

## Adoption Leave and Pay Policy

Effective: November 2009

Review: July 2012

### 1. Introduction

- 1.1 It is recognised that the needs of adoptive parents are at least as great as those of natural parents in establishing a relationship with the child and in developing new routines. The needs can be greater when, as frequently happens, the adoptive parents have only a few days notice of a child's arrival or where the child is older and may have a difficult family background as well as several changes of foster parents and children's homes.
- 1.2 The Adoption Leave Policy is therefore to enable an employee who will be the main carer and who wishes to adopt a child to take a period of leave to help the child settle into the family and adjust to new circumstance.
- 1.3 The policy applies to all children, being adopted below the age of 18.
- 1.4 Adoption Leave is available to a single person who is adopting a child or to a partner of a couple who jointly adopt a child under the age of 18. The couple may choose which partner takes the adoption leave. Where the Trust employs both parents, the period of leave and pay may be shared.
- 1.5 Adoption leave will cover circumstances where the child is initially unknown to the adoptive parents. If there is an established relationship with the child, such as fostering prior to adoption, time off will be given for official meetings only.

### 2. Contractual Adoption Leave and Pay

#### 2.1 Eligibility

- 2.1.1 An employee working full or part-time is entitled to paid and unpaid adoption leave under the NHS contractual adoption pay scheme if the employee:
  - a) has twelve months continuous service with one or more NHS employers by the date on which they are notified that they have been matched with a child for adoption. For those adopting overseas that the adopter has been sent official notification that the relevant UK Authority has issued a Certificate of Eligibility to the overseas authority involved in adoption that they are eligible to adopt a child from overseas.
  - b) notifies their manager of their intention to take adoption leave (via the form in appendix 1) within 7 days of being notified by their adoption agency that they have been matched with a child for adoption (or 28 days if adopting overseas) unless this is not reasonably practicable. The manager must, within 28 days of

receiving the employee's notice, write to the employee stating the date the employee is expected to return from adoption leave

- c) provides the Human Resources Department with the original matching certificate as documentary evidence of their entitlement to take adoption leave, or if adopting overseas have provided a the original official notification confirming the Central Authority has, or is prepared to issue a certificate confirming the employee is eligible to adopt and has been assessed and approved as being a suitable adoptive parent. The adoption agency must be one which is recognised in UK law.
- d) notifies their manager of when they would like adoption pay and leave to start at least 28 days before that date (or as soon as reasonably practicable)
- e) has expressed an intention to return to work within the NHS for at least 3 months following adoption leave
- f) continues to be employed until the child becomes available for placement and must agree to return to work for the Trust or another relevant NHS employing authority following adoption leave for a minimum of three months.

### **3. Employee Who Notifies of an Intention to Return to Work**

3.1 An employee with 12 months continuous service with the Trust and who intends to return to work with the Trust or another relevant NHS employing authority for a minimum period of three calendar months is entitled to 26 consecutive weeks leave of absence with pay as follows:

- a) 8 weeks at full pay, less any Statutory Adoption Pay (SAP)
- b) 18 weeks at half pay, plus any SAP receivable, providing the total receivable does not exceed full pay
- c) for the following 13 weeks: SAP only

3.3 The employee may remain absent on unpaid leave for a further consecutive period of up to 13 weeks. Total amount of paid and unpaid leave will not exceed 52 weeks.

3.4 An employee who has notified an intention to return to work at the end of full adoption leave (i.e. after 52 weeks) or whose expected return date has been based on 52 weeks paid and unpaid leave entitlement, is not required to give any further notification of return unless the employee wishes to return early, in which case 8 weeks notice must be given (at the managers discretion the notice required may be reduced following discussion and agreement with the Human Resources Department).

3.5 By prior agreement, OAP can be paid in a different way, for example a fixed amount spread equally over the adoption leave period.

- 3.6 An employee has the right to return to their job under their original contract and on no less favourable terms and conditions unless a redundancy situation arose during the period of adoption absence or there is some other reason why it is not reasonably practicable to return to the original job.

#### **4. Employee Not Returning to Work**

An employee who does not intend to return to work, either for the Trust or another NHS employer for a minimum period of three months after adoption leave has ended, may be entitled to pay equivalent to Statutory Adoption Pay (SAP).

