

## Children and Families Guidance

- **Maternity**
- **Adoption**
- **Paternity (equally Maternity Support/Adoption Support)**
- **Shared Parental Leave**
- **Unpaid Parental Leave**
- **IVF treatment**

### 1 **Maternity Rights**

A pregnant employee has the statutory right to 52 weeks Maternity Leave; this right is not dependent upon length of service. The first 26 weeks is classed as 'Ordinary Maternity Leave' and the last 26 weeks as 'Additional Maternity Leave'.

The earliest that Maternity Leave can begin is the beginning of the 11th week before the Expected Week of Childbirth (EWC).

New mothers must take at least 2 weeks Maternity Leave following the birth.

Following Ordinary Maternity Leave (ie return within 26 weeks), the employee has the right to return to the same job. If she returns after Additional Maternity Leave, she has the right to return to her original job or a suitable alternative (similar with the same or better terms and conditions).

Additionally, the employee will be entitled to:

- Reasonable time off with pay for antenatal care;
- Up to 10 'Keep in touch' (KIT) days where agreed with the employer;
- Protection of her employment terms and conditions, eg continuity of service, any pay rises, improvements in terms and conditions, accrual of annual leave.

To qualify for Maternity Leave, the employee must advise the organisation by the end of the 15th week before the EWC:

- that she is pregnant;
- the expected week of childbirth, by means of a medical certificate (usually a MatB1) if requested;
- the date she intends to start Maternity Leave (normally between the beginning of the 11th week before EWC and the birth. NB She can subsequently change the date she intends to start Maternity Leave, but must give 28 days' notice of change.
- Once notification is received, the employer must respond in writing to the

employee within 28 days, setting out the start date and return date of her Maternity Leave. Where the employee gives notice of change, the employer must respond within 7 days confirming new start and return dates.

- Where the employee subsequently wishes to change her return date she must give 8 weeks' notice.

### Shared Parental Leave

Parents are now able to choose how they share care of their child during the first year after birth. Employed mothers are still entitled to 52 weeks of Maternity Leave; however, working parents may opt to share the leave if they prefer. More details are available in 7. below.

## 2 **Maternity Pay**

The employee will be eligible for Statutory Maternity Pay (SMP) where she has 26 weeks service (by the 15th week before EWC) and earns at least the lower earnings limit for National Insurance contributions. Where eligible, employees will be paid SMP for up to 39 weeks:

Length of continuous service	Leave entitlement
Less than 26 weeks service (from the 15th week before EWC)	52 weeks unpaid leave *
More than 26 weeks service (from the 15th week before EWC) and an average weekly earnings at least equal to the lower earnings limit for National Insurance contributions	39 weeks paid leave: <ul style="list-style-type: none"> <li>• 6 weeks at higher rate Statutory Maternity Pay (SMP) which is 90% average weekly earnings (before tax)</li> </ul> <b>plus</b> <ul style="list-style-type: none"> <li>• 33 weeks at lower rate SMP (or 90% of average weekly earnings where this is lower)</li> </ul> <b>plus</b> <ul style="list-style-type: none"> <li>• 13 weeks unpaid leave</li> </ul>

\* Woman who do not qualify for SMP may be entitled to Maternity Allowance paid by the Benefits Agency for up to 39 weeks provided they have been employed (or self-employed) for 26 weeks out of the 66 weeks before the EWC.

## 3 **Adoption Rights**

The rights to Adoption Leave and Adoption Pay broadly follow the principles of the rights to Maternity Leave and Maternity Pay.

An adoptive parent can therefore take up to 52 weeks Adoption Leave; this right is not dependent upon length of service. The first 26 weeks is classed as 'Ordinary Adoption Leave' and the last 26 weeks as 'Additional Adoption Leave'.

The employee has the right to return to his/her original job provided he/she returns within 26 weeks (ie after Ordinary Adoption Leave). If he/she returns after Additional Adoption Leave, he/she has the right to return to his/her original job or a suitable alternative (similar with the same or better terms and conditions).

