

ADOPTIVE PARENTS: RIGHTS TO LEAVE AND PAY



INFORMATION FOR CWU MEMBERS

This factsheet gives information on the right to Statutory Adoptive Leave and Pay which is available to employees. The right to adoption leave and pay entitles eligible employees to take paid leave when a child is newly placed for adoption.

Where two people are adopting jointly, only one adoptive partner can get adoption leave and pay. Couples adopting a child will need to decide between themselves who will get it. The partner who does not get adoption leave and pay might be eligible for paternity leave and pay. Both adoptive parents may also be eligible for Shared Parental Leave and Pay.

ADOPTION LEAVE AND PAY ELIGIBILITY

To qualify for adoption leave, an employee must:

1. Be newly matched with a child for adoption by an approved adoption agency*
2. Apply for a parental order or adoption order to become the legal parent within 6 months of the child's birth (surrogacy arrangement only).
3. Have worked continuously for their employer for 26 weeks leading into the week in which they are notified of being matched with a child for adoption

LENGTH OF ADOPTION LEAVE

Adopters will be entitled to up to 26 weeks ordinary adoption leave followed immediately by up to 26 weeks additional adoption leave, a total of up to 52 weeks leave.

They can choose to start their leave:

- From 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 placement.

- Leave can start on any day of the week.
- 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.

STATUTORY ADOPTION PAY

Most adopters will be entitled to Statutory Adoption Pay (SAP) from their employers.

Statutory Adoption Pay will be paid by employers for up to 39 weeks providing you have 26 weeks of service at the date of placement. Six weeks at the higher rate and 33 weeks at the lower rate.

The rate of Statutory Adoption Pay will be the same as the standard rate of Statutory Maternity Pay or 90% of your average weekly earnings if this is less. It's paid in the same way as your wages (for example monthly or weekly). Tax and National Insurance will be deducted. Adopters who have average weekly earnings below the Lower Earnings Limit for National Insurance Contributions will not qualify for SAP.

IF YOU DON'T EARN ENOUGH TO QUALIFY

If you meet the other conditions but earn less than the lower earnings limit (LEL) for National Insurance contributions, you can still take unpaid adoption leave.

You may also be eligible for Universal Credit if you are on a low income or during adoption leave and you are not receiving Child or Working Tax Credit. Any Statutory Adoption Pay is partially disregarded as earnings. For more information

* Adoption leave and pay is not available in circumstances where a child is not newly matched for adoption, for example when a step-parent is adopting a partner's children.

on Universal Credit, see: www.gov.uk/universal-credit. For an online calculator, see www.betteroffcalculator.co.uk. You can get advice from the Citizens Advice free Universal Credit Help to Claim service: England: 0800 144 8444, Wales: 0800 024 1220, Scotland: 0800 023 2581.

NOTICE OF INTENTION TO TAKE ADOPTION LEAVE

Adopters will be required to inform their employers of their intention to take adoption leave within 7 days of being notified by their adoption agency that they have been matched with a child for adoption, unless this is not reasonably practicable. They will need to tell their employers:

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

Adopters will be able to change their mind about the date on which they want their leave to start providing they tell their employer at least 28 days in advance (unless this is not reasonably practicable). They will have to tell their employer the date they expect any payments of Statutory Adoption Pay (SAP) to start at least 28 days in advance, unless this is not reasonably practicable.

Employers will have 28 days in which to respond to their employees' notification of their leave plans. An employer will need to write to the employee, setting out the date on which they expect the employee to return to work if the full entitlement to adoption leave is taken.

TIME OFF FOR APPOINTMENTS

If employees meet with the eligibility requirements for adoption leave, they will also have the right to paid time off work for 5 adoption appointments after they have been matched with a child.

If the employer asks for it, employees will need to show them an appointment card or other proof.

