



## Adoption Leave & Pay – Teachers

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Applicable from 01 December 2018

# Adoption Leave & Pay – Teachers

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## 1.0 Introduction

1.1 This policy applies to all Teachers employed within The Co-operative Academies Trust to whom the Conditions of Service for School Teachers in England and Wales (Burgundy Book) apply.

1.2 Teachers who adopt a child, either from the UK or overseas are entitled to take up to 52 weeks adoption leave in order to care for their child. Teachers may also be eligible for Adoption pay during this time.

1.3 If teachers are adopting a child with their partner, only one party in the couple will be entitled to Adoption leave and/or pay. Teachers will need to decide with their partner who will take Adoption leave and/or pay, known as the 'main adopter.'

1.4 If the teacher is not the main adopter, they may be eligible to take statutory Paternity, Parental or Shared Parental Leave and should refer to these separate Trust policies.

1.5 This policy refers to the entitlements of employees who are the "main adopters" for the purposes of adoption leave and pay.

## 2.0 Eligibility for Adoption Leave

2.1 All teachers who have been matched with a child are entitled to take adoption leave regardless of length of service or hours worked each week. Benefits will vary depending on service, hours or pay.

2.2 This policy is also applicable to teachers who are fostering to adopt, or adopting a child following a surrogacy arrangement.

2.3 In order to be eligible for adoption leave, teachers must:

- Continue to be employed (whether or not at work) immediately before the start of the adoption leave
- Notify the academy in writing within 7 days of their notification of being matched with a child, or as soon as reasonably practical of their intention to take adoption leave
- Notify the academy of the start and end dates of their leave
- Inform the academy of the date of placement for their child

## 3.0 Overseas adoptions

3.1 For overseas adoptions, teachers must inform the academy of the following:

- The date of their official notification of adoption
- The estimated date of the arrival of their child to the UK, within 28 days of notification
- The actual date of arrival of their child to the UK, within 28 days of the child's arrival
- How much leave the employee intends to take, and the start day for this leave, providing 28 days' notice of the start date

## 4.0 Surrogacy arrangements

4.1 Teachers must provide notice in writing of their intention to take Adoption Leave at least 15 weeks before the Expected Week of Confinement and the start and end dates of the leave they intend to take.

4.2 Teachers must provide a written statement to confirm that they will be applying for a parental order in the 6 months following the birth of the child.

4.3 For all of the above arrangements, the academy will write to the teacher within 28 days to confirm the start and end dates of Adoption Leave.

## 5.0 Adoption Appointments

5.1 Teachers who are eligible to take Adoption Leave are entitled to take reasonable time off to attend up to 5 pre-adoption appointments after they have been matched with a child.

5.2 Time off to attend these appointments will be paid (up to half a day per appointment), subject to the employee seeking prior authorisation from the Headteacher / Principal.

5.3 If the teacher is not the main adopter, they are entitled to take reasonable time off to attend up to 2 pre-adoption appointments, which would usually be paid.

## 6.0 Adoption Leave

6.1 Eligible Teachers are entitled to take up to 52 weeks statutory Adoption Leave. Adoption Leave is made up of 26 weeks Ordinary Adoption Leave and 26 weeks Additional Adoption Leave.

6.2 The main adopter must take a minimum of two weeks adoption leave following the placement of a child.

6.3 An employee can choose the start date of their Adoption Leave subject to the following conditions:

- Adoption Leave may commence no sooner than 14 days prior to the placement of the child (UK Adoptions)
  - Adoption Leave may commence no later than the date of placement for the child (UK adoptions)
  - For overseas adoptions, Adoption Leave may commence on the day the child arrives in the UK, or within 28 days of this date
  - Adoption Leave must commence on the date the child is born or the day after (if you have used a surrogate)
- Employees must notify the academy within 28 days if the date of placement, or UK arrival date for overseas adoptions changes.

## 7.0 Eligibility for Adoption Pay

7.1 Eligible employees are entitled to receive up to 39 weeks Adoption pay.

7.2 Adoption pay may be made up of Statutory Adoption Pay and Occupational Adoption Pay, subject to entitlement.

7.3 Statutory Adoption Pay (SAP) is a statutory entitlement for those who have completed at least 26 week's continuous service with the employer by the week that they are matched with a child and who have average earnings above the Lower Earnings Limit (LEL) in the 8-week period prior to the Matching Week.

7.4 Employees must provide proof of adoption in order to be eligible for SAP. This proof will need to include the following information:

- The employees name and address
- The name and address of the adoption agency
- Evidence of the match date, which is evidenced from the Matching Certificate
- Confirmation of the date of placement, which can be provided via a letter from the Adoption agency
- The relevant UK authority's 'official notification' confirming that the employee is allowed to adopt (overseas adoptions only)
- Evidence of the date that the child arrived in the UK (overseas adoptions only)

7.5 SAP is treated as income and is therefore subject to deductions for Income Tax, National Insurance and pensions (where applicable). Payment of SAP is not conditional on the employee returning to work following their Adoption Leave.