Additionally, where an employee is entitled to Adoption Leave, he/she will also be entitled to:

- Up to 5 paid appointments with the Adoption Agency (after he/she been matched with a child);
- Up to 10 'Keep in touch' (KIT) days where agreed with the employer;
- Protection of his/her employment terms and conditions, eg continuity of service, any pay rises, improvements in terms and conditions, accrual of annual leave.

Adoption Leave and Adoption Pay are available to:

- individuals who adopt;
- one member of a couple where a couple adopt jointly (the couple must choose which partner takes Adoption Leave). (The partner of an individual who adopts, or the other member of a couple who are adopting jointly, may be entitled to Paternity (Adoption Support) Leave and pay, see 5. below.)

Employees must give their employer documentary proof to show that their right to paid Statutory Adoption Leave. This is usually a matching certificate from the adoption agency; the adoption agency must be recognised in the UK.

Statutory adoption leave can start either:

- from the date the child starts living with the employee;
- up to 14 days before the date the child is expected to start living with the employee;
- When the child arrives in the UK or within 28 days of this date (overseas adoption)
- The day the child is born or the day after (if the employee used a surrogate to have a child).

Wherever possible, the employee should inform the employer within 7 days of being told they have been matched with a child or alternatively as soon as possible.

## Shared Parental Leave

Parents are now able to choose how they share care during the first year after adoption. More details are available in 7. below.

### 4 **Adoption Pay**

The employee will be eligible for Statutory Adoption Pay (SAP) where he/she has 26 weeks service (by the date of notification of being matched with a child for adoption) and earns at least the lower earnings limit for National Insurance contributions. Where eligible, employees will be paid SAP for up to 39 weeks.

Length of continuous service	Leave entitlement
Less than 26 weeks service (by the date of notification of being matched with a child for adoption)	52 weeks unpaid leave
More than 26 weeks service (by the date of notification of being matched with a child for adoption) and average weekly earnings at least equal to the lower earnings limit for National Insurance contributions	39 weeks paid leave: <ul style="list-style-type: none"><li>• 6 weeks at higher rate Statutory Adoption Pay (SAP) which is 90% average weekly earnings (before tax)</li><li><b>plus</b></li><li>• 33 weeks at lower rate SAP (or 90% of average weekly earnings where this is lower)</li><li><b>plus</b></li><li>• 13 weeks unpaid leave</li></ul>

### 5 **Paternity Leave (equally Maternity Support or Adoption Support Leave)**

The following employees may be eligible for Paternity (or Maternity Support or Adoption Support) Leave:

- the child's father or the mother's partner\* (different sex or same sex);
- the partner of the adoptive parent\*;
- where a couple are adopting, the adoptive parent who is not taking Adoption Leave.

*\*In this context, 'partner' is defined by law as "someone who lives with the mother of the baby (child) in an enduring family relationship but is not an immediate relative".*

To qualify for Paternity (or Maternity Support or Adoption Support) Leave, an employee must:

- have 26 weeks of continuous service by the end of the 15<sup>th</sup> week before the expected week of childbirth (EWC) or the end of the week in which the child's adopter is notified of being matched with the child; and
- have or expect to have responsibility for the upbringing of the child;

- give the correct notice.

Paternity Leave may be taken as a single block of one or two calendar weeks (including non work days) at or around the time of the birth or adoption. The period of leave can start from the date of the child's birth or adoption or from a chosen number of days or weeks after the date of the child's birth or adoption but must be taken within 56 days of the actual date of birth or adoption of the child or the expected week of birth, if the child is born early.

Notice of intention to take Paternity Leave must be given by the 15th week before the baby is due (unless this is not reasonably practicable).

For adopters, employees should inform their employer that they intend to take Paternity (Adoption Support) Leave within 7 days of the adopter (or joint adopter) being notified by the adoption agency that they have been matched with a child.

Employees need to say whether they want one or two weeks' leave and when they want their leave to start. This can be changed with 28 days notice (unless this is not reasonably practicable, eg if the baby is born early).