#### **5. Employee Undecided Whether to Return to Work**

- 5.1 An employee who is undecided whether they will return to work after adoption leave can opt to receive SAP only.
- 5.2 If the employee subsequently decides to return to work for the Trust or another NHS employer for a minimum of three months and gives due notice (8 weeks, at the managers discretion the notice required may be reduced following discussion and agreement with the Human Resources Department), the employee will receive the entitlement to OAP (less SAP) that was withheld during Adoption Leave. This is paid as a lump sum normally within 1 month of notification.
- 5.3 If the employee subsequently decides not to return and gives due notice (as defined in the contract of employment), there will be no liability to refund OAP as only SAP was paid

#### **6. Calculation of Adoption Leave**

- 6.1 Full pay will be calculated on the basis of the employee's average weekly earnings for eight weeks prior to the date of commencement of adoption leave, subject to the following qualifications:
- a) in the event of a pay award or annual increment being implemented before the paid adoption leave period begins, the adoption pay will be calculated as though the pay award or annual increment had effect throughout the entire SAP calculation period. If such a pay award is agreed retrospectively, the adoption pay should be re-calculated on the same basis.
  - b) in the event of a pay award or annual increment being implemented during the paid adoption leave period, the adoption pay due from the date of the pay award or annual increment will be increased accordingly. If such a pay award is agreed retrospectively, the adoption pay should be re-calculated on the same basis
  - c) in the case of an employee on unpaid sickness absence, or on sickness absence attracting half pay during the whole part of the period used for calculating average weekly earning, average weekly earnings for the

period of sickness absence shall be calculated on the basis of notional full sick pay

## **7. Statutory Adoption Pay**

7.1 An employee who does not satisfy the conditions for contractual adoption pay and leave may be entitled to Statutory Adoption Pay (SAP)

7.2 An employee is entitled to a maximum of 39 weeks' SAP if the employee satisfies the following conditions:

- a) has been matched with a child for adoption by an adoption agency
- b) been employed by the Trust continuously for at least 26 weeks
- c) before the beginning of the week when the adoption agency confirmed the employee had been matched with a child for adoption, or has been continuously employed for at least 26 weeks continuing into the week in which the employee is sent Official Notification from the relevant UK Authority or by the time the employee wishes to start adoption leave for overseas adoptions, and
- d) has average weekly earnings of at least equal to the lower earnings limit for National Insurance contributions

7.3 SAP is paid at a flat rate.

## **8. Commencement and Duration of Adoption Leave**

8.1 An employee can commence adoption leave from;

- a) the date the child starts living with the employee, or
- b) an earlier date up to 14 days before the date that the child is expected to start living with the employee
- c) Leave can commence on any day of the week

8.2 If the placement is delayed and adoption leave has commenced, adoption leave cannot be stopped and resumed again at a later date.

## **9. Notification of Adoption Leave**

9.1 Employees are advised to notify their manager and the Human Resources Department in writing of their intention to take adoption leave within seven days of being notified by their adoption agency that they have been matched with a child for adoption (or 28 days if adopting from overseas), unless this is reasonably not practicable.

9.2 Appendix A includes the application for adoption leave for completion by the applicant, this will notify their manager and the Human Resources Department that:

- a) you intend to take adoption leave
- b) when the child is expected to be placed with you
- c) when you wish to commence adoption leave

9.3 When notified the Human Resources Department will arrange to:

- a) contact the employee to discuss the application and available options
- b) receive the original matching certificate or in the case of overseas adoption the official notification confirming the central authority has, or is prepared to issue a certificate if this has not already been made available
- c) give written confirmation of the:
  - paid and unpaid leave entitlement under this policy (or statutory entitlements if the employee does not qualify)
  - return date: unless an earlier return date has been given, the employee's expected return date based upon 52 weeks paid and unpaid leave entitlement under this policy
  - length of any period of accrued annual leave which it has been agreed may be taken following the end of the formal adoption leave period
  - need for the employee to give at least 8 weeks notice of the revised date if s/he wishes to return to work before the expected return date.

## **10. Keeping in Touch**

10.1 Subject to agreement with their manager, an employee can work up to ten KIT days (i.e. equivalent to two working weeks in total) during paid and/or unpaid adoption leave without losing entitlement to adoption pay and without bringing his/her adoption leave to an end. Any days of work will not extend the adoption leave period.

