

# Adoption Policy

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## **Preamble to the Policy**

### **Equal Opportunities**

The College shall comply with all statutory duties in respect of equal opportunities in the areas of sex, race, age, disability, sexual orientation, transgender, religion, belief, pregnancy, maternity and paternity, marriage and civil partnership and the rehabilitation of offenders. The college shall also comply with the Human Rights Act 1998 and any subsequent enactments or modifications.

### **Sustainability**

The College will comply with all statutory duties in respect of sustainable development by seeking to improve the long-term economic, social and environmental wellbeing of people and communities. This needs to be done in ways which promote social justice, equality of opportunity and which enhance the natural and cultural environment while respecting its limits.

### **Welsh Language**

The College will comply with its Welsh Language Scheme, which is a statutory document, in all of its activities. This includes conducting Welsh Language Impact Assessments for all new and revised policies and initiatives.

## **INTRODUCTION**

This Policy contains details of the rights, entitlements for all employees who are adopting a child, and who satisfy the qualifying conditions set out in this scheme.

This Policy should be read in conjunction with the Shared Parental Leave Policy.

The college has an obligation to pay Statutory Adoption Pay (SAP) on behalf of the Benefits Agency to all employees who are eligible to receive it. This policy explains employees' entitlement to both statutory and contractual adoption pay.

This policy applies to all employees regardless of gender. Reference to a partner throughout this policy may be a partner of a different sex or the same sex.

Adoption leave and pay will be available to:

- To parents where a child is placed for adoption within the UK as well as where a child is placed from overseas. Adoption leave is only available where the child is newly placed for adoption. It will be available to individuals who adopt or to one member of a couple (whether of a different sex or the same sex) where a couple adopt jointly. In the case of a couple, only one adoption leave will be granted, although this may be split between the couple.
- One of the intended parents in a surrogacy case. Where a child is born to a surrogate mother, the intended parents can become the child's legal parents by applying for a parental order. One of the intended parents must be the biological parent of the child, the child must live with the intended parents and the parental order application must be made when the child is between 6 weeks and 6 months old.
- An approved prospective adopter who looks after a child as part of a "fostering to adopt" arrangement.

## **1. NOTIFICATION REQUIREMENTS**

In order to take adoption leave, the employee must notify the college of the date or expected date of the placement and the date when they wish the leave to commence. This information must be provided within 14 days of them being notified by the adoption agency when a match with a child will take place or, if this is not practicable, as soon as practicable.

This information should be put in writing. The employee may vary the date when leave is taken but the employee should if practicable give the college at least 28 days in writing before the start of the leave initially specified. Once the employee has notified the college of the date of the placement and the date when they wish to start leave, the college must then write to the employee within 28 days stating the date upon which they expect the employee to return to work.

## **2. COMMENCEMENT OF LEAVE**

For adoptions within the UK leave can be taken either:

- From the date of placement, or
- No more than 14 days prior to the date of placement

For adoptions from overseas leave can be taken either:

- From the date the child enters the UK or
- No more than 28 days after the child has entered the UK

## **3. ORDINARY ADOPTION LEAVE / ADDITIONAL ADOPTION LEAVE**

An employee who has been continuously employed for at least 26 weeks leading into the week in which they are notified of being matched with a child for adoption will qualify for statutory adoption leave.

Employees who qualify will be entitled to 26 weeks ordinary adoption leave (OAL), immediately followed by a period of 26 weeks additional adoption leave (AAL), making a total of up to 52 weeks.

Only one period of leave will be available in respect of adoption arrangements. If more than one child is being adopted at the same time, this will not affect the length of the leave. However, adoption leave may be taken at a later time in respect of a fresh adoption process.

## **4. STATUTORY ADOPTION PAY**

Statutory Adoption Pay (SAP) is available to employees who have sufficient service to qualify to take adoption leave. SAP is available for up to 39 weeks and is paid at the current SAP flat rate or 90% of average weekly earnings if this is less than the standard SAP rate. Employees whose average weekly earnings are below the lower earning limits for SAP purposes may be able to seek other financial support and should seek advice from their local jobcentre Plus. Additional adoption leave, beyond the 39 weeks is unpaid.

In order to satisfy the college that they are entitled to SAP, an employee must provide the evidence of a letter from an adoption agency specifying the following:

- Name and address of the agency;
  - Name and address of the employee;
  - Date employee was notified of adoption or likely adoption;
  - Date on which child was placed for adoption or is due to be placed for adoption.
- The College may also ask for these matters in writing in order to satisfy itself that the employee is entitled to adoption leave.