Fathers (or the mother's partner) are eligible to take unpaid time off work to accompany a pregnant woman to 2 antenatal appointments, capped at a maximum of 6.5 hours per occasion. Healthwatch Worcestershire recognise the importance of these appointments to both parents and will not unreasonably refuse unpaid leave, use of Time off in lieu or making up of hours where the father (or partner) wishes to attend more than 2 visits. The father (or partner) may be required to complete a declaration stating the time and date of the appointment, that the appointment is made on the advice of a registered medical practitioner, nurse or midwife and that he or she qualifies either by their relationship with the mother or with the unborn child.

## 6. **Additional Paternity Leave**

Additional Paternity Leave (where the mother transferred over some of her Maternity Leave entitlement to the father) has now been replaced by Shared Parental Leave.

## 7. **Shared Parental Leave**

Shared Parental Leave (SPL) is a statutory entitlement enabling eligible parents to choose how to share the care of their child, during the first year of birth or adoption, dependent upon their preferences and individual circumstances. Parents are able to share a 50 week 'pot' of leave and can decide to be off work at the same time, or take turns, or a combination of both. Blocks of leave can be taken continuously between partners or, where agreed with the employer, in discontinuous chunks. All eligible employees have a statutory right to take Shared Parental Leave; there may also be an entitlement to some Shared Parental Pay (eligibility details below).

Shared Parental Leave can only be used by **two** people:

- the mother (or adopter) **and**
- **one** of the following:
  - the father of the child (in the case of birth), or
  - the spouse or partner of the child's mother/adopter

Both parents must share the main responsibility for the care of the child at the time of the birth/placement for adoption.

Additionally, an employee seeking to take SPL must satisfy each of the following criteria:

- the mother/adopter of the child must be entitled to statutory maternity/adoption leave **or** (if not entitled to statutory maternity/adoption leave) they must be entitled to Statutory Maternity/Adoption Pay or Maternity Allowance **and** must have ended or given notice to reduce any maternity/adoption entitlements;
- the employee must still be working for the same employer at the start of each period of SPL;
- the employee must pass the 'continuity test', requiring them to have a minimum of 26 weeks' service at the end of the 15th week before the child's expected due date/matching date;
- the employee's partner must meet the 'employment and earnings test'; in the 66 weeks leading up to the child's expected due date/matching date they must have worked for at least 26 weeks and earned an average of at least £30 a week in any 13 of those weeks (*this is correct as of 2019/20 but may change annually*);
- the employee must correctly notify the employer of their entitlement and provide evidence as required.

The amount of leave available is calculated using the mother's entitlement to maternity/adoption leave, which allows her to take up to 52 weeks' leave. If she reduces her maternity/adoption leave entitlement, then she and/or her partner may opt-in to the SPL system and take any remaining weeks as SPL. This means her partner could begin to take SPL while the mother is still on maternity/adoption leave.

Unlike maternity/adoption leave, eligible employees can stop and start their SPL and return to work between periods of leave with each eligible parent able to submit three notifications booking periods of leave (giving a minimum 8 week's written notice prior to each period of leave). SPL can only be taken in complete weeks either as a continuous period of leave or as separate (discontinuous) periods of leave. Where an employee elects to take a period of continuous leave, provided the eligibility criteria are met and procedures and notice periods followed, Healthwatch Worcestershire will support the notification. Where an employee requests discontinuous leave, reasonable consideration will be given, having due regard to the benefits to the employee/employer balanced against any adverse impact on the organisation.

Healthwatch Worcestershire encourages employees who are about to become parents to discuss their SPL needs or requests with the Managing Director at an early

date to ensure that arrangements can be agreed (or where necessary requests modified).

NB It remains a legal requirement that the birth mother must take at least 2 weeks of maternity leave after the birth of her child before her maternity leave can be curtailed. Equally, an adopter must take at least 2 weeks of adoption leave before it can be curtailed.