10.2 Before going on adoption leave, the manager and the employee should agree any voluntary arrangements for keeping in touch during the employee's adoption leave including:

- a) any voluntary arrangements that the employee may find helpful to help keep in touch with developments at work and, nearer the time of his/her return, to help facilitate a return to work
- b) keeping the manager in touch with any developments that may affect the intended date of return

10.3 To facilitate the process of 'Keeping in Touch' days (KIT days) it is important that the manager and employee have an early discussion to plan and make arrangements for KIT days before the employee's adoption leave takes place.

10.4 To enable employees to take up the opportunity, the Trust will consider the scope of reimbursement of reasonable childcare costs or the provision of childcare facilities where necessary.

- 10.5 The KIT work can be consecutive days or not, and can include training or other activities which enable the employee to keep in touch with their workplace.
- 10.6 Any such work must be by agreement, and neither the Trust nor the employee can insist on it.
- 10.7 The employee will be paid at their basic daily rate, for the hours worked less appropriate adoption leave payment for KIT days worked. Working for part of any day will count as one KIT day.

## **11. Pre-Adoption Meetings**

- 11.1 An employee who is the adopter or employee who is the partner of the adopter may take reasonable time off with pay for meetings about adoption arrangements, giving reasonable notice and providing proof of all appointments to the line Manager or Head of Department.

## **12. Failure of Adoption Arrangements**

- 12.1 If an adoption arrangement fails, this can be a traumatic time for an employee to deal with. In the event of this occurring and depending on the individual circumstances, the following will apply:
- a) If the employee is on paid adoption leave, adoption pay and adoption leave will cease 8 weeks after the week in which the employee is notified that the child will not be placed and the manager will need to discuss and agree with the employee what arrangements can be made for their return to work.
  - b) If the employee is on adoption leave under paragraph 5 above and returns to work, the employee is entitled to the amount of adoption pay that was deferred during the period the adoption existed.
  - c) If the employee is on unpaid adoption leave, the manager will need to discuss and agree with the employee what arrangements can be made for their return to work, or continued absence in the short-term.
  - d) If an employee has resigned to adopt a child, the employee will have no entitlement to return to employment with the Trust. Managers should at all times seek advice from the Human Resources Department before handling any matters under this section.

## **13. Failure to Return to Work**

- 13.1 If an employee has notified an intention to return to work for the Trust or another NHS employer in accordance with paragraph 3 above fails to do so within 15 months of the beginning of the adoption leave, the employee will be liable to refund the whole of the adoption pay, less any SAP received. Repayment must be made within 1 month of notification.

#### **14. Returning on Flexible Working Arrangements**

- 14.1 There is no legal right to return to a job on a part time basis. However the employee may apply for flexible working and the Trust has a duty to consider such requests. This can be done through the Flexible Working Policy.
- 14.2 If it is agreed that the employee can return to work on a flexible basis, including changed or reduced hours, for an agreed temporary period, this must be clearly confirmed via the Human Resources Department. This will not affect the employee's right to return to his/her job under her original contract at the end of the agreed period.

#### **15. Returning late from Adoption Leave**

- 15.1 If you wish to return to work later than the expected return to work date you should either;
- a) Request parental leave in accordance with the Special Leave Policy, giving at least 21 days notice before the end of your adoption leave. Parental leave is unpaid.
  - b) Request unpaid leave in accordance with your contract of employment. This will only be approved at the discretion of the Trust
- 15.2 If you are unable to return to work on the expected date due to illness or injury, this will be regarded as sickness absence and will be dealt with in line with the Health at Work Policy.
- 15.3 In any other case, a late return will be treated as unauthorised absence and will be dealt with in line with the Disciplinary Policy.

#### **16. Sickness Following the End of Adoption Leave**

In the event of illness following the date the employee was due to return to work, normal sick leave provisions will apply as necessary.

#### **17. Fixed Term Contracts or Training Contracts**

- 17.1 An employee subject to a fixed-term or training contract which expires after the 11th week before the EWC and who satisfies the conditions in paragraphs 2.1 a- f will have their contract extended so as to allow the employee to receive the 52 weeks contractual adoption leave which includes paid contractual leave, SAP and a remaining 13 weeks unpaid leave as set out in paragraph 3.1 c.
- 17.2 Absence on adoption leave (paid and unpaid) up to 52 weeks before a further NHS appointment will not constitute a break in service.
- 17.3 If there is no right of return to be exercised because the contract would have ended if adoption had not occurred, the repayment provisions set out in paragraph 13 above will not apply

- 17.4 An employee on a fixed-term contract who does not meet the twelve months continuous service condition set out in paragraph 2.1 a above, may still be entitled to SAP – paragraph 7.

