

## **PART 2: SECTION 7 - FAMILY LEAVE**

### **Maternity Leave**

7.1 An employee is entitled to 52 weeks of Maternity Leave (ML), regardless of length of service. The 52 weeks comprises 26 weeks' Ordinary Maternity Leave and 26 weeks' Additional Maternity Leave.

7.2 ML can begin from a date not earlier than the 11th week before the Expected Week of Childbirth (EWC), unless childbirth has taken place prior to this. The period of ML may commence on any day of the week. During the ML period all the employee's contractual terms and conditions, with the exception of remuneration, continue to apply.

### **Compulsory Maternity Leave**

7.3 An employee is required to take compulsory maternity leave of 2 weeks starting the day on which childbirth occurs.

### **Maternity Pay**

7.4 An employee with less than 26 weeks' continuous service at the beginning of the 15th week before the EWC will have no entitlement to maternity pay. She may, however, be entitled to Maternity Allowance payable through the Department of Work and Pensions.

7.5 An employee with at least 26 weeks' continuous service at the beginning of the 15th week before the EWC is entitled to be paid:

(a) Occupational Maternity Pay (OMP) and Statutory Maternity Pay (SMP) at the appropriate rate for the first 13 weeks. Taken together, these payments will be equal to the employee's normal salary, and where eligible,

(b) SMP for the remaining 26 week period, provided that the employee's average weekly earnings are not less than the lower earnings limit for National Insurance contribution liability.

7.6 Any previous employment with councils, employers listed in the Redundancy Payment (Local Government) (Modification) Order 1990 (as amended) and any other employment deemed by the council to be relevant, should be counted as continuous service (as defined in the Employment Rights Act 1996) subject to a gap in employment not exceeding one working week.

7.7 Other than Keeping In Touch Days (as described in paragraph 7.53 below), when an employee returns to work before the full ML period then her entitlement to any balance of maternity leave and maternity pay ceases. The employee will receive her normal salary from the date of her return to work.

### **Notification of Start of Maternity Leave**

7.8 To qualify for maternity leave and pay, an employee must notify the council in writing of:

- (a) the fact that she is pregnant;
- (b) the expected week of childbirth or the actual date of the birth, if this has already occurred; and
- (c) the date she wishes ML to commence (the notified leave date).

7.9 The notification set out above must be given to the council not later than 21 days before maternity leave commences, or as soon as is reasonably practicable.

7.10 Confirmation of the pregnancy and expected date of childbirth should be given in the form of a maternity certificate (form MAT B1) from a registered medical practitioner or midwife.

### **Notification of Birth**

7.11 An employee should notify the council, as soon as is reasonably practicable, of the date of the birth of her child.

### **Notification of Return from Maternity Leave**

7.12 An employee who wishes to return to work earlier than the end of the ML period must give the council 28 days' notice. If the appropriate notice is not given, the council may postpone her return for up to 28 days (but not to a date later than the end of the ML period).

7.13 No notification is required for an employee returning to work on the first working day following the end of the ML period.

### **Antenatal Care**

7.14 A pregnant employee shall be allowed to take such reasonable time off, without loss of pay, as is required to attend for antenatal care, on production of evidence of appointments (if required by the council).

### **Stillbirth**

7.15 In the event of a stillbirth after 24 weeks of pregnancy, an employee is entitled to maternity leave and pay provisions.

### **Sick Leave and Maternity Leave**

7.16 Where an employee is absent before the start of the maternity leave period due to illness, the absence will be treated as sickness absence except when paragraph 7.17 below applies. This includes absence due to miscarriage (that is, prior to the 24th week of pregnancy).

7.17 If an employee is absent because of a pregnancy related illness, and there are fewer than four weeks before her baby is due, she will be deemed to have commenced ML.

7.18 Where an employee is unable to return to work after the ML period has ended, or on the date previously notified, due to sickness, the normal sickness notification and certification procedures as set out in Section 6 (Sickness Allowances and Notification Arrangements) apply.

### **Annual Leave – Maternity**

7.19 Annual leave shall accrue during the period of ordinary and additional maternity leave.

7.20 A teacher or music instructor will accrue annual leave, in accordance with Section 5, paragraphs 5.3 to 5.4, during the period of her ML.

7.21 An education support officer, quality improvement officer or educational psychologist will accrue annual leave, in accordance with Section 5, paragraphs 5.11 to 5.14, during the period of her ML.

