



*Maximising Potential*

## Adoption Policy

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## **1.0 Scope and Purpose**

- 1.1 This policy outlines the statutory rights and responsibilities of employees who adopt through a UK adoption agency and sets out the arrangements for adoption leave. The rules governing an employee's rights when adopting children from overseas agencies vary slightly to those included in this policy. If an employee plans to adopt a child from an overseas agency, employees should contact the Headteacher for further information.
- 1.2 No-one will be discriminated against or subjected to a detriment for taking leave in accordance with this policy.
- 1.3 This policy does not form part of any employee's contract of employment and it may be amended by the Trust at any time after consultation with our recognised Trade Unions.

## **2.0 Who is Covered by the Policy?**

- 2.1 This policy covers all employees at all levels and grades including senior managers, employees, trainees, part-time and fixed term employees (referred to as employees in this policy).
- 2.2 It does not apply to agency staff, volunteers and self-employed contractors.

## **3.0 Who is Responsible for the Policy?**

- 3.1 The Trust has overall responsibility for the effective operation of this policy and for ensuring compliance with the relevant statutory framework. The Trust has delegated day-to-day responsibility for operating the policy to the Headteacher of the school.
- 3.2 The Headteacher and the Senior Leadership Team at each establishment has a specific responsibility to ensure the fair application of this policy and all members of staff are responsible for supporting colleagues and ensuring its success
- 3.3 The Chief Executive of the Trust will be responsible for administering the policy in relation to the Headteacher (where the policy is applied to the Headteacher, all references to Headteacher should be replaced with Chief Executive of the Trust).

- 3.4 The Board of Trustees will be responsible for administering the policy in relation to the Chief Executive of the Trust (where the policy is applied to the Chief Executive of the Trust, all references to Headteacher should be replaced with Board of Trustees).

## **4.0 Definitions**

- 4.1 The definitions in this paragraph apply in this policy. Qualifying Week means the week, starting on a Sunday, in which an employee is notified in writing by an adoption agency of having been matched with a child;
- 4.1.1 Expected Placement Date means the date on which an adoption agency expects that it will place a child into an employee's care with a view to adoption;
- 4.1.2 Ordinary Adoption Leave (OAL) means a period of up to 26 weeks' leave available to all employees who qualify for adoption leave under paragraph 5;
- 4.1.3 Additional Adoption Leave (AAL) means a further period of up to 26 weeks' leave immediately following OAL.

## **5.0 Entitlement to Adoption Leave**

- 5.1 Adoption leave is only available if an employee is adopting through a UK adoption agency. It is not available if there is no agency involved, for example, if an employee is formally adopting a stepchild or other relative.
- 5.2 An employee is entitled to adoption leave if he/she meets all the following conditions:
- 5.2.1 An adoption agency has given an employee written notice that it has matched him/her with a child for adoption and tells him/her the Expected Placement Date.
- 5.2.2 An employee has notified the agency that he/she agrees to the child being placed with him/her on the Expected Placement Date.
- 5.2.3 An employee has been continuously employed by the Trust for at least 26 weeks ending with the Qualifying Week.
- 5.2.4 An employee's spouse or partner will not be taking adoption leave with his/her employer (although they may be entitled to take paternity leave).

## **6.0 Notification of Intention to Take Leave**

- 6.1 An employee must give the Headteacher notice in writing of:
  - 6.1.1 The Expected Placement Date; and
  - 6.1.2 His/her intended start date for adoption leave ('Intended Start Date').
- 6.2 This notice should be given not more than seven days after the agency has notified an employee in writing that it has matched him/her with a child.
- 6.3 At least 28 days before an the Intended Start Date (or, if this is not possible, as soon as possible), an employee must also provide the Headteacher with:
  - 6.3.1 A Matching Certificate from the adoption agency confirming:
    - 6.3.2 The agency's name and address;
    - 6.3.3 The date notification of the match was provided; and
    - 6.3.4 The Expected Placement Date.
- 6.4 Written confirmation that an employee intends to take statutory adoption leave and not statutory paternity leave.

## **7.0 Starting Adoption Leave**

- 7.1 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.
- 7.2 An employee must notify the Headteacher of the Intended Start Date in accordance with paragraph 6.0. The Headteacher will, within 28 days, provide written confirmation to an employee of the date he/she is expected to return to work if he/she take the full entitlement to adoption leave (Expected Return Date).
- 7.3 An employee can postpone the Intended Start Date by informing the Headteacher in writing at least 28 days before the original date or, if that is not possible, as soon as possible.
- 7.4 An employee can bring forward the Intended Start Date by informing the Headteacher in writing at least 28 days before the new start date or, if that is not possible, as soon as possible.

