



# ADOPTION & SURROGACY ENTITLEMENTS TO LEAVE AND PAY

This policy is reviewed biennially by the Curriculum, Standards and Provision Committee.

To be read in conjunction with but not limited to:

- Maternity and Paternity policy and guidance
- Shared parental leave policy and guidance
- Flexible working policy and guidance

and other relevant policies and procedures

## History of Document

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## ADOPTION & SURROGACY ENTITLEMENTS – POLICY, PROCEDURE AND GUIDANCE

### 1. STATEMENT OF INTENT

SENDAT is a Multi Academy Trust specialising in the care and education of young people with Special Educational Needs and Disabilities. This policy should be considered in the light of this context and the complexity of need that is accommodated within the Trust and its constituent Schools / Alternative Provisions (APs).

### 2. INTRODUCTION

This policy, procedure and guidance outlines the statutory rights which apply to all employees and contractual rights which apply to all SENDAT teachers and support staff in relation to adoption pay and leave.

The main areas of interest covered in this document are:

- Adoption leave entitlements
- Adoption pay entitlements
- Returning to work
- Annual leave



- Pension Implications
- Surrogacy

### 3. SCOPE

For the primary adopters of children matched for adoption, the rights to adoption leave and pay mirror maternity leave and pay. Please refer to: Maternity and Paternity policy and guidance.

Adopters also have the same criteria for entitlements to shared parental Leave and pay. Some of the notification requirements will be different, for example,

- The relevant dates will be linked to the time of the match
- The relationship is evidenced by providing details of the adoption agency.

For further information see the Shared Parental Leave Policy on the Trust's website, or contact the SENDAT HR team.

The rights to adoption leave and pay allow an eligible employee who is adopting a child to take time off when a child is placed with them for adoption. An eligible employee is entitled to 26 weeks' ordinary adoption leave and a further 26 weeks' additional adoption leave, running from the end of ordinary adoption leave. During the period of ordinary adoption leave the employee may also be entitled to Statutory Adoption Pay and Occupational Adoption Pay (see Section 5 for further information about pay).

Paternity leave and pay may be available to the partner of an individual who adopts, or the other member of a couple where they are adopting jointly.

Adoption leave and pay is not available in circumstances where a child is not newly matched for adoption, for example when a step-parent is adopting a partner's child.

### 4. STATUTORY ADOPTION LEAVE

Where a couple is adopting jointly, the couple may choose which one of them takes adoption leave and which takes paternity\* leave.

Employees will be entitled to a total of 26 weeks' ordinary adoption leave, followed immediately by 26 weeks' additional adoption leave. Employees may choose to start their leave:

- Up to 14 days before the child starts living with you (UK adoptions)
- When the child arrives in the UK or within 28 days of this date (overseas adoptions)

Leave can start on any day of the week. Only one period of leave will be available, irrespective of whether more than one child is placed for adoption as part of the same arrangement.

If the child's placement ends during the adoption leave period, the adopter will be able to continue adoption leave for up to eight weeks after the end of the placement.



## **5. PATERNITY LEAVE**

Paternity leave is available to adoptive parents where a child is matched or newly placed with them for adoption. Either adoptive parent may take paternity leave where the other adoptive parent has elected to take adoption leave. In respect of an adopted child, the employee must have 26 weeks' continuous service by the week in which the child's adopter is notified of having been matched with the child for adoption.

To qualify for paternity leave, the employee must also have, or expect to have, responsibility for the upbringing of the child and be making the request to help care for the child or to support the child's mother.

Paternity leave must be taken in a single block of one or two working weeks within 56 days of the adoption of the child. Paternity leave can start either from the date the child is placed for adoption or from a chosen number of days or weeks after that date.

In the case of an adopted child, the employee must give written notice of his/her intention to take paternity leave no later than seven days after the date on which notification of the match with the child was given by the adoption agency. The notice must specify the date the child is expected to be placed for adoption, the date the employee intends to start paternity leave, the length of the intended paternity leave period and the date on which the adopter was notified of having been matched with the child.

If an employee subsequently wishes to change the timing of the paternity leave, he/she must give 28 days' written notice of the new dates

## **6. STATUTORY ADOPTION PAY**

During their adoption leave, most adopters will be entitled to Statutory Adoption Pay (SAP).