## **5. CONTRACTUAL ADOPTION PAY**

In order to be eligible for Contractual Adoption Pay (CAP), an employee must have been employed for 52 weeks or more leading into the week in which they are notified of being matched with a child for adoption.

Entitlement available for Contractual Adoption Pay (CAP) for staff with 52 weeks continuous service at the point of adoption is as follows:

For children up to 16 years old who are new to the home:

- 4 weeks leave at 100% of normal pay
- 2 weeks leave at 90% of normal pay (or SAP if this is greater than 90% of normal pay);
- 12 weeks leave at 50% of normal pay plus the rate of Statutory Adoption Pay (SAP), not exceeding full pay;
- 21 weeks SAP.

## **6. RIGHTS DURING ADOPTION LEAVE**

During ordinary adoption leave, an employee enjoys the same right as an employee taking ordinary maternity leave, namely an employee is entitled to the benefit of the terms and conditions of employment that would have applied if they had not been absent except in relation to salary. The employee is bound by any obligations under their contract except those that are inconsistent with their right to take ordinary adoption leave, such as the obligation to attend work.

During additional adoption leave, the employee is entitled to the benefit of the trust and confidence obligation and any terms and conditions relating to notice, compensation in the event of redundancy and disciplinary or grievance procedures. The employee is bound by the obligation of good faith and any terms and conditions relating to notice, disclosure of confidential information, acceptance of gifts or other benefits and participation in any other business.

## **7. RETURNING AFTER ADOPTION LEAVE**

It should be presumed that the employee would take their full statutory adoption leave entitlement, i.e. the full 52 weeks, unless they notify the college of their intention to return early.

An employee returning to work at the end of additional adoption leave need not give college notice of their return. The employee can simply turn up to work on the first working day after the end of the leave period.

An employee has the right to return from adoption leave at any point before the end of the ordinary or additional adoption leave period. If they wish to return to work earlier, the employee must give at least 8 weeks' notice of the date on which they intend to return. The employee should give the notice in writing.

If the employee attempts to return to work earlier without having given the 8 weeks' notice, the college is entitled to postpone their return but not beyond the date on which the 8 weeks would have elapsed and not beyond the end of the adoption leave period. The college will inform the employee in writing if it decides to postpone their return in these circumstances.

An employee returning from ordinary adoption leave is entitled to return to the same job that they left, on the same terms and conditions as before.

An employee returning from additional adoption leave has the right to return to the same job as before unless this is not reasonably practicable. If it is not reasonably practicable, the College should find another job, which is both suitable and appropriate in the circumstances.

If an employee wishes to return to work on a part time / fractional basis, the College will give due consideration to any such request, which should be made in writing through the Flexible Working Policy.

If a member of staff leaves within 12 weeks of their return to work after Adoption Leave the College has the right to recover any payment made in excess of SAP. This provision shall not apply to employees on a fixed term contract that expired either before their return to work or within a period of 12 weeks from return to work provided that they have not (i) been notified that their contracts is to be extended or (ii) refused an offer of suitable alternative employment.

## **8. REDUNDANCY DURING ADOPTION LEAVE**

If the employee's job becomes redundant during the course of their adoption leave, the College will offer them any suitable alternative work that becomes available and they will have the right to be considered for such work; even though they are on adoption leave. This offer will be made before their previous employment ends and

the new employment will commence immediately. It will be suitable work and the terms and conditions will not be less favourable than the old contract. If there is no suitable work available, then they will be made redundant, and receive redundancy pay in line with their statutory and contractual entitlements.

## **9. KEEPING IN TOUCH (KIT)**

A “keep in touch” day may be used to enable the employee to attend work without losing their right to SAP or contractual adoption pay. Up to 10 keep in touch days may be undertaken during the adoption leave period without bringing the adoption leave to an end.

There should be no pressure on employees to come to work. There is no obligation on an employee to undertake work, nor is there any obligation on the college to provide work. The keep in touch days must only be arranged by mutual agreement. The employee will receive their normal salary for working on a KIT day

If a KIT day is agreed, the purpose should be agreed in advance so that both parties are clear what the employee will actually do. This can include training, a meeting or other activities to help the employee keep in touch.

The College will keep the employee informed of staff vacancies during the period of adoption leave.

