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**Know
Your
Rights**

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Time off and pay for adoptive parents

TUC 

If you are adopting a child you and your partner may be entitled to time off work to attend adoption appointments and may be able to take paid adoption leave, paternity leave or Shared Parental Leave and Pay after the adoption. Other rights that may help you combine paid work with looking after your child include unpaid parental leave, the right to request flexible working and emergency time off for dependants.



Check your rights with your employer

This booklet covers the basic (sometimes called statutory) rights that employers must provide to qualifying adoptive parents who work for them. Your employer may offer better rights than the legal minimum and you need to check your contract of employment or your staff handbook to find out what your entitlement with your current employer is. If you work for an organisation that recognises a trade union, you are more likely to have better than the legal minimum rights, as unions have pushed for things like higher contractual pay during adoption leave.

Worker or employee?

This is an important question because most of the rights described in this booklet only apply to employees. Not everyone who works for someone else is an employee in the eyes of the law. If your employer tells you that you are not an employee, for example, because you are self-employed or an agency worker you should seek advice and clarification to make sure that this is really the case and you are not missing out on leave and pay that you are entitled to (see www.worksmart.org.uk for further guidance).

Same-sex partners

Same-sex partners are entitled to the same basic leave and pay rights as opposite-sex partners who are adopting a child. If employers provide better contractual rights to opposite-sex couples who are adopting a child then they must provide adoptive parents in a same-sex relationship with these rights too. To exclude same-sex partners would be direct sexual orientation discrimination which is unlawful.

Adoptive parents

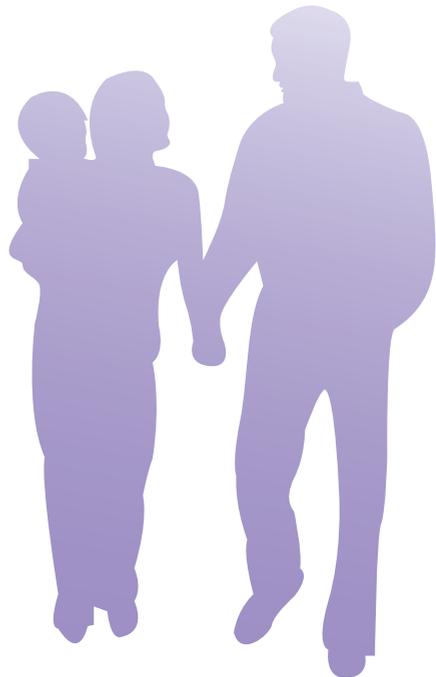
To access rights to leave and pay, you must have been matched with a child for adoption through a UK adoption agency or, if adopting from overseas, have approval for the adoption from a UK authority.

From 5 April 2015 if you are a local authority approved foster parent who has been approved as a prospective adopter and the local authority is placing a child with you with a view to permanent adoption (under section 22C(9B)(c) of the Children Act 1989) then you will also qualify for adoption leave and pay from when the child is initially placed with you. However, you can only use these leave and pay rights once. This means you can't make new claims for adoption leave and pay once the formal adoption goes through if you have already taken time off.

Individuals adopting privately without the permission of a UK authority, adopting a step-child or becoming a special guardian or kinship carer do not have rights to adoption leave and pay.

If you are adopting more than one child as part of the same adoption arrangement you won't be entitled to any more adoption leave and pay. The entitlement is per adoption arrangement rather than per child.

If you have a child through surrogacy you may be able to qualify for some of the rights described below. See the separate Know Your Rights booklet on surrogacy for more information.



Time off to attend adoption appointments

From 5 April 2015 if you are an employee and you have been notified by an adoption agency that a child is going to be or is likely to be placed with you, then you have the right to take time off work to attend adoption appointments.

If you are adopting a child on your own you are entitled to paid time off to attend up to five adoption appointments. You are entitled to be paid at your normal hourly rate and the maximum amount of time off that you can take for each appointment is 6.5 hours.

If you have been jointly approved for adoption with your partner one of you can use the right to paid time off to attend up to five adoption appointments, while the other can take unpaid time off to attend up to two appointments. Again the maximum amount of time that can be taken for each appointment is 6.5 hours. If you opt to use the right to take paid time off then you will be seen as 'the adopter' – the one who will take adoption leave and pay after the placement.