Statutory Adoption Pay is paid for up to 39 weeks. The first six weeks will be paid at 90% of the employee's average gross weekly earnings, bringing it into line with Statutory Maternity Pay. The remainder will be paid at the standard rate set by the Government. For further information, see the government's own website:

<https://www.gov.uk/adoption-pay-leave/pay>

Adopters who have average weekly earnings below the Lower Earnings Limit for National Insurance Contributions will not qualify for SAP. Additional financial support may be available through welfare benefits. Further information is available from the local Jobcentre Plus office or Social Security office.

## **7. OCCUPATIONAL ADOPTION PAY (OAP)**

### **7.1 Eligibility**

To qualify for OAP, the employee must have at least 1 year of continuous service with SENDAT at the 11<sup>th</sup> week before the expected week of placement. The Occupational Adoption Pay Scheme applies to employees with qualifying service regardless of the number of hours worked per week.



If the employee has less than 1 year of continuous service at the 15<sup>th</sup> week before the expected week of placement, he/she will not qualify for OAP, but will still get SAP or Statutory Adoption Allowance (SAA) as appropriate.

The amount of OAP received will depend on whether the employee returns to work at the end of adoption leave.

In order to determine eligibility for OAP, only continuous service with SENDAT, together with previous unbroken Local Government service (including service with LA maintained schools) is taken into account.

### 7.2 Adoption of a child over 5 years of age

The leave and pay offered to employees who adopt a child over five years of age will be at the discretion of the SENDAT Curriculum, Standards and Provision Committee but will not be less than the statutory provision.

### 7.3 Summary of main benefits

Length of service	SMP	OMP
Less than 26 weeks at QW	No entitlement except possibly SAA	No entitlement
At least 26 weeks at QW but less than 1 year at 11 weeks prior to EWP,	6 weeks at 90% of average pay plus 33 weeks standard rate SAP	No entitlement
More than 1 year at 11 weeks before EWP <b>(Support Staff)</b>	6 weeks at 90% of average pay plus 33 weeks standard rate SAP	Weeks 1-6 as per SAP Weeks 7-18 half pay (unless half pay plus standard rate SAP exceeds normal pay)*
More than 1 year at 11 weeks before EWP <b>(Teachers)</b>	6 weeks at 90% of average pay plus 33 weeks standard rate SAP	Weeks 1-4 full pay Weeks 5-6 as per SAP Weeks 7-18 half pay (unless half pay plus standard rate SAP exceeds normal pay)**

Note that if the normal earnings are lower than the standard rate of SAP, but above the Lower Earnings Limit (LEL), the 33 weeks will be paid at 90% of normal earnings.

\* Support Staff are required to return to work at SENDAT for a minimum of 12 weeks (regardless of whether they return on reduced hours) to secure an entitlement to OAP. If the employee does not return for the required period, then the half pay OAP entitlement must be repaid (SAP does not have to be repaid). The employee may choose to have the half pay paid as it falls due, or as a lump sum on return to work or as a lump sum after the employee has completed their 12 weeks' return to work.



\*\* Teachers are required to return to work at SENDAT for a minimum period of 13 weeks (or pro rata equivalent if the employee reduces working hours on her return to work) to secure an entitlement of OAP. (SAP does not have to be repaid). If the employee does not return for the required period, then the half pay entitlement must be repaid. The employee may choose to have the OAP paid as it falls due, as a lump sum on return to work or as a lump sum after having returned to work for 13 weeks.

The employee must return to contracted work in order to secure the entitlement to OAP. Supply and other casual arrangements do not count as contracted work.

## **9. PATERNITY PAY**

### **8.1 Ordinary Paternity Pay**

Pay during ordinary paternity leave will be at a standard rate of Statutory Paternity Pay (SPP) set by the Government for the relevant tax year, or at a rate equivalent to 90% of the employee's average weekly earnings if this figure is less than the rate of SPP. However, employees whose average weekly earnings are below the lower earnings limit (LEL) for national insurance contributions will not be eligible for ordinary statutory paternity pay.

Statutory paternity pay is treated as earnings and is therefore subject to PAYE and national insurance deductions.

Statutory paternity pay can start from any day of the week in accordance with the date the employee starts his/her paternity leave.

## **9. SHARED PARENTAL LEAVE AND PAY**

If the primary adopter chooses to curtail his/her right to adoption leave early, after the initial period of 2 weeks that must be taken, both parents may be eligible for up to 50 weeks' shared parental leave and up to 37 weeks' pay.

