

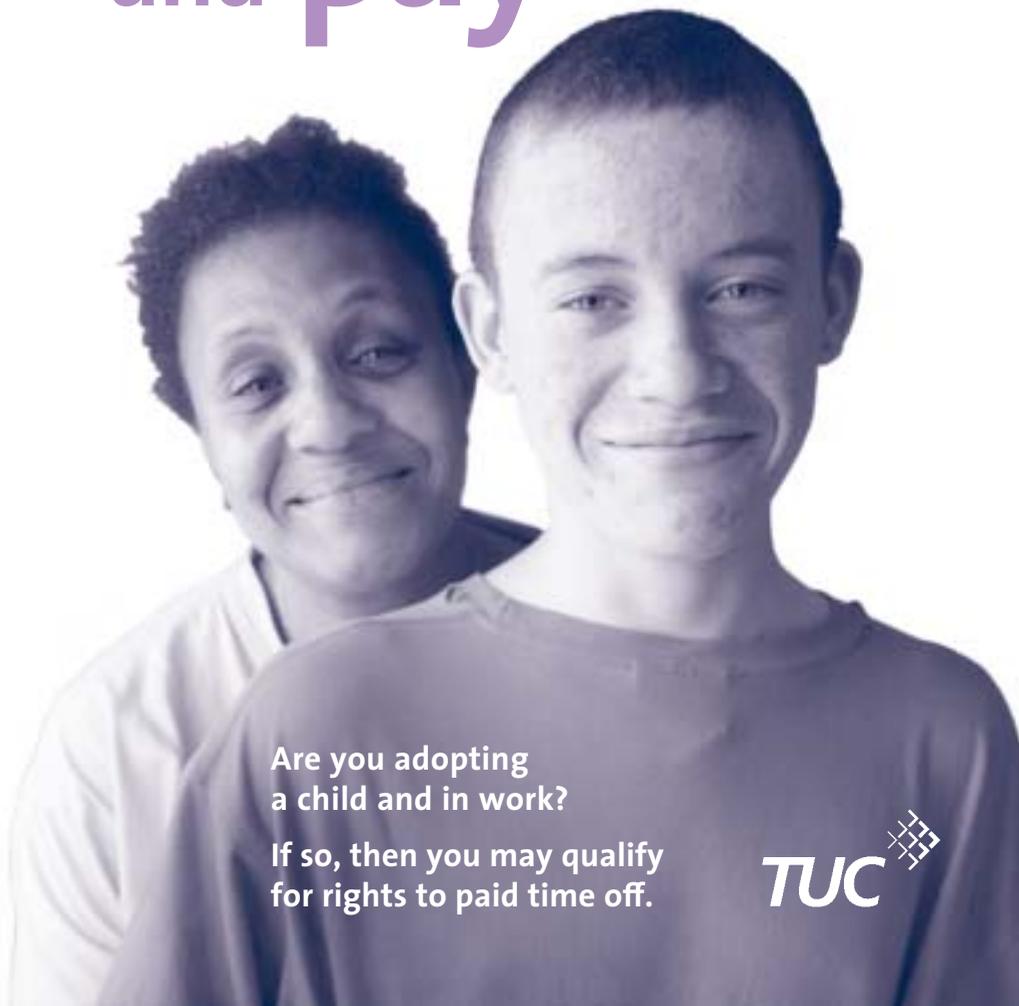
April 2007 Edition

workSMART

Know
Your
Rights

www.worksmart.org.uk

Adoption leave and pay



Are you adopting
a child and in work?

If so, then you may qualify
for rights to paid time off.

TUC 

As a working adoptive parent you may be entitled to 52 weeks adoption leave around the time you adopt, of which 39 weeks is paid.

This booklet tells you how to make the most of these new rights.

These regulations are only applicable to you if you are notified of being matched with a child on or after 1 April 2007, or where the adoption takes place on or after 1 April 2007. These regulations only apply to those employees who are adopting a child in the UK through a UK adoption agency. If you are looking to adopt a child from abroad, please seek specific legal advice and information.

This booklet gives a basic guide to your rights and answers common questions. Rights for adopting parents can be complicated and everyone's situation is different so you may need to seek further advice. This booklet is not a comprehensive statement of the law.

This booklet gives you information on adoption leave and pay. These rights apply to people who are adopting as individuals or as couples.

