

Adoption Leave and Pay

The Employment Act 2002 sets out the basic rights to adoption leave and pay. The Act amends the Employment Rights Act 1996 and the detail of the rights are mainly set out in the Paternity and Adoption Leave Regulations 2002. There is a separate Factsheet available for Statutory Adoption Pay.

ELIGIBILITY

To qualify the employee must be newly matched with a child for adoption by an adoption agency (foster or step-parent adoptions will not qualify) and have at least 26 weeks service with the employer ending in the week in which they are notified of the match with a child for adoption.

LEAVE ENTITLEMENT

The leave entitlement is to 26 weeks ordinary adoption leave (OAL) followed by a further 26 weeks additional adoption leave (AAL) to run concurrently.

The employee may choose to begin their ordinary adoption leave either on the date when the child is placed with them for adoption or at a chosen date that is no more than 14 days before the date on which the child is expected to be placed.

The employee is only entitled to one period of adoption leave per placement, even if more than one child is being placed for adoption as part of the same arrangement.

DISTURBED PLACEMENTS

If the placement of the child ends for whatever reason during the adoption leave then this will be classed as a disturbed placement. In these circumstances the adoption leave will continue only for up to 8 weeks after the end of the placement.

NOTIFICATION

The employee must notify the employer within 7 days of them being notified that they have been matched with a child for adoption or, where that is not reasonably practicable, they must notify the employer as soon as reasonably practicable.

If the employer requests it, the employee must also provide either a matching certificate or letter from the adoption agency, which confirms the employee has been matched with the child. This document must state the name and address of the agency, the date on which the employee was notified of the match with the child and the expected date of the placement of the child.

An employee can change their mind about when they want to take their leave provided they give their employer 28 days' notice in advance (unless this is not reasonably practicable).

The employer must respond to the employee's notification to take leave within 28 days and they must write to them setting out their entitlement and advising them based on them taking their full leave entitlement, of when they will be expected to return to work.

RETURN TO WORK

When the employee is returning at the end of their entitlement to adoption leave, they will not have to give notice to their employer of their return to work. However, if an employee wishes to return early from adoption leave, they will need to give their employer 28 days' notice of the early return.

Employees returning to work after OAL only, have the right to return to the job in which they were employed before their absence.

An employee returning from AAL has the right to return to the job in which they were employed before their absence, or, if it is not reasonably practicable for the employer to return to another job which is both suitable and appropriate in the circumstances.

RIGHTS AND OBLIGATIONS DURING OAL AND AAL

General

Employees are protected from detriment or dismissal as a result of taking or seeking to take adoption leave and can bring claims at an employment tribunal if they find that these rights have been infringed.

TERMS AND CONDITIONS

Employees should not be treated less favourably in their contractual terms and conditions on the grounds of taking or seeking to take adoption leave.

During OAL all terms and conditions continue to apply apart from remuneration.

Although service continues throughout AAL, the terms that continue are restricted to the following.

- implied terms of trust, confidence and good faith;
- notice of termination;
- contractual redundancy compensation;
- discipline and grievance;
- disclosure of confidential information;
- acceptance of gifts or other benefits; and
- participation in any other business.

PENSION SCHEME

During OAL, where there is a contributory pension scheme, employer pension contributions continue at the full salary rate but for employee contributions, this can be based upon actual pay received. During AAL, pension scheme contributions continue only where the pension scheme rules dictate or where there is a contractual provision.

HOLIDAY ENTITLEMENT

The 4 week statutory entitlement accrues throughout both OAL and AAL. In line with the Working Time Regulations 1998, employees are not entitled to carry over holiday accrued from one leave year to the next.

Employers are not permitted to pay in lieu of statutory holiday unless the employee leaves before the end of the current leave year. Therefore, an employee may request and take holiday prior to adoption leave commencing and take any remaining days at the end of the adoption leave.

Contractual holiday entitlement over and above the 4-week statutory entitlement continues for OAL but not automatically for AAL. The employer must agree by contract the arrangements for any contractual holiday leave entitlement that they offer an employee whilst on AAL. Employers need to be careful when restricting an employee's benefits that they are not exposing themselves to a risk of claims for discrimination or breach of contract. Further advice on this area can be gained from the Helpline see details below.

PROTECTION AGAINST UNFAIR TREATMENT OR DISMISSAL

Employees must not be subjected to detrimental treatment on the basis that they are taking or intending to take adoption leave. If an employee is dismissed because they took or intended to take adoption leave the dismissal will be unfair.

FURTHER INFORMATION

Factsheets available from BSH:

Maternity Entitlement
Statutory Maternity Pay
Flexible Working

DTI Website

www.dti.gov.uk

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It offers general guidance only and should not be regarded as a complete or authoritative statement of law.

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If you wish to adapt the fact sheet for your own internal use, you must contact the Helpline before doing so.

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