualify for SAP if they did not previously qualify).

## **6. Terms and conditions during OAL and AAL**

All the terms and conditions of remain in force during OAL and AAL, except for the terms relating to pay. In particular:

- (a) benefits in kind such as life insurance, health insurance, gym membership and use of a company vehicle if applicable continue;
- (b) annual leave entitlement continues to accrue; and
- (c) pension benefits continue.

During OAL and any further period of paid adoption leave the Company must continue to make any employer contributions that they would usually make into a money-purchase pension scheme, based on what the individual's earnings would have been if they had not been on adoption leave (provided that they continue to make contributions based on the adoption pay they are receiving).

In the event that the individual's post is affected by a redundancy situation occurring during their adoption leave, then employees on maternity and adoption leave must be given first refusal on any suitable alternative vacancies that are appropriate to their skills.

## **7. Disrupted Adoption**

Adoption leave is disrupted if it has started but:

- (a) the individual is notified that the placement will not take place;
- (b) the child is returned to the adoption agency after placement; or
- (c) the child dies after placement.

In case of disruption the individual's entitlement to adoption leave and pay (if applicable) continues for a further eight weeks from the end of the week in which disruption occurred, unless the individual's entitlement to leave and/or pay would have ended earlier in the normal course of events.

## **8. Keeping in Touch**

8.1 The Company is entitled to make reasonable contact with the individual from time to time during their adoption leave.

8.2 The individual may work (including attending training) on up to ten days during adoption leave without bringing their adoption leave to an end (although this is not compulsory)

## **8. Expected Return Date**

8.1 Once an individual has notified in writing of their Intended Start Date, the Company should send a letter within 28 days to inform the individual of their

Expected Return Date. If their start date changes, the Company should write to them within 28 days of the start of adoption leave with a revised Expected Return Date.

8.2 If an individual wishes to return to work earlier than the Expected Return Date, then they must give at least eight weeks' notice. If they fail to do so then the Company may postpone their return date until four weeks (or eight weeks as appropriate) after the individual gave notice, or to the Expected Return Date if sooner.

8.3 If the individual wishes to return later than the Expected Return Date, then they should either:

- (a) request unpaid parental leave giving us as much notice; or
- (b) request paid annual

8.4 If an individual is unable to return to work due to sickness or injury, this should be treated as sickness absence.

## **9. Rights on return**

9.1 An individual is normally entitled to return to work to the same position they held before commencing leave. Their terms of employment should be the same as they would have been had they not been absent.

9.2 However, if an individual has taken any period of AAL or more than four weeks' parental leave and it is not reasonably practicable for them to return to the same job, then the Company should offer a suitable and appropriate alternative position.

## **Appendix A**

### **Statutory Maternity /Adoption Pay - Rates as at 7 April 2013**

- 1 First six (6) weeks – payment at 90% of average weekly earnings (see procedure)
- 2 Then for the remaining thirty three (33) weeks at £136.78 per week, or if the person earns less than £136.78 per week, payment at 90% of average weekly earnings.

### **Maternity Allowance – Rates as at 8 April 2013**

- 1 Up to thirty nine (39) weeks at £136.78 a week, or if the person earns less than £136.78 per week, payment at 90% of average weekly earnings.

### **Statutory Paternity Pay – Rates as at 7 April 2013**

- 1 First two (2) weeks – payment at the lower of 90% of average weekly earnings or £136.78 per week

## Glossary

**Additional Adoption Leave (AAL):** a further period of up to 26 weeks' leave immediately following OAL.

**Childbirth** – the live birth of a child or a still birth after pregnancy lasting at least twenty (24) weeks.

**Expected Placement Date:** the date on which an adoption agency expects that it will place a child into an individual's care with a view to adoption.

**Expected week of childbirth** – the week beginning with midnight between Saturday and Sunday in which the baby is expected to be born.

**Ordinary Adoption Leave (OAL):** a period of up to 26 weeks' leave available to all employees who qualify for adoption leave.

**Partner:** someone (whether of a different sex or the same sex) with whom an individual lives in an enduring family relationship, but who is not their parent, grandparent, sister, brother, aunt or uncle.

**Qualifying Week:** the week, starting on a Sunday, in which an individual is notified in writing by an adoption agency of having been matched with a child OR the fifteenth week before the Expected Week of Childbirth.

**Week of childbirth** – the week beginning with midnight between the Saturday and Sunday in which the baby is actually born.

## Other

### Useful Contact details:

#### National Childbirth Trust

Tel: 0300 330 0700

Web: [www.nct.org.uk](http://www.nct.org.uk)

#### Working Families

Tel: 0800 013 0313

Web: [www.workingfamilies.org.uk](http://www.workingfamilies.org.uk)

#### British Pregnancy Advisory Service

Tel: 0845 730 4030

Web: [www.bpas.org](http://www.bpas.org)

#### Maternity Action

Tel: 0845 600 8533

Web: [www.maternityaction.org.uk](http://www.maternityaction.org.uk)

#### Family Lives/ Parentline

Tel: 0808 800 2222

Web: <http://familylives.org.uk>

#### Gingerbread – National Council for One

#### Parent Families

Tel: 0802 802 0925

Web: [www.gingerbread.org.uk](http://www.gingerbread.org.uk)