

Birmingham Maternity and Adoption leave guidance: support staff

Support staff adoption leave scheme

City Council Policy

The current information provided by the City Council on adoptive leave and pay is set out below. This information excludes some of the provisions of the former Adoption Leave Scheme (which was out of date, not having extended the period of leave to the statutory 52 weeks). For example, the current information does not explain that if both adoptive parents are employees of the City Council, only one of them may take this leave, with the other being eligible for support leave on the same lines as the two weeks of paternity leave/maternity support leave. The former scheme also permitted adoptive parents to start adoption leave eleven weeks before the placement; the new scheme limits this period to 14 days, to conform to statutory provisions.

The amount of Adoptive Parents' leave an employee is entitled to depends upon the amount of continuous local government service for that employee:

1. Employees with more than 26 weeks' continuous local government service in the week that they are notified of a match are entitled to 52 weeks, 39 weeks leave with pay and 13 weeks leave without pay.
2. Employees with less than 26 weeks' continuous local government service in the week that they are notified of a match will be entitled to 52 weeks unpaid leave.

The earliest time to start Adoptive Parents' leave is 14 days before the expected date of placement.

The latest time to start Adoptive Parents' leave is the actual date of placement, whether this is earlier or later than expected.

The latest time for return to work is after the full 52 weeks Adoptive Parents leave.

Adopters can change their mind about the date on which they want their leave to start providing they tell their line manager at least 8 weeks in

advance (unless this is not reasonably practicable). The school will respond in writing within 28 days of the employee's notification of their leave plans, setting out the date on which the employee is expected to return to work if the full entitlement to adoption leave is taken.

If the child's placement ends during the adoption leave period, the adopter can continue adoption leave for up to 8 weeks after the end of the placement.

Occupational Adoptive Parents Pay is paid to eligible employees with at least one year's continuous local government service provided that they return to work for at least three months (excluding parental leave taken immediately after the adoption leave). It is paid at the same level as occupational maternity pay. Employees with less than one year's continuous local government service receive statutory adoption pay only.

Should an employee who has received occupational adoptive parents' pay not return to work for the required period of three months that employee will be required to repay the amount by which this pay exceeds Statutory Adoption Pay, unless it is considered that there are exceptional reasons for repayment to be waived in full or in part.

An employee who is unsure at the start of Adoptive Parents' leave whether or not to return can opt for the occupational pay to be delayed and paid if the employee does return.

Maternity - support staff

The maternity leave scheme from the Green Book (the national conditions of service for support staff) **see separate document** Support Staff maternity leave scheme) applies to support staff employed by the City Council in schools and for support staff in voluntary aided and foundation schools which follow the City Council's conditions of service.

This scheme is for employees who, having the appropriate length of service, intend to return to work after their maternity leave and to do so for the required minimum period. They provide better benefits than the statutory minimum.

If employees simply exercise their statutory rights to return without committing themselves to return for the minimum period specified in the

occupational scheme, they will only be entitled to statutory maternity pay and not occupational maternity pay.

Statutory maternity leave and pay

A woman is entitled to take advantage of whichever right, statutory or contractual, is the more favourable to her, effectively mixing the contractual and statutory schemes. In recognition of this, contractual schemes have been amended from time to time to take account of new statutory rights.

Statutory Maternity Leave is 52 weeks. It's made up of:

- Ordinary Maternity Leave - first 26 weeks
- Additional Maternity Leave - last 26 weeks

You do not have to take 52 weeks, but you must take 2 weeks' leave after your baby is born (or 4 weeks if you work in a factory).

How to arrange maternity leave

The employee should notify the head teacher of her intention to take maternity leave, providing form MATB1 (from the employee's doctor or midwife). The school will ensure that the employee is provided with information on occupational and statutory maternity leave and pay as appropriate and is notified of her entitlement according to her particular circumstances and is informed of her obligations including what she must do if she wishes to return early from maternity leave.

If the employee becomes sick with a pregnancy related illness during the four weeks before the expected date of childbirth maternity leave will start automatically on the day following the start of her absence.