Agency workers who are adopting a child can take time off for adoption appointments if they have at least 12 weeks' service in the same role with the same hirer.

These rights can only be used to attend appointments that are made before the date the child is placed for adoption. They can only be used to attend appointments that have been arranged or requested by an adoption agency. Your employer can ask to see proof of this and evidence of the date and time of the appointments. They can also ask for a signed declaration stating whether you have chosen to use the right to paid time off or the right to unpaid time off. You must respond to these requests, if you don't you will not be able to take the time off.

Adoption leave and pay

If you are adopting a child you are entitled to 52 weeks' adoption leave and 39 weeks' statutory adoption pay (SAP). If you are adopting a child jointly with your partner, one of you must choose to be 'the adopter' for the purpose of taking adoption leave and pay. Only one of you can use this right. However, from 5 April 2015 the adopter can choose to convert some of their adoption leave and pay into Shared Parental Leave and Pay which can be used by either parent.

From 5 April 2015 the right to adoption leave and pay is a day one right for employees as maternity leave is (previously, to qualify for adoption leave and pay, you had to have at least 26 weeks' service with your employer).

To qualify for SAP you must have at least 26 weeks' service with your employer by the week you are matched with a child and your average weekly earnings in the eight weeks before you are matched must be above the Lower Earnings Limit.

From 5 April 2015 the first six weeks of SAP will be paid at 90 per cent of your normal weekly earnings and the remaining 33 weeks will be paid at a flat rate (or 90 per cent of your earnings if you earn less than the flat rate). See www.gov.uk/adoption-pay-leave/pay for the current flat rate.

Notice and evidence for your employer

Within seven days of being told that you have been matched with a child you must give your employer notice of your intention to take adoption leave and the date you want it to start. In addition you must give at least 28 days' notice of the date you want your SAP to begin. Or if these notice requirements can't be met then you must provide notice as soon as reasonably practicable.

Your adoption leave and pay can start either on:

- the date the child is going to be placed with you or
- an earlier date that is no more than 14 days before the placement is due to begin.



If you're adopting from overseas your leave can't begin before the child enters the UK.

When you notify your employer of your intention to take adoption leave, you will need to give them the following:

- the name and address of the adoption agency
- the date on which you were notified you had been matched with a child or the date you received official notification that you had been approved for an overseas adoption

- the date the agency expects to place the child with you or the date the child is expected to enter the UK
- a signed declaration that you have chosen to be the adopter and to take adoption leave and claim SAP.

You can vary the start date for your adoption leave and pay but you must tell your employer of any change of plans at least 28 days before the date given in the original notice.

Paternity leave and pay

If you are the partner of the adopter you are entitled to take one or two consecutive weeks' paternity leave after the child is placed with you. This leave must be taken within 56 days of the placement.

You can claim statutory paternity pay (SPP) which is paid at a flat rate for each week of paternity leave (or 90 per cent of your normal earnings if that is lower). See www.gov.uk/paternity-pay-leave/pay for the current rate of statutory pay.

You are entitled to paternity leave and pay if:

- you have at least 26 weeks' service with your employer by the end of the week in which the adopter is notified they have been matched with a child or the date you receive

official notification that you have been approved for an adoption from overseas, and

- you are the spouse, civil partner or co-habiting partner of the adopter and you expect to have the main responsibility along with the adopter for raising the child.

To qualify for statutory paternity pay you must also have average weekly earnings that are more than the Lower Earnings Limit in the eight-week period before the end of the week in which you are matched with a child.

Notifying your employer

If you intend to take paternity leave you have to give your employer notice that states:

- the date on which the adopter is notified they have been matched with a child
- the date the child is expected to be placed with the adopter
- the length of the leave that you intend to take (i.e. either one week or two weeks' leave)
- the date that you have chosen for your leave to begin.

You must also provide a signed declaration that you have opted to take paternity leave and pay and not adoption leave and pay.

This notice must be given within seven days of the adopter being notified that they have been matched with a child and it should be at least 28 days before you want SPP to begin (if you can't meet these notice requirements then as soon as reasonably practicable). You can vary the start date for the leave, provided you give your employer at least 28 days' notice.



Shared Parental Leave and Pay

If you are adopting a child with your partner on or after 5 April 2015 you may be able to access Shared Parental Leave (SPL) and Shared Parental Pay (ShPP). This could give you and your partner more flexibility over how you take time off work and care for your child in the first year following the adoption.