This booklet does not provide information on maternity rights, paid paternity leave for partners (which also covers the partners of adopting parents), the right to request to work flexibly, the right to unpaid parental leave, or the right for emergency time off for dependants. Information about all of these rights is available by phoning the TUC *Know Your Rights* line **0870 600 4 882** or visiting **www.worksmart.org.uk**



Check your rights with your employer

This booklet covers the basic (sometimes called statutory) rights that employers must provide for employees who are adopting a child. Your employer may offer better rights than the legal minimum and you need to check your contract of employment, your staff handbook, or perhaps a special leaflet that the personnel department may provide in larger organisations to find out your entitlement with your current employer.

Improving benefits and entitlements for adopting parents is a priority for unions, so if you work for an organisation that recognises unions you are likely to enjoy better rights than the legal minimum. These will normally be included in your contract of employment. If this is the case, your employer is legally bound to honour them because they have been promised to you. If you think that you have been denied time off that you expected, or some of your adoption leave or pay, then you need to check your legal rights and should seek advice.



Worker or employee?

Some working parents will get less than the legal minimum for employees, without anyone breaking the law. This is because not everyone who works for someone else is an employee in the eyes of the law. Some employers try and circumvent their obligations by treating their staff as self-employed and you can sometimes even find that you are being taxed as if you are employed but still denied the legal rights that an employee would enjoy. This is because, legally, you are a worker, not an employee.

If your employer tells you that you are a worker rather than an employee then you must seek legal advice. It is vital that you seek advice to ensure you get the leave and pay that is yours by rights. You can find out more about this from the TUC's booklet *Your Job and the Law* available from the TUC's *Know Your Rights* line **0870 600 4 882** or by visiting **www.worksmart.org.uk**

If you find that you are a worker and not an employee, you will not receive any rights to time off. If you are a worker in a unionised workplace, you may find that your union has negotiated rights that cover both workers and employees – you need to check your contract of employment and seek advice on this matter.



Adoption leave and benefits

Adoption leave

You are entitled to take adoption leave if you:

- are the person adopting the child (if you are in a couple, only one parent can take Ordinary and Additional Adoption Leave); and
- have been continuously employed for 26 weeks or more by the same employer in the week that you are notified that you have been matched with a child; and
- have notified the adoption agency that you agree to the placement of the child with you and have agreed the date of the placement.

You must give your employer notice of your intention to take adoption leave within seven days of being notified by the adoption agency that a child will be placed in your care for adoption.

You are entitled to take 52 weeks of adoption leave. This leave must begin on the date that you have specified in notice to your employer. The notice can be verbal or given in writing, but the employer can request that it is given in writing.

Your leave can start on:

- the day the child is expected to be placed with you; or
- a specific number of days after the child has been placed with you; or
- a pre-determined date.

Once you have given notice that you intend to take a period of ordinary adoption leave you can subsequently vary the date that the leave will begin on, providing you give your employer 28 days notice of this variation. Your employer can request that you give this change of date in writing.

If it is not reasonably practicable to give notice 28 days in advance, then you must give notice to your employer as soon as you can (as soon as is 'reasonably practicable').

Your leave will begin on the date that you specified in the final notice you gave your employer.

If you find that you are at work on the day you specified your leave to begin, then your Ordinary Adoption Leave period begins on the day after that.



Notice requirements

You have to give notice of your intention to take adoption leave that specifies:

- the date which the child is expected to be placed with you for adoption; and
- the date that you have chosen your adoption leave period to begin.

You must give this notice to your employer within seven days of being notified by the adoption agency that you have been matched with a child. If you find that you cannot do this, you must give notice as soon as you can.

If an employer requests it, you must provide them with evidence of the adoption. This should be in the form of documents issued by the adoption agency responsible for your placement (sometimes called a matching certificate).

This documentary evidence must show:

- the name and address of the agency; and
- the name and date of birth of the child; and
- the date that you were notified you had been matched with the child; and
- the date that the agency expects the child to be placed in your care.

Once you have notified your employer of your intention to take adoption leave, your employer has 28 days in which to tell you the date your leave will end on. If your employer fails to do this, they have to give you this information at least 28 days before the date that they are expecting your leave to end on.

Your contractual rights while you are on leave

Under the law, adoption leave is divided into two sections. The first 26 weeks are called Ordinary Adoption Leave (OAL) and the second 26 weeks are called Additional Adoption Leave (AAL). You are entitled to different employment rights under OAL and AAL although you should check whether your employer offers something better than the minimum protection offered by the law.