Costs of maternity leave

Since 1st April 2013 schools meet the full costs of each maternity leave for their employees and the schools HR/Payroll provider will recover the 92% of Statutory Maternity Pay (SMP) on their behalf. Payroll does this by reducing the monthly National Insurance Contributions paid to HMRC by the value of 92% SMP. Schools must meet the cost of the difference between full cost of the occupational maternity pay and the 92% SMP. Schools therefore continue to see only the 8% difference on their reports.

Resignation

Instead of taking maternity leave, employees who wish to care for their children full-time have the option of submitting their resignation. If they are uncertain about this before the birth, they may indicate an intention to resign and defer the actual resignation until after the birth. There are various reasons for delaying a decision. For example, a mother's personal circumstances might change during pregnancy or maternity leave (her husband or partner might be made redundant, for example). For pension purposes it is also better to defer resignation until after the birth. Due regard must however be paid to requirements for normal notice periods.

Returning to work but not for the period required as a condition of occupational maternity pay

If an employee resigns before completing the minimum period for which she is required to return the authority exercises its discretion regarding repayment of maternity pay to allow her to retain a proportion of her maternity pay (over and above statutory maternity pay, which the employee is entitled to retain) corresponding to the proportion of the minimum period which she has completed. In exceptional circumstances the whole of the repayment may be waived.

Successive pregnancies without returning to work

The support staff maternity leave scheme is silent on provisions for an employee who starts a second period of maternity leave before returning to work from the first period. However, for teachers the combined maternity leave is treated as a single period for the purpose of discharging the requirement to return to duty for the minimum period required in the scheme, so a similar arrangement will operate for support staff.

Compulsory maternity leave

There is a compulsory statutory period of maternity leave for two weeks following the date of the birth (article 8.2 of the Pregnant Workers' Directive and the Maternity (Compulsory Leave) Regulations 1994, Statutory Instrument 1994/2479 reg.2).

Statutory Maternity Pay (SMP)

Statutory Maternity Pay is payable to employees who satisfy Government regulations even if they do not intend to return to work. If the employee's fixed-term contract ends during the SMP period, the contract will not be extended or renewed, and the employee will be offered the choice of receiving the remaining SMP on a monthly basis or receiving it as a lump sum on the termination of the contract. The payments will be subject to normal deductions.

Statutory maternity pay will be offset against occupational maternity pay to the extent that no employee receives more than the equivalent of full pay.

Statutory Maternity Pay (SMP) is paid for up to 39 weeks. You get:

- 90% of your average weekly earnings (before tax) for the first 6 weeks
- £187.18 or 90% of your average weekly earnings (whichever is lower) for the next 33 weeks

SMP is paid in the same way as your wages (for example monthly or weekly). Tax and National Insurance will be deducted.

Changes to Maternity leave start date

Where an employee becomes sick with a pregnancy related illness during the four weeks before the expected date of childbirth, maternity leave will start automatically on the day following the start of her absence.

Where the baby is born before maternity leave starts, the day following the date of childbirth will be regarded as the first day of maternity leave.

An employee who is taking maternity leave under the appropriate contractual scheme and who is not able to return on the date already specified as her date of return because of sickness will be treated as on sick leave provided that she produces a medical certificate stating that she will be incapable of work before the date of return. Where the baby is born before maternity leave starts, the day following the date of childbirth will be regarded as the first day of maternity leave.

Premature birth and stillbirth

Childbirth is defined as the birth of a living child, or a stillbirth after a pregnancy lasting at least 24 weeks. An employee is entitled to maternity leave for childbirth as so defined. Outside this definition an employee who miscarries may take sick leave as necessary.

Maternity leave and annual leave

Employees on maternity leave accrue their normal leave entitlement during their maternity leave. As far as possible they should take their annual leave entitlement during the relevant leave year, but if they have outstanding leave at the end of the leave year and cannot take it because they are still on maternity leave, they should be able to carry over whatever has not been taken into the next leave year. Any requirement on an employee in a school to take leave in school holidays will continue to apply, although it may be agreed between the school and the employee that the employee could take the outstanding annual leave immediately after the end of maternity leave. The same arrangements apply to bank holidays; the employee is entitled to them.

