

ADOPTION LEAVE AND PAY

Key Legal Points

One member of a couple, or an individual, who adopts a child can take Statutory Adoption Pay and Leave. The other member of a couple may qualify for Statutory Paternity Pay and Leave (See Section 9). If they are adopting the child together, they can choose which of them will take adoption leave and pay and which will take paternity leave and pay.

Eligible employees (see below for further clarification on eligibility) are entitled to take **52 weeks' Statutory Adoption Leave (SAL) and receive Statutory Adoption Pay (SAP) for 39 weeks** when they adopt a child. The first **26 weeks are classed as Ordinary Adoptive Leave (OAL)** and the second **26 weeks as Additional Adoptive Leave (AAL)**.

Eligible employees are entitled to SAL regardless of their length of service. The rules are different depending on whether the child is adopted from within the UK or from overseas. An employee may also be entitled to adoption leave and statutory adoption pay if they are an intended parent in a surrogacy arrangement.

Rules in relation to **Shared Parental Leave and Pay** also apply to adoption or surrogacy (See Section 11 for further details). The period of leave can start from **the date of the child's placement** or from **up to 14 days beforehand**.

Employees who are the primary adopter of a child are entitled to paid time off to attend 5 appointments (6.5 hours each) after being notified of a match for adoption.

Employees who are secondary adopters are entitled to unpaid time off to attend 2 appointments (6.5 hours each) after being notified of a match for adoption. No qualifying length of service applies.

Employees won't qualify for either adoption leave or pay if they:

- become a special guardian or kinship carer
- adopt a stepchild
- adopt a family member or stepchild
- adopt privately, e.g. without permission from a UK authority or adoption agency.

Statutory Adoption Leave

Qualifying Conditions for UK Adoptions

An employee qualifies for 52 weeks' SAL when they adopt a child in the UK if they:

- Have been matched with a child to be placed with them by a UK adoption agency.

- Have notified the agency that they agree that the child should be placed with them and agree with the date of placement.
- Notify you of: when they want to take their SAL no more than seven days after they are notified that they've been matched with a child; that they intend to take adoption leave; when they intend to start it; and the date the child is expected to be placed with them for adoption.

Qualifying Conditions for Overseas Adoptions

An employee qualifies for 52 weeks' SAL when they adopt a child from overseas if they:

- Have received official notification from the relevant UK authority of their eligibility to adopt a child from abroad.
- Have given you the correct notification and confirmation that the adopter has been officially approved.
- Are the child's adopter. This is the person who will adopt or has adopted the child or, in a case where the child will be or has been adopted by two people jointly, whichever of the joint adopters has chosen to take statutory adoption leave in respect of the child.

Joint and individual adoptions

Where a couple are adopting jointly, they can choose who will take SAL and who (regardless of gender) will take Statutory Paternity Leave (SPL). They cannot both take SAL or SPL. If an employee is adopting individually, only they are eligible for SAL although their partner (regardless of gender) may be eligible for SPL.

Foster parents who adopt a child

A foster parent may be able to take SAL if they go on to adopt a child, but only if:

- The child that the employee fostered is then matched with them for adoption by a UK adoption agency. Adoption via a court order does not count.
- The child is then actually placed with them for adoption.
- The foster parents have not previously availed of adoption leave in respect of the same child in the circumstances described under the heading 'UK Adoptions' above.

The usual notification and service criteria still apply. The adoption leave only relates to the actual placement for adoption. Any period of ordinary foster caring does not count.

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Surrogacy

An employee who becomes a parent through an arrangement with a surrogate mother is also entitled to SAL and SAP.

They will also be entitled to the right to request a flexible working arrangement from their employer.

The intended parent who does not take adoption leave and pay may be eligible for paternity leave and pay.

Intended parents may also qualify for Shared Parental Leave and Pay where the parent who qualifies for adoption leave and pay chooses to return to work before the end of the adoption leave period.

Intended parents are also entitled to unpaid time off to attend ante-natal appointments with the surrogate mother.