- 7.5 Shortly before an employee's adoption leave starts the Headteacher will discuss with him/her the arrangements for covering his/her work and the opportunities for him/her to remain in contact, if desired, during the leave. Unless an employee requests otherwise, he/she will remain on circulation lists for internal news, job vacancies, training and work-related social events.

## **8.0 Statutory Adoption Pay**

- 8.1 Statutory Adoption Pay (SAP) is payable for up to 39 weeks. It stops being payable if an employee returns to work sooner or if the placement is disrupted or if he/she makes a declaration to receive Shared Parental Leave.
- 8.2 An employee is entitled to SAP if:
- 8.2.1 He/she has been continuously employed for at least 26 weeks at the end of the Qualifying Week and are still employed by the Trust during that week;
  - 8.2.2 His/her 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
  - 8.2.3 He/she has provided the Headteacher with the relevant notifications under paragraph 6.0.
- 8.3 SAP is paid at a Prescribed Rate which is set by the Government for the relevant tax year, or at 90% of an employee's average weekly earnings calculated over the Relevant Period if this is lower.
- 8.4 SAP accrues with each complete week of absence but payments shall be made on the next normal payroll date. Income Tax, National Insurance and pension contributions shall be deducted as appropriate.
- 8.5 If an employee leaves employment for any reason (for example, if he/she resigns or is redundant) he/she shall still be eligible for SAP if he/she has already been notified by an agency that he/she has been matched with a child. In such cases, SAP shall start:
- 8.5.1 14 days before the Expected Placement Date; or
  - 8.5.2 The day after the employment ends,
  - 8.5.3 Whichever is the later.

- 8.6 If an employee becomes eligible for a pay rise before the end of the adoption leave, he/she will be treated for SAP purposes as if the pay rise had applied throughout the Relevant Period. This means that an employee's SAP will be recalculated and increased retrospectively, or that he/she may qualify for SAP if he/she did not previously qualify. The Trust shall pay an employee a lump sum to make up the difference between any SAP already paid and the amount payable by virtue of the pay rise. Any future SAP payments at the Earnings-Related Rate (if any) will also be increased as necessary.

## **9.0 Occupational Adoption Pay**

- 9.1 To qualify for Occupational Adoption Pay (OAP) an employee must:
- 9.1.1 Have at least one year's continuous service (see Trust guidance note on Continuous Service) at the beginning of the 11th week before matching week;
  - 9.1.2 Declare in writing that he/she intends to return to work for at least 3 months following the end of the adoption leave. If an employee subsequently decides not to return to work, he/she must repay all of the Occupational Adoption Pay he/she has received.
- 9.2 Occupational Adoption Pay will be paid at the same rates as those apply to Occupational Maternity Leave provided for in the Burgundy Book or the Green Book as applicable to teachers and support staff in local authority managed schools.

## **10.0 Terms and Conditions During Ordinary Adoption Leave and Additional Adoption Leave**

- 10.1 All the terms and conditions of an employee's employment remain in force during OAL and AAL, except for the terms relating to his/her normal pay.

## **11.0 Annual Leave**

- 11.1 During OAL and AAL, annual leave will accrue. Annual leave cannot usually be carried over from one holiday year to the next.
- 11.2 This entitlement applies to all employees including term time only and teachers.
- 11.3 Term Time Only Workers – In order to calculate the entitlement to annual leave it is necessary to carry out a 'Balance of Salary' calculation at the start of the adoption leave period and a second calculation at the end of the leave

period. This calculation takes into account an employee's start date with the Trust and the number of completed weeks of the academic year up to the point the adoption leave starts. The proportion of completed weeks will then be compared to the salary an employee has been paid for the same period. In most cases this results in a payment of a balance of salary, however, there may be instances where the salary paid exceeds the weeks which have been worked and a recovery of salary is necessary. Once an employee returns to work, a second calculation is carried out to identify whether he/she is entitled to a payment in respect of the annual leave accumulated whilst on adoption leave (Please note: The date on which an employee starts and ends the adoption leave can significantly affect the balance of salary calculation. Employees should contact the Establishment's finance team to determine what impact this may have).

- 11.4 Teachers – The contract of employment makes no specific reference to an entitlement to annual leave for teachers. There is however a statutory right to a minimum of 28 days per annum under the Working Time Regulations. Periods of school closure count towards this entitlement, consequently it is unlikely that teachers returning to their posts following a period of adoption leave will have acquired a right to additional annual leave. It is possible that teachers who resign their post and do not return could have an outstanding balance of annual leave payable.
- 11.5 The Trust's holiday year runs from 1 September to 31 August each year.

## **12. Pensions**

- 12.1 For details of the implication of OAL and/or AAL on an employee's pension, employees should contact the Establishment's finance team who will provide further advice.