## **18. Rotational Training Contracts**

- 18.1 Where an employee is on a planned rotation of appointments with one or more NHS employers as part of an agreed programme of training, the employee shall have the right to return to work in the same post, or in the next planned post irrespective of whether the contract would otherwise have ended if adoption had not occurred.
- 18.2 In such circumstances, the employee's contract will be extended to enable the practitioner to complete the agreed programme of training.

## **19. Increments**

Adoption leave whether paid or unpaid, will count as service for annual increments.

## **20. Accrual of Annual Leave**

- 20.1 Annual leave will continue to accrue during adoption leave, and where possible should be taken during the relevant holiday year.
- 20.2 The amount of accrued annual leave an employee can carry over to the next annual leave year should not normally exceed 5 days i.e. one working week (pro rata for part time employees and full time employees who work their shifts over less than 5 shifts per week). The amount of annual leave to be taken in this way, or carried over, must be discussed and agreed in advance of the adoption leave period with the employee's manager.
- 20.3 In circumstances where there is an agreed or proposed change to working hours following a period of adoption leave, reference should be made to the Trusts policy for the Calculation of Annual Leave and Bank Holidays Entitlements which identifies how annual leave outstanding/overtaken at the date of change should be managed.
- 20.4 Adoption leave, whether paid or unpaid, will count as service for the purposes of any service qualification period for additional annual leave.
- 20.5 Public holidays do not accrue during adoption leave and cannot be taken in addition to normal holiday entitlement on return to work.

## **21. Pension**

- 21.1 Pension rights and contributions will be dealt with in accordance with the provisions of the NHS Pension Scheme.
- 21.2 Pension contributions accrue, but are not payable, during periods of unpaid adoption leave. As a result, the amount of accrued contributions will be deducted from salary when the employee returns to work over a period

equivalent to the amount of unpaid leave taken. For example, three months unpaid leave will amount to deductions from salary over the first three months following the employee's return to work.

21.3 These pension contributions are calculated from the pay received on the last day of paid leave before unpaid leave commenced.

21.4 The above deductions are in addition to the contributions payable by the employee from the date s/he returns to work.

21.5 Any queries should be dealt with by a Pensions Officer in Payroll.

## **22. Continuous Service**

22.1 For the purposes of calculating continuous service with one or more NHS employers the following applies:

- a) NHS employers include health authorities, NHS Boards, NHS Trusts, Primary Care Trusts and the Northern Ireland Health Service
- b) a break in service of three months or less will be disregarded (though not count as service)

22.2 The following breaks in service will also be disregarded (though not count as service):

- a) employment on an honorary contract
- b) employment as a locum with a general practitioner for a period not exceeding twelve months
- c) a period of up to twelve months spent abroad as part of a definite programme of postgraduate training on the advice of the Postgraduate Dean or College or Faculty Advisor in the specialty concerned
- d) a period of voluntary service overseas with a recognised international relief organisation for a period of twelve months which may exceptionally be extended for twelve months at the discretion of the Trust
- e) absence on an employment break scheme – see Flexible Working policy
- f) absence on maternity/adoption leave (paid or unpaid) as provided for under this policy
- g) Employment as a trainee with a General Medical Practitioner in accordance with the provisions of the Trainee Practitioner Scheme will be disregarded and count as service.

## **23 Salary Sacrifice Schemes**

23.1 There can be implications for an employee participating in a salary sacrifice scheme. These implications can include: effect on calculation for adoption pay;

and eligibility to remain in the scheme during adoption leave when in reduced pay and/or on unpaid adoption leave.

- 23.2 An employee should check the terms of their salary sacrifice arrangements for further details and contact Payroll, or their Human Resources Officer as necessary.

## **24 Professional Registration**

An employee is responsible for ensuring that they maintain their competence and professional registration (where applicable) at all times during their paid and unpaid adoption leave.