## **8. Shared Parental Pay (ShPP)**

Eligible employees may be entitled to take up to 37 weeks ShPP while taking SPL. The amount of weeks available will depend on the amount by which the mother/adopter reduces their maternity/adoption pay period or maternity allowance period.

ShPP may be payable during some or all of SPL, depending on the length and timing of the leave.

In addition to meeting the eligibility requirements for SPL, an employee seeking to claim ShPP must further satisfy each of the following criteria:

- the mother/adopter must be entitled to statutory maternity/adoption pay or maternity allowance and must have reduced their maternity/adoption pay period or maternity allowance period;
- the employee must intend to care for the child during the week in which ShPP is payable;
- the employee must have an average weekly earnings for the period of 8 weeks leading up to and including the 15<sup>th</sup> week before the child's expected due date/matching date of not less than the lower earnings limit in force for national insurance contributions (£118 per week at 2019/20);
- the employee must remain in continuous employment until the first week of ShPP has begun;
- the employee must give proper notification at least 8 weeks in advance and in line with procedure.

## **9. IVF treatment**

There is no statutory right for employees to take time off work to undergo investigations or IVF treatment. Healthwatch Worcestershire will support employees attending such such appointments and wherever possible will authorise the use of Annual Leave or making up of hours.

Following implantation, the women is regarded as being pregnant. If the IVF is unsuccessful, the protected period ends 2 weeks after the end of the pregnancy, ie 2 weeks after the date the woman was informed that the implantation was not successful.

## **10. Unpaid Parental Leave**

Unpaid Parental Leave is completely separate from Maternity, Paternity, Adoption and Shared Parental Leave arrangements.

Employees with at least one year's continuous service who have parental responsibility for a child are entitled to take up to 18 weeks' unpaid leave, for each child, before the child's 18th birthday in order to care for the child or to make arrangements for their welfare.

Leave may be taken straight after the birth or adoption or following a period of Maternity or Adoption Leave or at any other time providing the correct notice is given.

Foster parents do not have a right to parental leave although individuals may utilise annual leave and/or time off in lieu.

This right is available to either parent but is not transferable between parents; therefore, each parent is entitled to the appropriate unpaid leave in respect of each child.

Employees must give at least 21 days notice of their intention to take parental leave and must specify the dates on which the period of leave is to begin and end.

Parental leave can be taken in blocks of a week (based on employee's working pattern) or multiple weeks, but not odd days, up to a maximum of 4 weeks in any leave year. Parental leave for a child with a disability can be taken in single days.

Parents have the right to return to the same job after 4 weeks or less of parental leave.

It should be noted that there is no right to accrual of any type of leave (eg annual leave or sickness leave) during a period of unpaid parental leave.



## Maternity Procedure

### 1 Pre Maternity Leave

- 1.1 The employee should notify her line manager as early as possible in the pregnancy so that a risk-assessment can be carried out and any temporary changes to her duties can be implemented to protect the health, safety and welfare of both mother and child.
- 1.2 The employee will be allowed reasonable time off with pay for antenatal care; this includes hospital, clinics, GP appointments and routine check-ups. Additionally, time off with pay may be allowed for relaxation and parent-craft classes if she produces a letter from her GP/ Midwife or Health Visitor stating that these classes are a necessary part of her antenatal care. In all cases, after the first visit, time off will be subject to production of an appointment card.
- 1.3 To ensure she qualifies for Maternity Leave, the employee must advise her line manager by the end of the 15th week before the expected week of childbirth (EWC):
  - that she is pregnant;
  - the EWC, by means of a medical certificate (Form MatB1);
  - the date she intends to start Maternity Leave. This can normally be any date which is no earlier than the beginning of the 11th week before the EWC up to the birth.
- 1.4 Healthwatch Worcestershire will respond in writing within 28 days, confirming her right to Maternity Leave and Maternity Pay (where applicable) and setting out her return date.
- 1.5 Where the employee is not entitled to Maternity Pay (see Maternity Rights), Government form SMP1 will be issued within 28 days for the employee to provide to the Department for Work and Pensions (as she may be eligible for Maternity Allowance).
- 1.6 If the employee subsequently wishes to change the start date of her Maternity Leave, she must give 28 days' notice. Healthwatch will respond within 7 days to confirm the new start and return dates. If she is unable to give notice, eg because the baby is born early, she should notify Healthwatch Worcestershire at the earliest opportunity so that her Maternity Leave and Maternity Pay can start the day following the birth and where necessary a new return to work date can be advised to her.
- 1.7 If the employee is absent due to pregnancy-related illness at any time during the four weeks up to the EWC, her Maternity Leave period will automatically begin on the day after the first day of absence.