MATCHING CERTIFICATE

Employees will have to give their employer documentary evidence – a 'matching certificate' or letter from their adoption agency as evidence of their entitlement to SAP. Employers can also ask for this certificate as proof of entitlement to Adoptive Leave. Employees should ask their adoption agency for a matching certificate, which will include basic information on matching

and expected placement dates. For overseas adoptions, the proof must show the relevant UK authority's 'official notification' confirming the parent is allowed to adopt and a date the child arrived in the UK, for example a plane ticket.

CONTRACTUAL BENEFITS

Employees are entitled to the benefit of their normal terms and conditions of employment, except for terms relating to wages or salary (unless their contract of employment provides otherwise), throughout their 26 week ordinary Adoption Leave period. However, most adopters will be entitled to SAP during this period. If the employee has a contractual right to Adoption Leave as well as the statutory right, he/she may take advantage of whichever is the more favourable. Any adoption pay to which an employee has a contractual right reduces the amount of SAP to which they are entitled to.

During additional adoption leave, the employment contract continues and some contractual benefits and obligations remain in force, for example compensation in the event of redundancy and notice periods.

RETURN TO WORK AFTER ADOPTION LEAVE

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. Adopters who want to return to work before the end of their adoption leave period, must give their employers 8 weeks' notice of the date they intend to return.

WORK DURING THE ADOPTION LEAVE PERIOD – "KEEPING IN TOUCH DAYS" (KIT)

Employees may, by agreement with their employer, do up to ten days' work – known as "Keeping in Touch Days" – under their contract of employment during the adoption leave period.

Such days are different to the reasonable contact that employers and employees may make with one another as during KIT days employees can actually carry out work for the employer, for which they will be paid.

It should be noted that half or part days worked still count as a full KIT day.

If you work more than 10 KIT days, adoption leave and pay automatically end by law.

PROTECTION FROM DETRIMENT AND DISMISSAL

Employees will be protected from suffering detriment or unfair dismissal for reasons related to taking or seeking to take, adoption leave. Employees who believe they have been treated unfairly will be able to complain to an Employment Tribunal.

TERMINATION OF PLACEMENT

If, after the employee has begun Adoptive Leave, a child's placement is terminated and the child returned to the adoption agency (or if the child dies), the employee will continue to be entitled to Adoptive Leave for up to 8 weeks after the placement ends – provided this period of 8 weeks does not extend beyond the date on which ordinary or additional Adoptive Leave would otherwise have ended.

PATERNITY LEAVE AND PAY (ADOPTION)

Following the placement of a child for adoption, the right to paternity leave and pay will give eligible employees the right to take paid leave at the Statutory Paternity Pay rate to care for their new child or support the adopter.

ELIGIBILITY

Employees will need to satisfy the following conditions in order to qualify for Paternity Leave. They must:

- Have or expect to have responsibility for the child's upbringing.
- Be the adopter's spouse or partner.
- Be the intended parent (if they're having a baby through a surrogacy arrangement).
- Have worked continuously for their employer for 26 weeks leading into the week in which the adopter is notified of being matched with a child.

Employers can ask their employees to provide a self-certificate (see below for further details) as evidence that they meet these eligibility conditions.

Length of paternity leave.

Eligible employees will be entitled to choose to take either one week or two consecutive weeks paid paternity leave (not odd days). They can choose to start their leave:

- From the date of the child's placement (whether this is earlier or later than expected) or

- From a chosen number of days or weeks after the date of the child's placement (whether this is earlier or later than expected), or
- From a chosen date.
- On the date the child arrives in the UK or an agreed number of days after this (overseas adoptions).

Leave can start on any day of the week on or following the child's placement but must be completed within 56 days of the child's placement.

Only one period of leave will be available to employees irrespective of whether more than one child is placed together.

STATUTORY PATERNITY PAY (SPP)

During the paternity leave period most employees will be entitled to Statutory Paternity Pay (SPP) from their employers. It can be taken in a block of one week or two weeks but if the employee chooses to take one week off, it is not possible to take the other week at a later stage. The leave can start on any day of the week but it must finish within 56 days of the baby being born or the adoption placement. SPP is paid for one or two consecutive weeks. If you qualify for SPP you will be paid £151.97 pw or 90% of your weekly average earnings if this is less.