SPL and ShPP are created by the adopter bringing or giving notice that they want to bring their adoption leave and pay entitlements to an early end and convert the remaining amount into SPL and ShPP. Either parent can then take SPL and ShPP as long as they meet the eligibility criteria. The maximum amount of SPL that can be created is 50 weeks and the maximum amount of ShPP is 37 weeks (i.e. the adopter must take at least two weeks' adoption leave and SAP).

Unlike adoption leave SPL doesn't have to be taken as a single block of leave. So a parent could take a block of SPL then return to work for a period then take some more SPL. Each parent is entitled to take up to three separate blocks of SPL. SPL must be taken as a week's leave or multiples of a week's leave.

SPL must be used within a year of the placement date. It can be used so that both parents are off work at the same time caring for the child. For example, the adopter can give notice to their employer around the time of the placement that they only intend to take 26 weeks' adoption leave and 26 weeks' SAP. This then creates an entitlement to 26 weeks' SPL and 13 weeks' ShPP which their partner may decide to use to take time off when the adopter is still on adoption leave or after they have returned to work.

ShPP is paid at the same flat rate as SPP and the final 33 weeks of SAP.

Eligibility for SPL and ShPP

To be eligible to take SPL:

- You must be sharing the main responsibility for caring for the child with your partner (single adopters will not qualify).
- You or your partner must be entitled to adoption leave and/or SAP which has been brought to an early end.
- You must be an employee with at least 26 weeks' service with your current employer and your average earnings must be more than the Lower Earnings Limit in the eight weeks ending with the week that you are matched with a child or received official notification that you had been approved for an adoption from overseas (if you qualify for SAP or paternity leave and SPP then you will meet these criteria).
- Your partner must have been an employed or self-employed earner for at least 26 out of the 66 weeks immediately before the week in which the notification of being matched with a child or approved for an overseas adoption was received and have earned an average £30 a week in 13 of the 66 weeks (it doesn't have to be consecutively).

If you are the adopter and your partner is self-employed your partner can't take SPL and ShPP. However, you may still decide to bring your adoption leave and pay to an early end to create some SPL and ShPP for yourself to use, for example, if you want to return to work for a period and then resume leave.

Curtailing adoption leave and pay

The adopter can bring their adoption leave to an early end and create an entitlement to SPL, either by returning to work or by giving their employer a 'curtailment notice'. If they want to convert some SAP into ShPP then they must give their employer a curtailment notice.

A curtailment notice tells the employer the date on which they want their adoption leave and SAP to end. The notice must be given to the employer at least eight weeks before their chosen end date.

Notice of entitlement and intention to take SPL

If you want to take some SPL you must give your employer two notices: a notice of your entitlement and intention to use SPL and a 'booking notice' to book a period of SPL.

The first notice is not binding it just tells your employer that you qualify for SPL and ShPP and would like to use it. It must be given to your employer at least eight weeks before you intend to take any SPL.

You must include the following information in this notice:

- your name
- your partner's name
- the date the adopter was notified they had been matched with a child or received official notification approving them as an adopter in the case of an adoption from overseas

- the date the child was expected to be placed and the actual date they were placed or entered the UK in the case of an adoption from overseas
- the start and end dates of the adopter's adoption leave and SAP
- the total amount of SPL and ShPP that is available once the adoption leave and pay entitlement ends
- how much SPL and ShPP you and your partner intend to take
- an indication of when you intend to take your SPL and ShPP.

You also need to give your employer a signed declaration that you meet the eligibility criteria for SPL and ShPP and that you will inform them if this is no longer the case.

Your employer will need a signed declaration from your partner too that includes their name, address and national insurance number. They must also consent to the amount of SPL and ShPP you intend to claim and to your employer processing their information.

Your employer can ask for evidence from the adoption agency of the adoption, the name and address of the adoption agency and the name and address of your partners' employer. If your employer does ask for this information then you must respond within 14 days of their request.

Booking notice for SPL

After you have given your notice of entitlement and intention to use SPL you must give your employer a booking notice. This is a binding notice which tells them the start and end dates of any period of SPL you plan to take. You can give a maximum of three booking notices (unless your employer agrees to accept more).