- 1.8 Before the start of Maternity Leave, the employee and her line manager should agree arrangements for maintaining contact including frequency and method of contact. This will allow updates about any changes at work and smooth the way for return to work at the end of the Maternity Leave. It will also allow discussion about any 'Keep in Touch' (KIT) days mutually agreed as beneficial.

## **2 During Maternity Leave**

- 2.1 During Maternity Leave, all terms and conditions of employment remain the same with the exception of pay. The employee will receive Statutory Maternity Pay in place of normal pay where she meets the qualifying requirements.
- 2.2 The employee is required to notify the date of birth. It is a legal obligation that the employee takes a minimum of 2 weeks Maternity Leave following the birth for recovery.
- 2.3 During Maternity Leave, up to 10 'Keep in Touch' (KIT) days can be agreed for training, business updates, relevant meetings, appraisal, etc without the employee losing her right to SMP. KIT days will not be agreed for purely social visits.
- 2.4 Healthwatch Worcestershire recognise the benefit of employees keeping in touch with the business and will therefore 'top up' SMP to a day's normal pay for any day worked as an agreed KIT day.
- 2.5 The employee's annual leave entitlement will continue to accrue throughout her Maternity Leave.

If she decides not to return to work, any holiday entitlement accrued and not taken may be paid in lieu at the leave date. Similarly, overpayment for any annual leave taken in excess of the pro-rata entitlement will be recovered.

The employee should plan to take her annual leave during the appropriate leave year, even where her Maternity Leave runs across a leave year end. Where the employee has been unable to take her annual leave in the relevant period, the Managing Director may use discretion as to whether annual leave can be carried over into the following leave year.

Upon notification of the employee's return to work, it may be appropriate to agree for outstanding annual leave to be 'tagged on' immediately following her Maternity Leave in preference to returning to work and soon going off again.

## **3 Return to work**

- 3.1 If the employee returns on the date as agreed, she does not need to give further notice. However, any change to this date should be preceded by 8

weeks' notice to allow her return to be planned, her job to be risk assessed and notice to be given on any cover arrangements.

- 3.2 If the employee decides not to return to work at the end of her Maternity Leave, she will need to resign providing the appropriate notice as per her employment contract.
- 3.3 The employee may request to have temporary arrangements made in the workplace to express milk. This may be the provision of facilities ie a suitable room and access to a fridge. Alternatively, the timing and length of meal breaks may be temporarily adjusted to enable a return home to feed the baby.
- 3.4 In the event that the employee wishes to request to change her working pattern, she should consult the Healthwatch Worcestershire Flexible Working Guidance. It should be noted that an employee's right is to 'request' and the employer's duty is to 'give serious consideration'; this does not imply an automatic right to change contractual hours which will be dependent upon the needs of the organisation, and in particular, the service needs of Healthwatch Worcestershire's partners and clients.

#### **4 Stillbirth and Miscarriages**

- 4.1 In the sad event that the baby is stillborn after the end of the 24th week of pregnancy, or the baby dies after being born, the employee will be entitled to Maternity Leave and Maternity Pay.
- 4.2 If the baby is lost before 24 weeks, sympathetic consideration will be given to the granting of compassionate leave or sick leave.

## Adoption Procedure

Healthwatch Worcestershire Adoption Procedure broadly follows the principles of the Maternity Procedure - details are available upon request.