NOTICE OF INTENTION TO TAKE PATERNITY LEAVE

Employees will be required to inform their employers of their intention to take paternity leave using a SC4 form which can be obtained from the governments website here - https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/675766/SC4_01_18_v1.0.pdf. Employees must inform their employer within seven days of the adopter being notified by their adoption agency that they have been matched with a child, unless this is not reasonably practicable.

For overseas adoptions the form and notice period is different. The process is explained on form SC5 which can be obtained here - <https://www.gov.uk/government/publications/ordinary-statutory-paternity-pay-and-leave-adopting-a-child-from-abroad-sc5>.

Employees will be able to change their mind about the date on which they want their leave to start providing they tell their employer 28 days in

advance (unless this is not reasonably practicable).

Employees will have to tell their employers the date they expect any payments of SPP to start at least 28 days in advance, unless this is not reasonably practicable.

SELF-CERTIFICATE

Employees will have to give their employers a completed self-certificate as evidence of their entitlement to SPP. Employers can also request a completed self-certificate as evidence of entitlement to paternity leave. The self-certificate must include a declaration that the employee meets certain eligibility conditions and provide the information specified above as part of the notice requirements. By providing a completed self-certificate, employees will be able to satisfy both the notice and evidence conditions for paternity leave and pay. Employers will not be expected to carry out any further checks. Employees can use the government form SC3 available here - https://public-online.hmrc.gov.uk/lc/content/xfaforms/profiles/forms.html?contentRoot=repository:///Applications/PersonalTax_iForms/1.0/SC3&template=SC3.xdp to ask for leave and pay.

CONTRACTUAL BENEFITS

Employees are entitled to the benefit of their normal terms and conditions of employment, except for terms relating to wages or salary (unless their contract of employment provides otherwise) throughout their paternity leave. However, most employees will be entitled to SPP for this period. If the employee has a contractual right to Paternity Leave as well as the statutory right, employees may take advantage of whichever is the more favourable. Any paternity pay to which employees have a contractual right to reduces the amount of SPP to which they are entitled to.

RETURN TO WORK AFTER PATERNITY LEAVE

Employees will be entitled to return to the same job following paternity leave.

PROTECTION FROM DETRIMENT AND DISMISSAL

Employees will be protected from suffering unfair treatment or dismissal for taking or seeking to take, Paternity Leave. Employees who believe they have been treated unfairly will be able to complain to an Employment Tribunal.

SHARED PARENTAL LEAVE AND SHARED PARENTAL PAY (ADOPTION)

Shared parental leave permits the primary adopter to end adoption leave/pay early so that one or both parents can take leave in a more flexible way during the first year that a child has been placed. SPL is also available to intended parents in a surrogacy arrangement where they qualify for adoption leave and/or pay.

ELIGIBILITY FOR ADOPTERS

To be eligible for Shared Parental Leave (SPL) and Statutory Shared Parental Pay (ShPP), both adoptive parents must:

- Have been employed continuously by the same employer for at least 26 weeks by the end of the week they were matched with the child.
- Stay with the same employer while you take SPL.
- Be 'employees' (not 'workers' i.e. self-employed/contract/agency/zero hours workers).
- Each earn on average at least £120 a week.
- If either parent is a 'worker', you can share ShPP but not SPL. If either parent earns less than £120 a week, you can share SPL but not ShPP.

If you usually earn an average of £120 or more a week each, and you only earned less in some weeks because you were paid but not working ('on furlough') under the Coronavirus Job Retention Scheme, you may still be eligible.

If only one parent wants to take the SPL and ShPP The parent who wants to take the leave and pay must still meet with the above eligibility criteria, however the other parent must:

- Have been working for at least 26 weeks (they do not need to be in a row) during the 66 weeks before the week the child was placed with you.
- Have earned at least £390 in total in 13 of the 66 weeks (this can be added up using the highest paying weeks, as they do not need to be in a row).
- Length of Shared Parental leave.
- Eligible employees will be entitled to.
- Up to 50 weeks of SPL.
- Up to 37 weeks of Shared Parental Pay (ShPP).