7.22 Maternity leave shall either fall within one leave year or span two leave years. Statutory leave must be provided by the council and must be taken by the employee for each leave year spanned by the period of maternity leave.

7.23 The balance of annual leave in each leave year which accrues from the period of maternity leave can be taken as paid leave or, if agreed between the council and the employee, can be paid in lieu in accordance with Section 1, Pay, paragraph 1.5.

7.24 An employee on maternity leave which spans two leave years shall receive at the end of the first leave year a statement which notifies: the leave taken to the commencement of the maternity period and the leave accrued during the maternity period in that leave year (contractual entitlement minus leave taken). The balance to be carried forward into the next leave year.

7.25 When an employee has notified the council of the intended date of return, the council will issue a statement of the employee's annual leave entitlement effective at that date, including any balance of statutory leave which will require to be taken.

7.26 On return from maternity leave the employee shall take any remaining statutory leave in that leave year. Where it is not practicable to take that leave in full or in part any

balance will be carried forward into the next leave year but must be taken as leave. The timing of this leave shall take account of the needs of the service and,

(a) in the case of teachers and music instructors, should normally be taken in the term in which the return to work takes place, or within the following term; or

(b) in the case of education support officers, quality improvement officers and educational psychologists, should normally be taken as soon as possible following the return to work.

7.27 The balance of annual leave accrued during maternity leave that is being taken as paid leave shall be taken following the end of the maternity leave period. The timing of this leave is subject to the overriding needs of the service and,

(a) in the case of teachers and music instructors, should normally be taken in the term in which the return to work takes place, or within the following term; or

(b) in the case of education support officers, quality improvement officers and educational psychologists, should normally be taken as soon as possible following the return to work.

7.28 Where an employee gives written notice to the council that she does not intend to return to work at the end of her ML period, the council will make a payment in lieu of leave accrued during the paid ML period. This is in accordance with the provisions in Section 5 (Annual Leave).

### **Adoption Leave**

7.29 An employee is entitled to 52 weeks of Adoption Leave (AL) regardless of length of service. The 52 weeks comprises 26 weeks' Ordinary Adoption Leave and 26 weeks' Additional Adoption Leave.

7.30 The AL may begin:

(a) from the date of the child's placement; or

(b) from a fixed date up to 14 days before the expected date of placement.

7.31 Where more than one child is placed as part of the same adoption arrangement, only one period of leave will be granted.

7.32 Where a couple jointly adopts a child, the couple must choose one person to take the adoption leave.

### **Adoption Pay**

7.33 An employee who has less than 26 weeks' continuous service, prior to the week in which she/he is notified of being matched with a child for adoption, is entitled to 52 weeks' AL without pay.

7.34 An employee who has 26 weeks' continuous service prior to the week in which she/he is notified of being matched with a child for adoption will be entitled to be paid:

(a) Occupational Adoption Pay (OAP) and Statutory Adoption Pay (SAP) for the first 13 weeks. Together, these payments will equal the employee's normal salary; and

(b) SAP for the next 26 weeks, provided that the employee's average weekly earnings are not less than the lower earnings limit for National Insurance contribution liability.

7.35 Other than Keeping In Touch Days (as described in paragraph 7.53 below), when an employee returns to work before the full AL period then her/his entitlement to any balance of adoption leave and adoption pay ceases. The employee will receive her/his normal salary from the date of her/his return to work.

### **Notification of Start of Adoption Leave**

7.36 An employee must inform the council in writing of her/his intention to take AL within 7 days of being notified by their adoption agency that they have been matched with a child for adoption (where this is reasonably practicable).

7.37 Such notification must include:

(a) the expected date of placement;

(b) the date on which they intend to start their adoption leave; and

(c) a matching certificate from the adoption agency.

7.38 An employee who wishes to change the date on which her/his adoption leave starts must give the council 28 days' written notice, where this is reasonably practicable.

7.39 The council will respond in writing, within 28 days, to an employee's notification to change the start date of adoption leave and will also state the latest date on which the employee is expected to return to work. Notification of Return from Adoption Leave

7.40 An employee who wishes to return to work prior to the end of the adoption leave period must give the council 28 days' notice. If the appropriate notice is not given, the council may postpone her/his return for up to 28 days, or to the end of the adoption leave period if this is earlier.

### **Pre-adoption Meetings**

7.41 An employee who is adopting will be allowed to take such reasonable time off, without loss of pay, as required to attend pre-adoption meetings, on production of evidence of appointments (if required by the council).