See the Shared Parental Leave Policy on the Trust's website, or contact the SENDAT HR team for further information, including the eligibility criteria.

## **10. NOTIFICATION OF INTENTION TO TAKE ADOPTION LEAVE**

Employees must inform their Headteacher / Head of School/AP or their line manager of their intention to take adoption leave within 7 days of being notified by their adoption agency that they have been matched with a child for adoption, unless this is not reasonably practicable. Adopters will need to confirm:

- the date on which the child is expected to be placed with them
- the date on which they want their adoption leave to start

Employees must inform their Headteacher / Head of School/AP or line manager within 28 days of the date of placement (or UK arrival date for overseas adoptions) changes.



## **11. MATCHING CERTIFICATE**

Employees will have to, on request, give their Headteacher / Head of School/AP / Line Manager a 'matching certificate' from their adoption agency as evidence of their entitlement to SAP. This certificate will also serve as proof of entitlement to adoption leave. Employees should ask their adoption agency for a matching certificate, which will include basic information on matching and expected placement dates.

## **12. CONTRACTUAL BENEFITS**

Employees are entitled to the benefit of their normal terms and conditions of employment, except for terms relating to wages or salary, throughout their 26 week ordinary adoption leave period and any period of shared parental leave. Most adopters will be entitled to SAP during this period.

During additional adoption leave, the employment contract continues and some contractual benefits and obligations remain in force, for example, compensation in the event of redundancy and notice periods.

## **13. CONTACT DURING ADOPTION LEAVE**

Shortly before an employee's adoption leave starts, discussions should begin regarding the arrangements for him/her to keep in touch during his/her leave, should he/she wish to do so. The School/AP / Line Manager will also reserve the right, in any event, to maintain reasonable contact with the employee from time to time during adoption leave. This may be to discuss plans for return to work, to discuss any special arrangements to be made, training to be given to ease the return to work, or simply to update the employee on developments at work during his/her absence.

## **14. KEEPING-IN-TOUCH (KIT) DAYS**

Keeping-in-touch (KIT) days provide for the employee to attend for work on up to 10 occasions during maternity leave, without the risk of statutory maternity leave being terminated. Both parties must be in agreement on any such work and the dates must be mutually agreed. A KIT day cannot take place during the first two weeks following the birth of the child.

KIT days do not have to be consecutive and can be used for work activities, training or any other activity such as a staff meeting, that enables the employee to keep in touch with the workplace. Working for part of a day will count towards one of the 10 days.

SENDAT's policy is that employees will be paid their normal rate of pay for KIT hours worked, unless the KIT day is used to complete a specific task which is outside the normal role and at a significantly lower level, in which case payment will be at an appropriate rate (agreed in advance).

## **15. RETURNING TO WORK AFTER ADOPTION LEAVE**

### **15.1 Ordinary adoption leave**

If the employee returns to work immediately after entitlement to Ordinary Adoption Leave is exhausted i.e. after 26 weeks, he/she is entitled to return to the same job as was occupied



before commencing adoption leave, on the same terms and conditions of employment, as if the employee had not been absent.

If the employee is employed on a fixed-term contract and this is due to end during adoption leave, there is no right to return to the same role as was occupied before commencing adoption leave. However, the fixed-term contract may be renewed, and the school / provision should consult with the employee before putting in place any extension/renewal. If the fixed-term contract is not renewed, and as the ending of a fixed-term contract is classed as a dismissal in law, it will be dealt with in the same way as any dismissal providing the same rights of appeal. Further information can be obtained from the SENDAT Central Administration office.

### **15.2 Additional adoption leave**

If the employee returns to work after additional adoption leave i.e. between 26 and 52 weeks of starting adoption leave, they are entitled to work which is the same, or broadly similar, on the same terms and conditions of employment.

### **15.3 If the employee decides not to return**

If the employee decides not to return to work after adoption leave, he/she must notify the school in writing, giving normal contractual notice. If he/she resigns but there is not time to complete the notice period before the end of his/her entitlement to adoption leave, he/she will be expected to return to work after adoption leave ends to complete the remainder of his/her notice. This may be waived by agreement with the school in exceptional circumstances.

If the employee resigns and the notice period ends before he/she has exhausted all of the SAP entitlement, payment will continue until all 39 weeks have been paid.

## **16 REQUESTS FOR FLEXIBLE WORKING**

Employees have a statutory right to request flexible working such as changing/reducing working hours.