How much SPL or ShPP eligible parents get depends on how much adoption entitlement the primary adopter has already taken.

Eligible employees for SPL have the option of taking their Shared Parental Leave (SPL) in one go or in 3 separate blocks, this is also the case for parents who choose not to share leave entitlements.

Subject to agreement with the employer, blocks of leave may also be taken in shorter periods of at least a week. Employers can refuse this type of request, for example if it's not suitable for the work or workplace, however they cannot turn down a request for a block of leave if the employee is eligible and gives the right notice.

If both parents are taking SPL they can take their leave at the same time as each other or at different times.

SHARED PARENTAL PAY AWARDS

Eligible employees for ShPP will be paid £151.97 pw or 90% of your weekly average earnings whichever is lower. This rate is usually reviewed every year – always check the government's website for updates.

APPLYING FOR SHARED PARENTAL LEAVE AND PAY

Eligible employees are required to give at least 8 weeks' notice to their employer. Sample forms for giving notice are available from ACAS and can be obtained here - <https://www.acas.org.uk/shared-parental-leave-forms>. There are also model notices and declarations in the governments Parent's Guide to SPL available here <https://www.gov.uk/guidance/shared-parental-leave-and-pay-guidance-and-tools-for-parents#parents-guide>

It's important to remember that each eligible parent has up to 3 times to either change the dates of booked SPL or book a block of SPL. To change or cancel the dates of any SPL booked, employees must give their employer 8 weeks' written notice.

The employer can ask the employee to change dates of booked SPL. If the employee agrees, this would not count as a notice to vary leave. The employee does not have to agree and must not be treated unfairly if they do not.

SHARED PARENTAL LEAVE KEEPING IN TOUCH (SPLIT) DAYS

Employees may, by agreement with their employer, do up to twenty days' work – known as

“Shared Parental Leave keeping in touch (“SPLIT” days)” – under their contract of employment during the Shared Parental Leave period.

SPLIT days can be useful for the employee to:

- Keep up-to-date with work.
- Go to a work-related activity or training session.
- Work part of a week to help the team.
- Return from leave in a gradual way, for example taking 2 SPLIT days and working 3 days a week to start with.

It's up to the employer and employee to agree:

- Whether to use SPLIT days.
- How many of the 20 to use.
- How much the employee will get paid for them.

RETURNING TO WORK

After Shared Parental Leave, the same rights and processes apply as returning to work after adoption leave.

PROTECTION FROM DETRIMENT AND DISMISSAL

Employees are protected against detrimental treatment or unfair dismissal for asking to take or taking SPL. Men and women have protection against sex discrimination if they are treated less favourably at work. If a woman is treated less favourably as a result of taking shared parental leave she would have to compare her treatment to that of a man (and vice versa for a man) in order to show sex discrimination.

CHILD BENEFIT

Don't forget that you will also be eligible for child benefit.

TAX CREDITS AND OTHER FINANCIAL PROVISIONS

All new parents should check with the HM Revenue and Customs about tax credits. Tax credit calculators from the government's website are a useful tool to identify what benefits you could be missing out on. Access the government's tax credit calculator here - <https://www.gov.uk/tax-credits-calculator>.

All payment figures quoted in this factsheet are from 2021 and may be subject to change. Please refer to the government's website for latest payment updates.

SOURCES:

Gov.UK – Adoption leave and pay available at <https://www.gov.uk/adoption-pay-leave>

Gov.UK – Parental leave and pay available at <https://www.gov.uk/employers-paternity-pay-leave>

Gov.UK – Shared Parental leave available at <https://www.gov.uk/shared-parental-leave-and-pay>

ACAS - Your adoption leave pay and other rights available at <https://www.acas.org.uk/your-adoption-leave-pay-and-other-rights/returning-to-work-after-youve-adopted-a-child>