7.6 Entitlement to SAP will remain for 8 weeks if the placement is disrupted after it started or if the child dies.

7.7 If an employee does not qualify for SAP, they will be provided with an SAP1 form from the employer.

7.8 Occupational Adoption Pay (OAP) is paid by the academy to teachers who have completed at least one years' continuous service by the Matching Week.

7.9 OAP is subject to an employee returning to work for a period of 13 weeks after their adoption leave. If an employee resigns from her post without having returned to work for the requisite period of time she shall be required to refund the OAP payments made during her maternity, apart from those made during the first 6 weeks of maternity leave – such action will be considered on an individual basis by the Academy.

7.10 Where the academy agrees, a full-time employee may return to work on a part-time basis for a period which equates to 13 weeks' full-time service. Similarly, where the academy agrees, a part-time employee may return to work on a different part-time basis for a period which equates to 13 weeks' part-time service relating to their previous contract.

7.11 The 13-week period (or part-time equivalent) starts from the date the employee actually returns to work or the date during the academy holiday on which the employee has notified the academy in writing that they are available to work, provided they actually return to duty on the first day after the period of closure.

7.12 If an employee is unsure whether they will be making a return to work following their Adoption leave, they can request that their payroll provider withhold the refundable OAP aspect of their Adoption pay. If the employee does return to work for the qualifying period, they will be paid the OAP owed to them.

## 8.0 Adoption Pay

8.1 For the purpose of this scheme, a week's pay shall be treated as the amount payable to the employee under the contract of employment over a calendar week period. If there are significant variations in the employee's salary, the average salary over the 12 weeks preceding the date of absence shall be treated as a week's salary.

a) Teachers who have less than 26 weeks' continuous service with the current employer, at the matching week, and less than one years' continuous service with one or more local authorities or schools are not entitled to either Occupational or Statutory Adoption Pay. In these circumstances the teacher may wish to contact the Adoption Agency who may be able to offer further advice.

b) Teachers who have at least 26 weeks' continuous service with the current employer, at the matching week, but less than one year's continuous service with one or more local authorities or schools are entitled to Statutory Adoption Pay only.

Payment will be as follows:

6 weeks 90% average weekly earnings  
33 weeks SAP

c) Teachers who have less than 26 weeks' continuous service with the current employer, at the matching week, but at least one years' continuous service with one or more local authorities or schools are entitled to Occupational Adoption Pay. They are not entitled to Statutory Adoption Pay.

Payment will be as follows:

4 weeks' full pay  
2 weeks' 90% pay  
12 weeks' 50% pay  
21 weeks unpaid

d) Teachers who have at least 26 weeks' continuous service with the current employer, at the matching week, and more than one year's continuous service with one or more local authorities or schools are entitled to both Occupational and Statutory Adoption Pay.

Payment will be as follows:

4 weeks' full pay inclusive of SAP  
 2 weeks' 90% pay inclusive of SAP  
 12 weeks' half pay plus SAP  
 21 weeks' SAP

\*During the period of combined half pay plus SAP the total payable must not exceed the teacher's normal full pay.

8.2 OAP entitlements are subject to the teacher returning to work for the required period

## 9.0 Pensions

9.1 If the employee is a member of the Teachers' Pension Scheme, contributions will continue to be deducted while they are in receipt of Adoption pay and the academy will continue to pay the employer's contribution based on the employee's normal full pay.

9.2 Contributions cannot be made for any unpaid adoption leave period, thus, such period does not count as part of pensionable service. Teachers may wish to discuss the possibility of Additional Pension Contributions (APCs) with their pension provider, for any period of unpaid leave.

## 10.0 Contact during Adoption Leave

10.1 Before an employee's adoption leave begins, the Trust will discuss the arrangements for them to keep in touch during their leave. The Trust reserves the right in any event to maintain reasonable contact with the employee from time to time during this time. This may be to discuss the employee's plans to return to work, to ensure the individual is aware of any possible promotion opportunities, to discuss any special arrangements to be made or training to be given to ease their return to work or simply to update them on developments at work during their absence

.2This does not constitute 'work' and such contact will not bring the Adoption leave period to an end.

## 11.0 Keeping-in-touch (KIT) days

11.1 Except during the first two weeks of the Adoption Leave, a teacher can agree to work, or to attend training, for up to ten days during their leave without that work bringing the period of their Adoption leave to an end and without loss of a week's SAP.

11.2 These are known as 'keeping-in-touch' (KIT) days. Any work carried out on a day shall constitute a day's work for these purposes. Working for part of a day will count as one day. A teacher will be paid for any work undertaken and this will usually be at their normal daily rate of pay.

11.3 The employer cannot require a teacher to carry out any work, and the teacher has no right to undertake any work during their Adoption leave. Any work undertaken is entirely a matter for mutual agreement between the academy and teacher. Any KIT days worked do not extend the period of Adoption leave. Once the KIT days have been used up the teacher will lose a week's SMP for any week in which they agree to work for the academy.