## **25 Audit & Monitoring**

- 25.1 Compliance with this policy will be monitored by the Director of Human Resources. The organisations' figures will be presented to the Trust's Board on a quarterly basis who will identify appropriate action plans to address any areas of concern and will continue to monitor the plan until its completion.
- 25.2 Monitoring will include reporting of information from internal audits to ascertain that;
- The number of applications made to ensure adoption entitlements are administered appropriately.

## **26 Further Advice and Guidance**

Please contact a Human Resources Officer in the Human Resources Department

**Author:** Director of Human Resources

## The Newcastle upon Tyne Hospitals NHS Foundation Trust

## Application for Adoption Leave/Pay

Surname:	
Forename(s):	
Hospital / Department:	
Assignment Number:	
Post:	
Date of Appointment:	
Date of Continuous Service (please ask your manager to confirm the date)	
UK or Overseas Adoption	
Date of Matching Certificate:	
Expected Date of Placement:	
Adoption Leave requested:	
From and To (paid):	
From and To (unpaid):	

**(Please sign Section A, B, C or D below as appropriate)**

### Section A

I wish to apply for contractual adoption pay and intend to continue working in the NHS for a minimum period of three months after the expiry of my adoption leave. I enclose a matching certificate.

If I fail to return to work in the NHS for three months after the expiry of my adoption leave, I agree to repay on demand the whole of the contractual adoption pay, less any SAP, I receive. I also agree to reimburse the Trust the full amount of Employer's National Insurance Contributions for the period of paid leave.

Signed: ..... Date: .....

**Section B**

I wish to apply for Statutory Adoption Pay only and wish to retain the right to return to my post. In the event of returning to my post within the stated time limits after my date of confinement for a minimum period of three months, I understand that the Trust will pay to me any contractual adoption pay I am entitled to under the Adoption Leave policy. I enclose a matching certificate.

Signed: ..... Date:  
.....

**Section C**

I have no entitlement to Statutory Adoption Pay, but wish to apply for adoption leave in accordance with the Trust's Adoption Leave policy. I enclose a matching certificate.

Signed: ..... Date: .....

**Section D - Adoption Pay (where there is no intention of returning to work)**

I do not intend to return to work after the adoption and wish to apply for Statutory Adoption Pay. I enclose a matching certificate.

Signed: ..... Date: .....

**For Human Resources Department Use Only**

**Authorised**

Signed: ..... Date:  
.....

Print Name:  
.....

Designation:  
.....

Date application and matching certificate sent to Payroll:  
.....

**THE NEWCASTLE UPON TYNE HOSPITALS NHS FOUNDATION TRUST  
IMPACT ASSESSMENT – SCREENING FORM A**

This form must be completed and attached to any procedural document when submitted to the appropriate committee for consideration and approval.

Policy Title:	Adoption Leave	Policy Author:	Karen Pearce
	Yes/No?	You must provide evidence to support your response:	
1.	Does the policy/guidance affect one group less or more favourably than another on the basis of:	No	Policy applies to all employees of the Trust. It is underpinned by Trust's overriding policy on Equal Opportunities.
	• Race	No	)
	• Ethnic origins (including gypsies and travellers)	No	)
	• Nationality	No	)
	• Gender	No	)
	• Culture	No	) As above
	• Religion or belief	No	)
	• Sexual orientation including lesbian, gay and bisexual people	No	)
	• Age	No	)
	• Disability – learning difficulties, physical disability, sensory impairment and mental health problems.	No	)
2.	Is there any evidence that some groups are affected differently?	No	There was no evidence to support any group was affected differently
3.	If you have identified potential discrimination, are any exceptions valid, legal and/or justifiable?	No	) As above
4(a).	Is the impact of the policy/guidance likely to be negative? <i>(If "yes", please answer sections 4(b) to 4(d)).</i>	No	No
4(b).	If so can the impact be avoided?	No	
4(c).	What alternatives are there to achieving the policy/guidance without the impact?	No	
4(d)	Can we reduce the impact by taking different action?	No	

<b>Comments:</b>	<b>Action Plan due (or Not Applicable):</b>
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Name and Designation of Person responsible for completion of this form: Karen Pearce..... Date: 22/04/2009.  
 Names & Designations of those involved in the impact assessment screening process:..... The Employment Policies and Procedures Consultative Group.....

(If any reader of this procedural document identifies a potential discriminatory impact that has not been identified on this form, please refer to the Policy Author identified above, together with any suggestions for the actions required to avoid/reduce this impact.)