

Statutory Adoption Pay

Statutory Adoption Pay (SAP) may be payable to adoptive parents where the certificate matching them with a child for adoption is issued on or after 6 April 2003. To qualify for SAP the employee must meet all of the following qualifying conditions:

- Be liable to Class 1 National Insurance
- Be a person with whom a child is, or is expected to be, placed for adoption under UK law
- Have been continuously employed for at least 26 weeks into the Matching Week (MW), ie when the adopter is notified that they have been matched with the child
- Have stopped working for, or taken leave, from the employer
- Have average weekly earnings at or above the Lower Earnings Limit (LEL) that applies at the end of the MW (£84 per week in 2006/07)
- Give the employer notice of when they expect the liability to pay SAP to begin at least 28 days beforehand. Where this is not reasonably practicable it must be given as soon as is practicable.

ADOPTION PAY PERIOD

When you have determined that an employee is entitled to SAP from you, it is payable for up to 26 weeks and must be paid even if the placement is disrupted after it has started or if the child dies after placement.

The period for which SAP is payable is known as the Adoption Pay Period (APP). The APP may start:

- 1 on the date the child is placed or up to two weeks in advance of the expected date of placement; and
- 2 on any day of the week.

SAP can be taken in whole weeks only and can continue for up to 26 weeks.

Payment of SAP by the employer will cease for any week in which the employee undertakes some work for that employer.

STATUTORY ADOPTION PAY ENTITLEMENT

Both men and women can be entitled to SAP. Where a married couple are adopting jointly, one can elect to receive SAP and the other to receive Statutory Paternity Pay (SPP). Where only one member of a couple is adopting the other member of the couple may be entitled to SPP as long as they meet the qualifying conditions.

SAP will be available when a child up to the age of 18 is newly placed for adoption.

When an employee becomes entitled to receive SAP from their employer, entitlement is for up to 26 weeks.

RATE OF STATUTORY ADOPTION PAY

For the 2006/07 tax year the rate of SAP is £108.85 per week or 90% of the employee's average weekly earnings, whichever is the lower amount.

CALCULATION OF AVERAGE EARNINGS

The 'relevant period' to be used to calculate an employee's average weekly earnings is the period between:

- 1 the last normal payday before the end of the matching week, ie on or before the Saturday of the Matching Week; and
- 2 the last normal payday falling at least eight weeks before the payday at 1.

For example, your employee is paid monthly on the last day of the month. If your employee's Matching Week was Sunday 24th November to Saturday 30th November, the last normal payday would be Friday 29th November. You then need to work back eight weeks from the 29th November (which will take you back to Friday 4th October) and include any paydays that fall within this period, ie Thursday 31st October.

To calculate the weekly average of the 2 payments, ie 29th November and 31st October, you should add the two figures together, multiply by six and then divide by 52 to give you a weekly average.

MATCHING CERTIFICATE

An employer must be given evidence to show the date that the child is expected to be placed. This will be in the form of a matching certificate that will be given to the employee by the adoption agency when they are notified that they have been matched with a child. Only approved adoption agencies will be able to issue a matching certificate and SAP *must not* be paid to an employee until the matching certificate has been provided.

STATUTORY ADOPTION PAY RECOVERY

The arrangements for recovery of Statutory Adoption Pay mirror those in place for Statutory Maternity Pay. In general, employers are able to recover 92% of the gross SAP paid to an employee, but where the employer is deemed a 'Small Employer', the employer can recover 100% of the gross SAP paid plus an additional 4.5% in respect of compensation for the employers' National Insurance Contributions paid on the SAP.

To be deemed as a Small Employer for SAP paid in the 2006/07 tax year, Class 1 National Insurance contributions (both employees' and employers') in the last complete tax year before the employee's matching week must be equal to or less than £45,000.

The method of recovery is to simply subtract the amount to be recovered from payments over to HMRC in respect of PAYE and National Insurance Contributions.

If there are insufficient monies from which to make the deduction, ie where the employer expects to pay out more in SMP than they will have to pay to HMRC for the same period, then an application to the HMRC Accounts Office can be made for advance funding.

Non Payment of SAP

Where an employee does not qualify to receive SAP from you, you must notify the employee in writing. The Inland Revenue has produced a model notification form for employers to use (form SAP1) but employers are free to produce their own. The employee will then be able to make a claim for Income Support.

This fact sheet is an outline of the position at the time of writing.

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

No part of this fact sheet should be copied or transmitted to any third party.

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