## **12.0 Multiple Adoptions**

12.1 There is no entitlement to additional leave or pay if more than one child is placed.

## **13.0 Statutory Annual Leave**

13.1 Teachers are entitled to statutory annual leave of 28 days per year, which forms part of normal academy holidays during academy closure periods.

13.2 A teacher who takes Adoption Leave must be able to take the 28 days' statutory annual leave at a time outside of their Adoption Leave. An employer may not treat any part of the Adoption Leave period as annual leave.

13.3 The statutory annual leave entitlement can be offset by any period of academy closure that has taken place in the leave year in question, i.e. both before and after the Adoption Leave period.

13.4 On return from Adoption Leave, a teacher must be allowed to take any outstanding leave during term time during that leave year if there are insufficient academy closures to accommodate their leave in that leave year.

13.5 Where the return from Adoption Leave is so close to the end of the leave year that there is not enough time to for the employee to take all their annual leave entitlement, an employee must be allowed to carry over any balance of their leave to the following leave year. An employee can be required to take this during the remaining periods of academy closure after the 28 days' annual leave for that leave year has been accommodated.

13.6 It is not possible for either the teacher or the academy to decide to carry over the annual leave into the next leave year if there is time to take the leave in the current leave year, i.e. in academy closures or in term time.

## **14.0 Right to return to work**

14.1 After Ordinary Adoption leave, teachers are entitled to return to the job in which they were employed under their original contract of employment.

14.2 After Additional Adoption leave, a teacher is entitled to return to either the job that they left, or a suitable alternative job, if their original job is no longer available, on terms and conditions no less favourable than those which would have been applicable to the employee had they not been absent. ('Job', for this purpose, means the nature of the work which the Teacher is employed to do and the capacity and place in which they are so employed.)

## **15.0 Notice of return to work**

15.1 An employee will have been notified of the date of expected return to work by the academy. The employee is not required to give notice of their intended return on this date.

15.2 However, if an employee wants to return early from Adoption leave they must give 28 days' notice. Where this notice is not given, the employer may postpone the return for up to eight weeks from the date when the employee informs the employer of the early return or up to the expected date of return, whichever is sooner.

15.3 If the employee does not return on the specified date, their absence may be considered unauthorised and the Headteacher / Principal may make contact to discuss this.

15.4 Where an employee is unable to return to work at the end of their period of Adoption leave due to sickness, the conditions of the sick pay scheme and the Trust's attendance policy will apply.

15.5 If a Teacher does not intend on returning to work following a period of Adoption Leave, the usual Teacher notice periods as set out in the Burgundy Book will apply.

## **16.0 Flexible Working**

16.1 Teachers have the right to request a variation to their contract so that they can work more flexibly and thereby balance their childcare responsibilities with their work commitments.

16.2 There is no automatic right to return to work following Adoption Leave on an adjusted working pattern, however careful consideration will be given on receipt of a request in accordance with the Trust's flexible working policy.

## **17.0 Continuous service**

17.1 Adoption Leave is regarded as continuous service and does not constitute a break in service even when unpaid. Any period of unpaid leave however does not count towards pensionable service in the assessment of retirement benefits.

17.2 During the time that an employee is receiving Adoption Pay, National Insurance, Income Tax and pension contributions (where applicable) will be deducted from the gross pay. Continuous service is calculated as service as a teacher with one or more local authorities or schools without a break in service.

## **18.0 Salary sacrifice**

18.1 Employees who have sacrificed salary in return for benefits (e.g. childcare vouchers) may wish to review the arrangements in advance of their Adoption Leave.

18.2 Advice should be sought from the academy's finance team or the salary sacrifice benefit provider at the earliest opportunity.

\* HMRC confirms employers are not required to provide childcare vouchers during maternity leave and therefore the Trust will not provide childcare vouchers during maternity leave when offered through a salary sacrifice scheme, unless already a member of the scheme.

## **19.0 Review**

19.1 The Trust will review this policy every three years and/or if any significant changes in legislation occur.

**Annex One****Adoption Leave Request Form - CONFIDENTIAL**

The notes at the end of this form will assist you in completing the form and in assessing your possible entitlement to Adoption Leave.

The employer will notify you, within 28 days of receipt of this fully completed form, of your actual entitlements. (Please refer to the work and family toolkit for sample letters)

SURNAME

.....

FIRST NAME(S)

.....

ACADEMY/LOCATION

.....

POST

.....

CONTRACTED HOURS

.....

The following information and the declaration at the bottom of this form are required to assess your entitlement to any statutory and/or other leave and pay.

Date on which you were notified of being matched to a child for adoption	
Expected date of placement	
Date you would like the adoption leave to start	

**Declaration:**

	Yes/No
I confirm that I have been matched with a child for adoption by an approved adoption agency	
My partner will <u>not</u> also be in receipt of Adoption Leave	
This is a new adoption	

**Please attach your Adoption Matching Certificate.**

Signed.....Date.....

**Please return this form to the Headteacher / Principal**

Headteacher / Principal – Please forward this form, with the Adoption Matching Certificate and letter to Payroll once completed.