The booking notice must be given at least eight weeks before the intended start date of SPL. It can provide notice of the start and end dates of more than one period of SPL. If it does it will be treated as a request for discontinuous leave which your employer can refuse. However if it provides notice of just one period of SPL then the employer must grant that leave.

Requests for discontinuous leave

If you request discontinuous leave within two weeks of receiving your booking notice, your employer can:

- agree to the periods of leave requested
- propose alternative dates for the periods of leave
- refuse the periods of leave without proposing alternative dates.

If your employer agrees to the requested leave or agrees alternative dates with you then you are entitled to take the leave. If alternative dates are agreed you need to give a new booking notice to your employer which will not count towards your maximum of three.

If the employer refuses your request or does not respond to it within two weeks, then you are entitled to take the total amount of leave you requested in the booking notice as one continuous block. You can choose a start date for this leave by giving notice of it within five days of the end of the two-week period. The start date you choose must be at least eight weeks after the date on which you gave your original notice. If you don't notify your employer of a start date the leave must begin on the start date of the first period of leave you requested in your booking notice.

Alternatively if you can't reach agreement with your employer, you can withdraw your original booking notice within 15 days of giving it. It will not then count towards your maximum of three notices and you can begin again.

If you change your mind

You can change your mind about a period of SPL but you must give your employer at least eight weeks' notice before both the date you were meant to start your leave and the new date you've chosen.

If you give notice that you want to vary a period of SPL that you've already booked it will count towards the maximum of three notices you can give, unless the variation:

- withdraws a notice of discontinuous leave that your employer wouldn't agree to
- is because you originally requested discontinuous leave and your employer suggested alternative dates which you've agreed to
- is because your child is being placed for adoption earlier or later than expected.



Keeping in touch during adoption leave and SPL

You can work up to 10 'Keeping in Touch' (KIT) days during adoption leave without bringing your leave and your SAP to an end.

Similarly, during SPL you can work up to 20 days – known as 'Shared Parental Leave In Touch' (SPLIT) days – without bringing your SPL or ShPP to an end. In the case of SPLIT days, the maximum of 20 days applies to the whole period you are eligible to take SPL rather than to each block of SPL that you take.

Your employer can't make you work KIT or SPLIT days but you may find them beneficial, for example, to attend a staff training day or to generally keep in touch with developments in the workplace.

There is no requirement for KIT or SPLIT days to be paid at your normal rate of pay. You need to agree this with your employer. You are still paid SAP or ShPP for the weeks in which you are working KIT or SPLIT days.

KIT and SPLIT days could be used to give you a period of part-time work. This might be useful if you want to trial a period of part-time work or have a phased return to work.

For example, you could take six weeks of SPL and agree with your employer that you will work three SPLIT days a week during those six weeks (18 SPLIT days in total). If your employer agrees to pay your normal pay for the SPLIT days and you are still receiving ShPP then it would make a period of part-time work more affordable too.

Working during SPL does not extend your SPL entitlement. In the example given above, you would still use up six weeks of your SPL entitlement even though you were actually working three days a week during those six weeks.

Terms and conditions during leave

During adoption leave, paternity leave or SPL, your employment contract and all your terms and conditions continue, except your right to receive your normal wage or salary. You are also protected from detriment or dismissal because you have tried to take, are taking or have taken a period of statutory leave.

Redundancy during adoption leave or SPL

If your job becomes redundant while you are on adoption leave or SPL you have the right to be offered a suitable and appropriate alternative vacancy if one exists with your employer. This new post must have terms and conditions that are not substantially less favourable than your previous job.

Returning to work

If the total amount of adoption leave and SPL or paternity leave and SPL that you have taken does not exceed 26 weeks you have the right to return to the same job on the same terms and conditions.

If you have taken a total of more than 26 weeks' leave then you have the right to return to the same job unless that is not reasonably practicable, in which case you have the right to return to a similar job on terms and conditions that are not less favourable.

Unpaid parental leave

As well as adoption leave, paternity leave and Shared Parental Leave, which must all be taken within the first year of the child's placement, many adoptive parents will also qualify for unpaid parental leave which can be used to take time off work to care for a child up to their 18th birthday (the upper age limit increases from 5 to 18 years old from 5 April 2015).