## **13. Disrupted Adoption**

- 13.1 Adoption leave is disrupted if it has started but:
- 13.1.1 An employee is notified that the placement will not take place;
  - 13.1.2 The child is returned to the adoption agency after placement; or
  - 13.1.3 The child dies after placement
- 13.2 In case of disruption an employee's entitlement to adoption leave and pay (if applicable) will continue for a further eight weeks from the end of the week in which disruption occurred, unless the entitlement to leave and/or pay would have ended earlier in the normal course of events.

## **14. Keeping in Touch**

The Senior Leadership Team may make reasonable contact with an employee from time to time during the adoption leave.

An 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 would be discussed and agreed the Headteacher but any KIT days worked will be paid at the employee's normal rate of pay (less any adoption pay paid to them).

Shortly before an employee is due to return to work, the Headteacher may invite him/her to have a discussion (whether in person or by telephone) about the arrangements for return. This may cover:

- 14.1 updating an employee on any changes that have occurred during his/her absence;
- 14.2 any training needs an employee may have;
- 14.3 and any changes to working arrangements (for example, if an employee has made a request to work part time).

## **15. Shared Parental Leave**

An employee wishing to opt into the Shared Parental Leave (SPL) scheme, must give the Headteacher at least eight weeks' written notice to end his/her adoption leave (a curtailment notice) before he/she can take SPL. The notice must state the date the adoption leave will end. An employee can give such notice before or after adoption leave starts, but he/she must take at least two weeks adoption leave.

An employee must also give the Headteacher, at the same time as the curtailment notice, a notice to opt into the SPL scheme in accordance with the procedure set out in the Trust's Shared Parental Leave (Adoption) Policy or a written declaration that the other parent has given their employer an opt-in notice and that he/she has given the necessary declarations in that notice.

If an employee's partner is eligible to take SPL from their employer, they cannot start it until the Trust has received the curtailment notice.

The curtailment notice is binding and cannot usually be revoked. An employee can only revoke a curtailment notice if adoption leave has not yet ended and one of the following applies:

- 15.1 He/she realises that neither he/she nor the other parent are in fact eligible for SPL or Shared Parental Pay, in which case an employee can revoke the curtailment notice in writing up to eight weeks after it was given; or

15.2 An employee's partner has died.

Once an employee has revoked a curtailment notice he/she will be unable to opt back into the SPL scheme.

## **16. Expected Return Date**

Once an employee has notified the Headteacher in writing of his/her Intended Start Date, the Headteacher shall send him/her a letter within 28 days stating the Expected Return Date. If an employee's start date changes the Headteacher shall write to him/her within 28 days of the start of adoption leave with a revised Expected Return Date.

An employee will be expected to be back at work on his/her Expected Return Date unless he/she tells the Headteacher otherwise. It will help the Headteacher if, during the adoption leave, an employee is able to confirm that he/she will be returning to work as expected.

## **17. Returning Early**

If an employee wishes to return to work earlier than the Expected Return Date, he/she must give the Headteacher at least eight weeks' notice. It is helpful if this notice is given in writing.

If an employee does not give enough notice, the Headteacher may postpone his/her return date until four weeks (or eight weeks as appropriate) after he/she gave notice, or to the Expected Return Date if sooner.

## **18. Deciding Not to Return**

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

Once an employee has given notice that he/she will not be returning to work, he/she cannot withdraw such notice without the Headteacher's agreement.

If an employee has received Occupational Adoption Pay and does not return to work he/she will be required to repay the Occupational Adoption Pay as detailed in the Burgundy / Green Book (whichever is applicable).

If an employee returns for only part of the 3-month period required, he/she shall be required to repay the appropriate proportion of Occupational Adoption Pay.

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

## **19. An Employee's Rights on Return**

An employee is normally entitled to return to work in the same position as he/she held before commencing leave. An employee's terms of employment shall be the same as they would have been had he/she not been absent.

However, if an employee has taken any period of AAL or more than four weeks' parental leave, and it is not reasonably practicable to permit him/her to return into the same position, the Headteacher may give him/her another suitable and appropriate job on terms and conditions that are not less favourable.

In the event of a redundancy situation, an employee on adoption or maternity leave shall be given first refusal on any suitable alternative vacancies that are appropriate to their skills.

## **20. Returning to Work Part-Time**

The Headteacher will deal with any requests by employees to change their working patterns (such as working part time) after adoption leave on a case-by-case basis. There is no absolute right to insist on working part time, but an employee does have a statutory right to request flexible working and the Headteacher will try to accommodate an employee's wishes unless there is a justifiable reason for refusal, bearing in mind the needs of the establishment. It is helpful if requests are made as early as possible. The procedure for dealing with such requests is set out in the Trust's Flexible Working Policy.