**Termination of Placement**

7.42 Where the adoption placement ends, for any reason, during the adoption leave, the employee will notify the council. Where the adoption placement ends within the first 26 weeks of AL the employee will be entitled to remain absent from work until the end of the 26 week period. Where the adoption placement ends after the 26th week of AL the employee will be entitled to remain absent on AL for up to 8 weeks after the end of the placement or until the end of the AL period, whichever is sooner. Notification of the intended date of return should be given in accordance with paragraph 7.40 above.

**Annual Leave – Adoption**

7.43 Annual leave shall accrue during the period of ordinary and additional adoption leave.

7.44 A teacher or music instructor will accrue annual leave, in accordance with Section 5, paragraphs 5.3 to 5.4, during the period of her/his AL.

7.45 An education support officer, quality improvement officer or educational psychologist will accrue annual leave, in accordance with Section 5, paragraphs 5.11 to 5.14, during the period of her/his AL.

7.46 Adoption leave shall either fall within one leave year or span two leave years. Statutory leave must be provided by the council for each leave year spanned by the period of adoption leave.

7.47 The balance of annual leave in each leave year which accrues from the period of adoption leave can be taken as paid leave or, if agreed between the council and the employee, can be paid in lieu.

**Please note that section 7.48 will not apply until 1 September 2010.**

7.48 An employee on adoption leave which spans two leave years shall receive at the end of the first leave year a statement which notifies: the leave taken to the commencement of the adoption period and the leave accrued during the adoption period in that leave year (contractual entitlement minus leave taken). The balance to be carried forward into the next leave year.

7.49 When an employee has notified the council of the intended date of return, the council will issue a statement of the employee's annual leave entitlement effective at that date, including any balance of statutory leave which will require to be taken.

7.50 On return from adoption leave the employee shall take any remaining statutory leave in that leave year. Where it is not practicable to take that leave in full or in part any balance will be carried forward but must be taken as leave. The timing of this leave shall take account of the needs of the service and,

(a) in the case of teachers and music instructors, should normally be taken in the term in which the return to work takes place, or within the following term; or

(b) in the case of education support officers, quality improvement officers and educational psychologists, should normally be taken as soon as possible following the return to work

7.51 The balance of annual leave accrued during adoption leave that is being taken as paid leave shall be taken at the end of the adoption leave period, following the employee's return to work. The timing of this leave is subject to the overriding needs of the service and,

(a) in the case of teachers and music instructors, should normally be taken in the term in which the return to work takes place, or within the following term; or

(b) in the case of education support officers, quality improvement officers and educational psychologists, should normally be taken as soon as possible following the return to work.

7.52 Where an employee gives written notice to the council that she/he does not intend to return to work at the end of the AL period, the council will make a payment in lieu of leave accrued during this period. This is in accordance with the provisions in Section 5 (Annual Leave).

### **Keeping in Touch Days**

7.53 During both ML and AL the employee is allowed up to ten days at work with normal pay as Keeping In Touch Days, without bringing the ML or AL period to an end. Normal pay will be an amount inclusive of SMP, SAP or Maternity Allowance, as appropriate. These days do not have to be consecutive and can be used for training or any other activity which enables the employee to keep in touch with the place of employment. Keeping In Touch Days can only be taken following agreement between the employer and the employee on both the activity and timing. The Code of Practice on Keeping In Touch Days (Appendix 2.10) should be the basis for arrangements for such days.

### **Pension**

7.54 The employer shall continue to make full pension contributions during the period of paid ML or AL.

### **Maternity and Adoption Support Leave and Pay**

7.55 Support Leave of one week with normal pay will be granted to the spouse or partner or nominated carer of an expectant mother or of someone taking adoption leave at or around the time of birth or placement. The nominated carer is the person nominated by the mother or the person taking adoption leave to assist in the care of the child and to provide support to her/him.

7.56 Maternity Support Leave and Adoption Support Leave can be taken:

- (a) from the date of the child's/children's birth or placement for adoption; or
- (b) from another date after the child's/children's birth or placement for adoption.

This is subject to paragraphs 7.62 and 7.65 below.

### **Statutory Paternity Leave and Pay**

7.57 In addition to the maternity support leave described above, an employee who is the spouse or partner of an expectant mother (and who has at least 26 weeks' continuous service at the start of the 15th week before the baby is due) is entitled to a further week's Statutory Paternity Leave (SPL).