To be eligible for this parental leave, you must have at least a year's service with your current employer. The entitlement is to 18 weeks' unpaid parental leave per child. So if you have two children your total entitlement is 36 weeks.

Under the basic right you have to take this leave in blocks of one week or multiples of a week. If you do take less than a full week's leave it will still count as a week and be deducted from your total entitlement. However, if your child is disabled or your employer has agreed to leave being taken in shorter periods, you may be able to take the leave on a daily or even shorter basis.

Under the basic right you can't take more than four weeks' parental leave a year for each child (if you have two children the maximum amount would be eight weeks' leave a year). However,

your employer may have agreed not to apply this maximum limit.

To take parental leave you must give your employer at least 21 days' notice. Your employer can postpone a period of parental leave that you have requested if they believe it would unduly disrupt the business. However they must allow you to take the leave at an agreed date within six months of the start date you had requested.

If you take less than four weeks' parental leave you have the right to return to the same job. However, if you take more than four weeks' parental leave, you have the right to return to the same job unless that is not reasonably practicable in which case you have the right to return to a similar job on terms and conditions that are not less favourable.

Right to request flexible working

Once you become a parent, you may wish to reduce or vary your working hours to accommodate your childcare responsibilities.

All employees with 26 weeks or more service with their employer have the right to request flexible working. Your employer has a duty to consider a request reasonably.

A request must be in writing and must include:

- the date of the application, the change you are requesting and when you'd like it to begin
- what effect you think the change would have on your employer and how that could be dealt with
- a statement that it is a statutory request and, if you have made a request before, the date you made that request on.

You can only make one statutory request a year.

Acas has a statutory code of practice which explains what an employer should do with a request.

It says they should arrange to discuss the request with you as soon as possible, they should allow you to be accompanied by a colleague at a meeting to discuss the request, they should inform you in writing of their decision and if they reject the request they should allow you to appeal that decision.

The employer must give you a final response within 12 weeks of receiving your initial request.

If your employer agrees to the request then it results in a permanent change to your contract. If you want to trial a period of flexible working or only want a temporary variation then you should make sure you agree this with your employer in writing.

Your employer can say no to your request for one of eight business reasons. They cover: additional costs, an inability to reorganise work, an inability to recruit additional staff, detrimental impact on quality, performance or customer service, insufficient work for the periods the employee proposes to work and a planned structural change to your business.

If you are a mother and your employer rejects your request, you may be able to claim indirect sex discrimination if you can show that by not allowing flexible working your employer is putting mothers

(who still tend to have the primary caring responsibility for children) at a disadvantage and that your employer could have still met their business needs if they had granted the request.

If you are a father who is denied flexible working but your employer has granted similar requests from mothers then you might be able to claim direct sex discrimination.

If you are a parent in a same-sex relationship who is denied flexible working when other parents in similar circumstances have been granted it then you might be able to claim sexual orientation discrimination.



Emergency time off for dependants

As a working parent you have a statutory right to time off that could be used in the following circumstances:

- to help if a child falls ill or is injured
- to make arrangements to help care for a child who is ill or injured
- to deal with an unexpected breakdown in childcare
- to deal with an unexpected incident at school that involves your child.

The right is to a reasonable amount of time off to deal with the immediate crisis, for example, to put alternative childcare arrangements in place if your usual nursery or childminder can't look after your child.

You must tell your employer why you are off work as soon as possible.

The time off doesn't have to be paid. However, your employer may agree to pay it or they may provide a certain amount of paid carer's leave or compassionate leave that can be used in these circumstances.



Contacts

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Working Families

Cambridge House
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Free legal helpline for low income families:
0300 012 0312 or email: advice@workingfamilies.org.uk

www.workingfamilies.org.uk
Twitter: @workingfamUK

Unions today – Your friend at work

The rights described in this booklet – and many others such as the minimum wage – have been won by union campaigning. Without union help and assistance many workers don't get the full benefit of their rights. Unions also help negotiate better pay and conditions than the legal minima, including far better provisions for family-friendly employment.

Every day unions help thousands of people at work and every year they win hundreds of millions of pounds in compensation for their members through legal action.

To find out more about trade unions and which is the best for you visit the TUC website **www.tuc.org.uk/joinaunion**

www.worksmart.org.uk

This is a one-stop site for everyone at work. The site provides a range of information about working life – whether you are a union member or not.



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