Statutory Adoption Pay

- Many employees will find it convenient to give notice of the date for the start of Statutory Adoption Pay (SAP) at the same time as they give notice for SAL. The date for the start of SAP can be the same as the start date for adoption leave.
- Employees must provide evidence (if their employer requests it) from the adoption agency as proof of their entitlement to adoption pay, for example, a letter on headed paper confirming they have been matched with a child or a 'matching certificate' together with relevant notifications outlined above.
- Employees may be eligible for Statutory Adoption Pay. There are different eligibility criteria for SAP for UK and overseas adoptions.
- The employee's average weekly earnings during the eight weeks ending with the week that the adoption agency told the adopter they had been matched with a child must not be less than the lower earnings limit set by the government.
- Statutory Adoption Pay is paid for 39 weeks and usually covers the first 39 weeks of an employee's adoption leave. The amount payable to employees is the lower of:
 - The standard weekly rate (see www.nibusinessinfo.co.uk for current rates);
 - Their Average Weekly Earnings.
- Employers will normally be able to recover some or all of the SAP paid.

See the HMRC website for further information and advice. www.hmrc.gov.uk

Terms and conditions during Statutory Adoption Leave

- The employee has a statutory right to continue **to benefit from all the terms and conditions** of his/her employment which would have applied to him/her had he/she been at work, the **exception being wages or salary**, though you must pay him/her statutory adoption pay if he/she is eligible.
- The employee continues to accrue both full statutory annual leave (i.e. 5.6 weeks or pro rata equivalent) and any additional contractual leave throughout the 52 weeks.
- An employee may not take annual leave during adoption leave. However, the employer may allow the employee to take any untaken annual leave before and/or after their adoption leave.
- **Benefits such as share schemes, use of company car and phone** (unless these are provided for business use only) do continue during the period of leave.
- Contributions to an **Occupational Pension Scheme** should continue as if the employee is working normally. During any period that your employee is on additional adoption leave (AAL) but not receiving any pay e.g. during the last 13 weeks of AAL, it is not obligatory to make any employer pension contributions unless the contract of employment provides otherwise. If the pension scheme rules require employee contributions to continue during adoption leave, contributions should be based on the amount of statutory and/or enhanced adoption pay he/she is receiving. Employee contributions will therefore stop during any period of unpaid leave e.g. during the last 13 weeks of AAL but the scheme rules may allow voluntary contributions.
- Statutory Adoption Leave **does not break continuity of employment**.
- Similarly, the entire SAL period **counts towards an employee's period of continuous employment** for the purposes of entitlement to other statutory employment rights, e.g. the right to a redundancy payment.
- Both OAL and AAL count for **assessing seniority and personal length-of-service payments**, such as pay increments, under the contracts of employment of employees who have had a child placed with them for adoption **on or after 5 October 2008**, or who have a child adopted from overseas that entered Northern Ireland on or after 5 October 2008.
- However, for employees who had a child placed with them before 5 October 2008, it was only necessary to count the period of OAL for assessing length of service payments.
- Therefore, when assessing length of service for a pay rise for example, it's possible that an employee who has adopted twice or more while employed with one employer could have a later period of AAL count towards their length of service but not an earlier one.

SECTION 10

Communication

After receiving notification of when the employee wishes their adoption leave to start, it is important in turn to notify him/her (within 28 days of his/her notification) of the date on which the leave will end. This will normally be 52 weeks from the intended start of their adoption leave.

It is helpful for both parties to confirm the employee's adoption plans in writing – see Appendix 10A.

During the adoption leave period you can make reasonable contact with an employee and he/she may make contact with you. In addition, an employee can choose to come to work as a way of keeping in touch with workplace developments. The employee may work (including attending training) on up to ten days during adoption leave without bringing the adoption leave to an end. This is not compulsory and arrangements, including any additional pay, would be discussed and agreed with the employer.

Remember that you should keep an employee informed of promotion opportunities and other information relating to their job that they would normally be made aware of if they were working e.g. redundancy situations.

Terminated Placement

If a child's placement is terminated during adoption leave, specific rules governing when the adoption leave will end will apply if:

- the employee has started the adoption leave before the placement and the adoption agency has notified the employee that the child will no longer be placed with him or her; or
- the child dies/is returned to the adoption agency during the leave.

In such circumstances, the adoption leave will end eight weeks after the end of the week during which the employee is notified that the adoption will not be taking place or the child dies unless the employee's entitlement to leave and/or pay would have ended earlier in the normal course of events.

