

## Adoption leave & pay

**This advice note summarises the law in England and Wales relating to an employee's rights to statutory adoption leave and statutory adoption pay. It applies to qualifying employees who adopt through a local authority or approved adoption agency.**

### Introduction

An employee's entitlement to statutory adoption leave (SAL) is made up of 26 weeks' ordinary adoption leave (OAL) and a further 26 weeks' additional adoption leave (AAL).

Statutory adoption pay (SAP) is available for a 39-week adoption pay period (APP).

Single people, married couples, civil partners, and couples who are living together are all entitled to undertake adoption. When two people adopt as a couple, they can elect which is to be "the adopter" for the purposes of taking SAL and receiving SAP. The partner or spouse may then be entitled to paternity leave and pay.

### Ordinary adoption leave (OAL)

#### Eligibility

An employee is entitled to one period of OAL, irrespective of how many children are adopted, as part of the same arrangement provided that they:

- Are adopter of a child (the person who has been matched with a child for adoption or, in a case where two people have been matched jointly, whichever of them has elected to be the child's adopter);
- Have completed 26 weeks' qualifying employment ending with the week in which they are notified of having been matched for adoption with the child;
- Have notified the adoption agency of their agreement that the child should be placed with them.

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However, foster parents and those entering arrangements with surrogates may be entitled to SAL and SAP if they are issued with a matching certificate by a UK adoption agency that places the child with them for adoption.

### **Notice requirement**

No more than seven days after the date on which an employee has been told by the adoption agency that they have been matched with the child or, where that is not reasonably practicable, as soon as is reasonably practicable, the employee must give their employer notice of intention to take OAL, specifying:

- The date on which the child is expected to be placed with them for adoption;
- The date on which the employee has chosen their OAL to begin, being either:
  - The date on which the child is placed with the adopter; or
  - A specified date which is no more than 14 days before the date on which the child is expected to be placed and no later than the day of placement.

On receipt of an employee's notice of intention to take OAL, the employer must, within 28 days of receipt of the notice, notify the employee of the date on which their period of adoption leave will end and include any period of AAL to which the employee is entitled. The response to the notice must therefore confirm to the employee the date upon which they are expected to return to work.

### **Evidential requirements**

An employer may ask the employee for evidence, in the form of documents issued by the adoption agency, of the:

- Name and address of the agency;
- Date on which the employee was notified that they had been matched with the child;
- Date on which the agency expects to place the child with the employee.

A 'Matching Certificate' completed by the adoption agency will contain the required information.

### **Additional Adoption Leave (AAL)**

AAL starts the day after the last day of the employee's OAL, and lasts for a further 26 weeks, giving a total entitlement of 52 weeks' SAL.

### **Eligibility**

The qualifying criteria for AAL are:

- The child was placed with the employee for adoption;
- The employee took OAL in respect of the child;
- The employee's OAL did not end prematurely because the placement of the child was disrupted or because the employee was dismissed.

### **Terms and conditions during leave**

Certain terms and conditions of the employment contract will continue to apply during adoption leave. Since the employment contract still subsists (albeit in a limited form) during adoption leave, employees will continue to benefit from statutory and contractual rights during the period of absence:

- The accrual of statutory holiday entitlement (accrual of contractual holiday may vary depending on the contract);
- The accrual of the employee's continuity of service;
- The employer's implied obligation of trust and confidence;
- Any contractual terms and conditions relating to: notice periods; compensation for redundancy; and disciplinary and grievance procedures;
- If the employee is on paid adoption leave, an employer's pension contributions to a money purchase scheme should be calculated as if the employee was working normally on normal pay. The employee's contributions will be based on the adoption pay received;

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- Employees are protected from detrimental treatment and dismissal for reasons connected with their rights to OAL and AAL;
- Employees have priority to be offered suitable alternative employment in a redundancy situation.

At the same time, the employee remains bound by:

- The implied obligation of good faith (or fidelity) towards the employer;
- Any contractual terms and conditions relating to: notice periods; disclosure of confidential information; acceptance of gifts or benefits; and their freedom to participate in another business, for example, by working for a third party.

## Statutory Adoption Pay (SAP)

### Eligibility

To be entitled to SAP, an employee or former employee must meet each of the following conditions:

- They must be a person with whom a child is, or is expected to be, placed for adoption under UK law;
- They must have been in employed earner's employment for a continuous period of 26 weeks ending with the week in which they are notified of having been matched with the child (the relevant week);
- They must have ceased working for the employer;
- Their normal weekly earnings for the period of eight weeks ending with the relevant week must not be less than the lower earnings limit for the purpose of National Insurance Contributions in force at the end of the relevant week;
- They must have elected to receive SAP.

### Exclusion from entitlement

Some employees are specifically excluded from the entitlement to SAP:

- If the employee has elected to receive statutory paternity pay;
- Where the employee is part of couple which is expecting a child to be placed for adoption and the other member of the couple qualifies for SAP and has elected to receive it.

### Notice

To receive SAP payments, the adopter must give the person who will be liable to pay the SAP (usually their employer) notice of the date from which they wish payment of SAP to begin and must do this at least 28 days before that date, or if that is not reasonably practicable, as soon as it is reasonably practicable.

## Returning to Work

Employees are entitled to:

- Return to the same job (or, in certain circumstances, to return to a suitable and appropriate alternative job);
- Return on terms and conditions no less favourable than those that would have applied had they not been absent;
- Return with their seniority, pension rights and similar rights as they would have been had they not been absent.

If you would like further advice on this topic or more specific information please contact Nick Jones on 0117 904 5912 or [njones@lyonsdavidson.co.uk](mailto:njones@lyonsdavidson.co.uk)

*The purpose of this general advice note is to provide a general summary of information around a specific topic. It should not however be taken as legal advice and should not be relied on as such. We recommend that you always obtain specific legal advice in respect of a particular issue or matter. Please contact our employment team if you have a question about anything related to the subject matter of this note.*

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