An employee who does not return to work and who has been unable to take her annual leave entitlement and bank holidays, or has only taken part of it, during her period of maternity leave is entitled to payment instead of leave and bank holidays which have not been taken, and payment will be made for those days. Individual calculations will be undertaken to take account of different leave entitlements and term-time only working.

Employees moving jobs during maternity leave

The support staff maternity leave scheme specifies a “return to local authority employment” after occupational maternity leave. An employee who comes to Birmingham from another authority during her maternity leave will therefore be allowed to continue her maternity leave and will receive payments for such part of her maternity leave as may be outstanding.

Maternity leave and pension contributions

Unpaid maternity leave does not count as reckonable service for pension purposes, unless members of the Local Government Pension Scheme elect to continue paying contributions during the period of unpaid leave. Those who do not wish to accumulate pensionable service may decline to

exercise this option. Employees who resign part way through their paid maternity leave will continue to receive Statutory Maternity Pay if eligible, but without pension contributions being deducted after the date of resignation.

‘Keeping in touch’ days

Women may spend up to ten ‘keeping in touch days’ at work during their maternity or adoption leave (outside the two weeks after the birth) without interrupting that leave. The arrangement must be by mutual agreement; the employer is not obliged to offer the opportunity, and the employee has no right to come into work without her employer’s consent. Part of a day counts as one of the ten days.

An employee who attends work for a Keeping in Touch Day continues to receive any occupational or statutory maternity or adoption pay to which she is entitled. From 1st April 2014 all support staff in community, community special, voluntary controlled and maintained nursery schools will be entitled to have their occupational or statutory maternity or adoption pay made up to normal full pay for each Keeping in Touch Day. This will be calculated, in accordance with the Working Time Regulations, as 1/260 of annual salary. The same arrangement applies to support staff in other schools which have adopted the Birmingham Contract or that part of the Contract which provides for payment for Keeping in Touch days, although the date of implementation may be after 1st April.

Schools where the Birmingham Contract applies, or the school has adopted payment for Keeping in Touch days must notify Payroll of the name of the employee and the date of any Keeping in Touch Day and request payment. A form is attached at the bottom of this page. If the employee works only for part of the day the appropriate number of hours will be paid, so it will be for the school to notify Payroll of that number on the form.

Ante-natal care including risk assessments

Sections 55 and 56 of the Employment Rights Act 1996 provide that an employee who is pregnant and who has, on the advice of a registered medical practitioner, registered midwife or registered health visitor, made an appointment to attend at any place for the purpose of receiving ante-natal care, is entitled to be permitted by her employer to take time off

during her working hours to enable her to keep the appointment. The time off is paid leave at the normal rate of pay. If a part-time employee's ante-natal appointments happen to fall on one of her working days, she should therefore be given paid leave of absence on that day. The Government has ruled that ante-natal care may include not only medical examinations but also relaxation and parentcraft classes. It does not cover pregnancy tests. If requested to do so by the employer, the employee must produce documentary proof of the appointment (other than the first appointment during the pregnancy). Under the Education (Modification of Enactments relating to Employment) (England) Order 2003 the Authority remains responsible for implementing this statutory right.

For advice on the health and safety of new and expectant mothers see [risk assessments for pregnant women](#).

From 1st October 2014 perspective fathers, partners of pregnant women, or eligible intended parents in cases of surrogacy have the right to time off to attend up to two ante-natal appointments, lasting up to six and a half hours each. Partners do not have to be the biological parent of the child. The law is silent on pay and therefore time off for this purpose is unpaid. As with any time off, employees must apply in advance and in this particular case can be asked for a declaration that they are eligible for the time off and a statement of the appointment details. They cannot be asked to produce the appointment card, because this is the property of the mother.

Fertility treatment

Some employees undergoing fertility treatment will have their absence covered by a medical certificate, so such absence should be treated as sick leave. Others may be required to attend for hospital appointments, the timing of which will be determined by the hospital, and for which leave of absence should be given in the same way as for hospital appointments generally. Paid leave of absence should also be given for attendance at a prescribed course of medical treatment. Advice on particular cases may be obtained from your Employee Relations provider. A ruling on a case before the European Court of Justice in 2008 established that action taken against an employee absent for IVF treatment was sex discrimination.