Returning to Work following Adoption Leave

Employees have a right to return to the same job after Ordinary Adoptive Leave. If the employee takes Additional Adoptive Leave he/she is still entitled to return to his/her old job unless this is not reasonably practicable, but must still be offered a job that is suitable for him/her and the terms and conditions must be no less favourable.

Unless the employee has notified you otherwise, the date on which they return to work will normally be the first working day 52 weeks after their statutory adoption leave (SAL) began.

If an employee wishes to return to work before the planned return date (usually the date confirmed to them before they went on leave), they must give notice at least eight weeks **before** their new return date although the employer can accept less or no notice.

If the employee attempts to return to work earlier than planned **without** giving notice, the employer can postpone their return until after the eight weeks have elapsed.

However, their return may not be postponed to a date later than the end of their 52 week SAL period.

Returning Late

If the employee wishes to return later than the planned return date they must either:

- request unpaid parental leave, giving as much notice as possible but not less than 21 days; or
- request paid annual leave in accordance with their contract, which will be at the employer's discretion.

If the employee is unable to return to work due to sickness or injury, this will be treated as sickness absence and the employer's usual sickness policy will apply.

In any other case, late return will be treated as unauthorised absence.

Deciding not to return

If the employee does not intend to return to work, or is unsure, it is helpful if he/she discusses this with the employer as early as possible. If the employee decides not to return he/she should give notice of resignation in accordance with their contract. The amount of adoption leave left to run when the employee gives notice must be at least equal to their contractual notice period, otherwise the employer may require the employee to return to work for the remainder of the notice period.

Once the employee has given notice that he/she will not be returning to work, they cannot change their mind without the employer's agreement.

This does not affect the employee's right to receive SAP.

Protection from Detrimental Treatment and Dismissal

Employees are protected from suffering a detriment or dismissal for taking, or seeking to take, adoption leave. Examples of detrimental treatment include denial of promotion, facilities or training opportunities which you would normally have made available to the employee.

Related rights

Be aware that employees have the **right to request Parental Leave, Shared Parental Leave, time off for dependants and flexible working**. See Sections 7, 11 and 12.

See the NI Business Info website (www.nibusinessinfo.co.uk) for full details and further information.

APPENDIX 10A

MODEL LETTER FOR EMPLOYERS TO ACKNOWLEDGE NOTIFICATION OF ADOPTION LEAVE

This letter should be used when only the statutory levels of leave and pay are provided and as such could be amended if additional leave/pay are offered. (Employer must respond within 28 days of receipt of employees' notification).

Date:

Dear [name of employee],

Congratulations and thank you for telling me that you will be adopting a child. I am writing to you about your adoption leave and pay.

As we have discussed, you are eligible for **52 weeks' adoption leave** (26 weeks' Ordinary Adoptive Leave plus 26 weeks' Additional Adoptive Leave / **you are not eligible for adoption leave** *[delete as appropriate]*.

Given your chosen start date of [insert date] your adoption leave will end on [insert date].

If you want to change the date your leave starts you must, if at all possible, tell me at least 28 days before your proposed new start date or 28 days before [insert date leave starts] (your original start date), whichever is sooner. Please contact me if you wish to discuss this.

If you decide to return to work before [insert date leave ends], you must give me at least eight weeks' notice.

As we discussed you are eligible for **39 weeks' Statutory Adoption Pay** / **not eligible for Statutory Adoption Pay** *[delete as appropriate]*.

Your adoption pay will be £[insert amount] from [insert date] to [insert date]

OR

The SAP1 form (enclosed) explains why you do not qualify for Statutory Adoption Pay. You should contact your adoption agency to find out if you can get any other help.

During your adoption leave we are both able to make reasonable contact with each other to help with staying in touch. We are also able to agree that you can do up to ten days' work during your adoption leave without it affecting either your adoption leave or your SAP. Before you begin your adoption leave we should discuss how we will keep in touch during your time off.

If you decide not to return to work, you must still give me proper notice. Your decision will not affect your entitlement to SAP.

If you have any questions about any aspect of your adoption entitlements please do not hesitate to get in touch with me. I wish you well.

Yours sincerely,