7.58 In addition to the adoption support leave described above, an employee who is the spouse or partner of a person taking adoption leave and who has at least 26 weeks' continuous service at the start of the notification week is entitled to a further week's SPL.

7.59 SPL can be taken:

- (a) from the date of the child's/children's birth or placement for adoption; or
- (b) from another date after the child's/children's birth or placement for adoption.

7.60 Leave can start on any day of the week, but must be taken within 56 days of the actual birth or placement date. If the birth is early, leave must be taken within the period from the actual date of the birth up to 56 days after the expected week of birth.

7.61 An employee who is on SPL shall receive Statutory Paternity Pay (SPP).

7.62 An employee who wishes to take SPL must inform the council of her/his intention to take paternity leave by the 15th week before the week in which the child is expected (where reasonably practicable). In the case of adoption, employees must inform their employers of their intention to take paternity leave within 7 days of the employee being notified by their adoption agency that they have been matched with a child/children, unless this is not reasonably practicable. He/she must state in writing:

- (a) the expected week of childbirth or date of placement for adoption; and



(b) when they want the leave to start.

7.63 There can only be one period of leave. Where an employee elects to take 2 weeks' leave, these must be consecutive. Where an employee elects to take only 1 week of leave then this will be taken as a complete week of leave. The first week will be support leave and paid at full pay while the second week will be paternity leave and SPP will be paid.

7.64 The employee shall accrue annual leave, in accordance with Section 5, Annual Leave, during the leave period. This leave should be taken following the employee's return to work. The timing of this leave is subject to the overriding needs of the service and,

(a) in the case of teachers and music instructors, should normally be taken in the term in which the return to work takes place, or within the following term; or

(b) in the case of education support officers, quality improvement officers and educational psychologists, should normally be taken as soon as possible following the return to work.

7.65 Employees may alter the date on which their leave starts by giving 28 days' notice in writing, where this is reasonably practicable.

7.66 Only one period of leave is available to employees, irrespective of whether more than one child is placed for adoption or in the case of multiple births.

7.67 An employee shall be entitled to the above provisions in circumstances where the child is stillborn after 24 weeks or has died or where the child's mother has died within the period of leave.

7.68 The paternity leave and pay provisions allow for up to 2 weeks' SPL and SPP for employees who meet the criteria. The provisions above provide for normal pay for the first week and SPP for the second week. In the first week SPP is offset against normal pay.

### **Right to Return to Work**

7.69 An employee has the right to return from the periods of leave described in this Section to the post in which she/he was employed. This will be under the original contract of employment and on terms and conditions not less favourable than those which would have been applicable to her/him had she/he not been on maternity or adoption leave.

7.70 Where it is not practicable, by reason of redundancy, for the council to permit the employee to return to work in her/his post, the employee is entitled to be offered a suitable alternative vacancy where one exists.

7.71 Suitable alternative employment may also be offered in exceptional circumstances other than redundancy (eg a general reorganisation) which would have occurred if the employee had not been on maternity or adoption leave, and where these circumstances necessitate a change in the post in which she/he was employed prior to her/his leave commencing.

7.72 A temporary employee will not have the right to return to work where her/his contract would have expired during the leave period but will be entitled to all other provisions in this Section, provided she/he meets the criteria (where these are stated).

### **Parental Leave**

7.73 Parental leave is a right for all employees who are parents, and who have at least 1 year's continuous service, to take time off work to look after or make arrangements for their child's welfare. Parental leave is unpaid.

7.74 Employees are entitled to 13 weeks in total for each child. A parent of a disabled child is entitled to 18 weeks in total for each disabled child.

7.75 Parental leave must be taken before the child's 5th birthday or 18th birthday, if the child is disabled.

7.76 Parental leave must be taken in week blocks or multiples of one week, except for parents of a disabled child who can take parental leave in blocks or multiples of one day.

7.77 Up to 4 weeks' parental leave can be taken in any calendar year.

7.78 The council may postpone parental leave for up to 6 months but not in the case of leave required following the birth or adoption of a child. Postponement can only take place if the absence would unduly disrupt the Service. Notification of postponement arrangements should be issued to the employee no later than seven days following the employee's notice to take leave.

7.79 Employees are entitled to return to their job following a period of parental leave.

### **Continuous Service**

7.80 All periods of maternity, adoption, paternity, maternity support leave and parental leave count towards continuous service.

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