The College is entitled to maintain reasonable contact with the employee during the adoption leave period should circumstances make this necessary. This entitlement is separate from the keeping in touch arrangements, and may be necessary to communicate and consult with the employee about issues relevant to their employment. For example:

- to communicate important news about the College or to update the employee on any developments which have occurred during their absence;
- to keep the member of staff advised of any changes that may arise which could affect their job, such as mergers, restructuring or job evaluation; and
- to discuss and plan the employee’s return to work.

## **10. CIRCUMSTANCES IN WHICH ADOPTION LEAVE AND SAP WILL END**

In certain circumstances, placements may be disrupted and so adoption leave and pay will end after a prescribed time. The adoption leave will end if more than 8 weeks of adoption leave remain and one of the following circumstances applies:



- after having notified an employee that they will be matched with a child, the adoption agency notifies the employee that the child will not be placed with the employee;
- the child dies; or
- the child's placement ends.

Adoption leave will end 8 weeks after any of the three dates referred to below:

- the week during which the employee is notified that the placement will not take place;
- the week during which the child dies;
- the week during which the child's placement ends

In these circumstances, SAP will also terminate in accordance with these timescales.

#### **11. CIRCUMSTANCES IN WHICH THE RIGHT TO SAP OR CAP WILL BE LOST**

An employee will lose their right to receive SAP (and CAP) if:

- they start working for another employer.
- they return to work (except in circumstances when a "keeping in touch" day is undertaken)
- they are receiving statutory sick pay;
- the child reaches the age of 18
- they are taken into legal custody or sentenced to imprisonment

#### **12. TRANSFERRING PART OF THE ADOPTION LEAVE TO SHARED PARENTLY LEAVE**

1. If the employee returns to work before using all of their full entitlement to adoption leave, their partner may be eligible to take the remainder of the leave as shared parental leave from their employer
2. In these circumstances the member of staff as primary adopter must make a written and signed declaration to their partner's employer, which confirms that they are returning to work in the College, along with other details required by their partner's employer.
3. If the partner of the primary adopter is also an employee of the College, they should refer to the College's Shared Parental Leave Policy for details of the procedure for requesting additional paternity leave. If the partner is not employed by the College, they will need to refer to their own employer's policies and procedures.
4. Note the earliest date that the shared parental leave can start is 2 weeks after the placement of the child. The right to paternity leave is available to the individual who is married to the primary adopter, the civil partner of, or the partner of the

primary adopter. To qualify for shared parental leave, the individual must have responsibility for the child's upbringing, be taking the leave to care for the child and meet certain qualifying conditions.

### **13. PENSION CONTRIBUTION**

An employee in receipt of remuneration, whether salary, or SAP, or both during their adoption leave will be treated as though they are working normally for the purposes of access to occupational pension scheme membership and benefits. Member and employer contributions will continue during paid adoption leave according to the scheme rules.

For periods of unpaid adoption leave, advice should be sought from the relevant pension scheme about pensionable service and contributions

### **14. GENERAL ISSUES**

It is unlawful to subject an employee to detriment or to dismiss them for having exercised their right to adoption leave or for seeking to exercise it. Any such dismissal will automatically be unfair, regardless of length of service.

If the employment is terminated before the adoption pay period the right to SAP will be retained. In those circumstances, the adoption pay period will begin either:

- on the date the child is placed for adoption or
- on the date immediately after the last day of employment where the termination occurs on or within 14 days before the expected date of placement.

Adoption leave is not sick leave, and will not be taken into account when calculating any period of sick leave entitlement.

During the adoption leave period, the contract continues to run and the employee continues to accrue statutory and contractual annual leave entitlement in the case of OAL and statutory annual leave only in the case of AAL.

Periods of adoption leave and adoption absence are regarded as continuous service for the purpose of calculation entitlements to employment benefits.

If an employee acts dishonestly in respect of any element of the College's adoption leave policy this will be regarded as serious misconduct and will result in the employee being subject to the college's disciplinary procedure.

If an employee believes that they are not being treated fairly in relation to the right to take adoption leave, the matter should be dealt with through the grievance procedure or by contacting a senior manager if the issue needs to be resolved quickly.

## **15. RECORDS**

The college will keep records of adoption leave taken by employees.

The College will comply with any reasonable requests to disclose relevant records to the employer of an individual who was previously employed at the college.

## **16. USEFUL CONTACTS**

Further information regarding statutory adoption rights and entitlements can be found on the following websites:

[www.dwp.gov.uk](http://www.dwp.gov.uk)

[www.inlandrevenue.gov.uk](http://www.inlandrevenue.gov.uk)

[www.tiger.gov.uk](http://www.tiger.gov.uk)