There is no absolute right to return to work on different terms, as the right to return after adoption leave relates to the position held before adoption leave began.

All requests for part-time work or other flexible working arrangements will be considered in line with the operational requirements of the school. It may take some time to consider/implement changes and employees should be encouraged to start discussions with their Headteacher / Head of School/AP as early as possible.

If the employee returns on a different basis (e.g. reduce to part-time from full time), this will affect some of their entitlements, such as annual leave, pension provisions, etc, depending on the change being made, normally pro-rata to the new hours being worked. The SENDAT HR team will provide further information where requested.



For support staff, returning part-time does not affect an employee's entitlement to retain their 12 weeks at half pay, providing they return to work for the minimum period of 12 weeks, regardless of the number of hours worked.

For teaching staff where there is a reduction in hours, the requirement to work for a minimum of 13 weeks is increased pro rata, e.g. a reduction from full time to 0.5 full time equivalent necessitates you returning for a minimum of 26 weeks to retain occupational adoption pay.

Employees have the right to request one change to their working hours in the first 12 months after their return, and this is considered a permanent change to their contract. However, by mutual consent a temporary arrangement may be made and for a shorter period, this can then be reviewed thereafter before making the change permanent or reverting back to their substantive contract.

## **17 PENSIONS**

During any period of paid adoption leave, employees must continue to pay pension contributions on the actual pay, if any, they are receiving. Benefits will continue to accrue as if they were working normally on full pay.

Employees can choose to pay contributions for any period of unpaid adoption leave so that the period of absence will count in full for pension purposes. The contributions will be calculated on the rate of pay (or reduced pay) they were entitled to receive immediately before commencing the period of unpaid maternity leave.

If the employee chooses to pay the contributions, they will be given the opportunity to pay at the end of the period of unpaid leave. Repayments are usually made over the same period as the length of the missing service e.g. unpaid adoption leave of six months would mean recovery of the pension contributions over the following six months. Instalments are subject to agreement between yourself and SENDAT's Payroll team (Schools' Choice).

If, before going on adoption leave, the employee was paying additional contributions to increase their pension, these remain payable. They are calculated on the rate of pay the employee would have received were they not on adoption leave. The additional membership continues to accrue in full.

## **18 CONTINUOUS SERVICE**

Adoption leave counts as continuous service for redundancy purposes and does not adversely affect the employee's right to a redundancy payment.

For the purposes of entitlements to Occupational Adoption Pay, continuous service will include continuous previous service with any public authority to which the Redundancy Payments Modification Order (Local Government) 1983 (as amended) applies.



## **19 SURROGACY**

### **19.1 Surrogacy and Adopting**

An employee who becomes the parent of a child through surrogacy may be entitled to adoption leave, pay and other rights, provided that they apply to become the legal parent within six months of the child's birth.

The employee must apply for:

- A parental order – if one intended parent is genetically related to the child;
- An adoption order – if the intended parents are not genetically related to the child.

If the employee applies for a parental order the rules for surrogacy are different. For further information, see the Acas website:

### **19.2 Staff Surrogacy**

If a staff colleague decides to become a surrogate and becomes pregnant, she will be entitled to all maternity pay and leave benefits as detailed in the SENDAT Maternity Pay and Leave policy.

<https://www.acas.org.uk/leave-and-pay-when-you-have-a-child-through-surrogacy>

## **20. LEGISLATION**

20.1 The legislation relevant to this Adoption and Surrogacy policy is:

- Employment Act 2002
- Employment Rights Act 1996
- Social Security Contributions and Benefits Act 1992
- Paternity and Adoption Leave (Adoption from Overseas) Regulations (SI 2003/921)
- Paternity and Adoption Leave Regulations 2002 (SI 2002/2788)
- Statutory Paternity Pay and Statutory Adoption Pay (Weekly Rates) Regulations 2002 (SI 2002/2818)
- Maternity and Parental Leave etc and the Paternity and Adoption Leave (Amendment) Regulations 2006 (SI 2006/2014)
- Statutory Paternity Pay and Statutory Adoption Pay (General) and the Statutory Paternity Pay and Statutory Adoption Pay (Weekly Rates) (Amendment) Regulations 2006 (SI 2006/2236)
- Maternity and Parental Leave etc and the Paternity and Adoption Leave (Amendment) Regulations 2008 (SI 2008/1966)

## **21 FURTHER ADVICE**

Further advice and information is available from the SENDAT HR team:

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