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### 1 Pre Adoption Leave

- 1.1 The employee should notify his/her line manager within 7 days of being notified that he/she has been matched for adoption. He/she must provide documentary proof, usually a matching certificate from a UK-recognised adoption agency. Where it is not possible for the employee to provide 7 days' notice, the notice should be provided as soon as possible.
- 1.2 Healthwatch Worcestershire recognises that Adoption can be finalised quickly and will therefore respond as soon as possible with entitlements to leave and pay and confirming the expected date of return from Adoption Leave.
- 1.3 If the employee needs to change the date on which they wish to start their Adoption Leave they may do so providing they give at least 28 days' notice (or as much as is reasonable practicable in the circumstances).
- 1.4 Where a couple are adopting jointly, either individual may take the Adoption Leave; however, the leave cannot be claimed by both individuals. The other adoptive parent may be eligible to claim Paternity (Adoption Support) Leave (or, where eligible, both parents may opt for Shared Parental Leave).
- 1.5 Unpaid time off will be allowed to attend pre-placement meetings; employees are requested to select the appointment which is least disruptive to the working day (where possible) and to give as much notice as they can. Time off for pre-placement meetings will not be unreasonably refused. Alternatively, employees may be able to use Time off in lieu or to make up the hours.
- 1.6 Adoption Leave can start on any day of the week determined either by the actual date of the child's placement or a pre-determined date no more than 14 days before the expected date of placement.
- 1.7 Before the start of Adoption Leave, the employee and his/her line manager should agree arrangements for maintaining contact including frequency and method of contact. This will allow updates about any changes at work and smooth the way for return to work at the end of the Adoption Leave. It will also allow discussion about any 'Keep in Touch' (KIT) days mutually agreed as beneficial.
- 1.8 If for any reason, the adoption is not successful and ends after the Adoption Leave has begun, the employee should return to work unless medical evidence is produced that they are not fit to work.

## **2 During Adoption Leave**

- 2.1 During Adoption Leave, all terms and conditions of employment remain the same with the exception of pay. The employee will receive Statutory Adoption Pay in place of normal pay where he/she meets the qualifying requirements.
- 2.2 During Adoption Leave, up to 10 'Keep in Touch' (KIT) days can be agreed for training, business updates, relevant meetings, appraisal, etc without the employee losing their right to Statutory Adoption Pay. KIT days will not be agreed for purely social visits.
- 2.3 Healthwatch Worcestershire recognises the benefit of employees keeping in touch with the business and will therefore 'top up' SMP to a day's normal pay for any day worked as an agreed KIT day.
- 2.4 The employee's annual leave entitlement will continue to accrue throughout his/her Adoption Leave.

If he/she decides not to return to work, any holiday entitlement accrued and not taken may be paid in lieu at the leave date. Similarly, overpayment for any annual leave taken in excess of the pro-rata entitlement will be recovered.

The employee should plan to take his/her annual leave during the appropriate leave year, even where his/her Adoption Leave runs across a leave year end. Where the employee has been unable to take his/her annual leave in the relevant period, the Managing Director may use discretion as to whether annual leave can be carried over into the following leave year.

Upon notification of the employee's return to work, it may be appropriate to agree for outstanding annual leave to be 'tagged on' immediately following his/her Adoption Leave in preference to returning to work and soon going off again.

## **3 Return to work**

- 3.1 If the employee returns on the date as agreed, he/she does not need to give further notice. However, any change to this date should be preceded by 8 weeks' notice to allow his/her return to be planned and notice to be given on any cover arrangements.
- 3.2 If the employee decides not to return to work at the end of his/her Adoption Leave, he/she will need to resign providing the appropriate notice as per his/her employment contract.

- 3.4 In the event that the employee wishes to request to change his/her working pattern, he/she should consult the Healthwatch Worcestershire Flexible Working Guidance. It should be noted that an employee's right is to 'request' and the employer's duty is to 'give serious consideration'; this does not imply an automatic right to change contractual hours which will be dependent upon the needs of the organisation, and in particular, the service needs of Healthwatch Worcestershire's partners and clients.