Ordinary Adoption Leave

When you take Ordinary Adoption Leave, you are entitled to benefit from all the terms and conditions, such as pensions or holidays, that you would have received if you had not been on leave. These include perks such as health club membership and use of company car or mobile phone (unless these are provided for business use only).

You are not entitled to receive 'remuneration', i.e. wages and salary, while on ordinary adoption leave, but you may be entitled to receive Statutory Adoption Pay (SAP).

Additional Adoption Leave

During a period of Additional Adoption Leave you are still an employee, but the only contractual rights and duties which continue automatically are:

- the notice periods for terminating a contract – you or your employer should still give this period of notice if either of you wants to end your job contract;
- your right to receive redundancy payment/compensation;

- disciplinary or grievance procedures;
- terms on not working for competing organisations or disclosing confidential information about your employer's business.

During Additional Adoption Leave all other contractual rights and benefits, such as pension and paid holiday, can be suspended, although your statutory rights to paid annual leave may continue to apply. However, unions often negotiate with employers for contractual rights and benefits to continue – as if a woman on additional maternity leave were still at work.

Some good employers may well provide a better deal than the legal minimum and you should check your contract. You should check other relevant employers' policies or union agreements.

Your employer must not discriminate against you while you are on any part of adoption leave. If you feel that you have been discriminated against while on adoption leave, you may be able to take a sex discrimination claim to an employment tribunal. You should seek advice from your union or a legal specialist in such circumstances.

Notice of your intention to return

You do not need to give any notice that you are returning to work at the end of your adoption leave, and you can simply turn up at work on the day that you are due back. However, you might find it helpful to contact your employer just to make sure that they know you're coming back!

You must return to work on the day after the last day of your 52 weeks adoption leave period.

If you want to return to work earlier than the end of the full 52 weeks of leave that you are entitled to take, then you must give your employer eight weeks notice of your intention to return.

Notice from your employer of the date your adoption leave ends

If your employer fails to comply with either of the notice periods (**see page 4**), and you return to work on the day that you thought you were supposed to return on (a day that you reasonably thought to be the day after the last day of your adoption leave), your employer cannot turn you away or refuse to pay you for any work that you do.

You are protected under the law if:

- your employer fails to give you notice of your return date and then attempts to dismiss or discipline you when you fail to return on that date;
- your employer gives you less than 28 days notice of the date that your adoption leave period would end and it was not reasonably practicable for you to return to work on that date.

Keeping in Touch Days

During your adoption leave period you may carry out up to ten days' work for your employer (or employers if you have more than one) without losing any adoption pay. 'Keeping in Touch (KiT) Days' could include attending a training day or staff meeting or actually doing a full day's work. Anything you do on any day will count as though you had worked a full day, even if you only went into work for two hours, but KiT Days cannot be used to extend your adoption leave period.

Your employer cannot force you to work at any point during your adoption leave period; it has to be an agreement between you and the employer. If you choose to work a KiT Day, your employer does not have to pay you your normal wages, but your adoption pay is not affected by working such a day. Some good employers might decide to pay you your normal wages for that day, although you should check that this does not jeopardise your entitlement to adoption pay. Some employers might allow time off 'in lieu' when your adoption leave period ends and you return to work.

Your job when you return

After returning from **Ordinary Adoption Leave (see page 5)** you have the right to go back to the same job you were doing before you went on leave.

After returning from **Additional Adoption Leave** you also have the right to return to the same job unless your employer can demonstrate that it is not reasonably practicable to have kept that job open for you. In this case you are still entitled to an alternative job that is both suitable and appropriate for you.

Requesting the right to return to work flexibly

Many new parents would like to return to work on a part-time basis or work more flexible hours, and some good employers are happy to negotiate these new terms. Employees who have children under six, or disabled children under 18, have the right to request to work flexibly, including part time, and to have that request considered seriously by their employer.

This is an important right, and your trade union may well negotiate better terms and conditions in line with this right in your workplace. You should check your contract or your staff handbook, talk to your trade union representative and (where appropriate) your personnel department to ensure that you get access to all that your employer offers in this area.

See the TUC *Know Your Rights* line booklet *Flexible Working for Parents and Carers* for more on this issue.



Adoption pay

Statutory Adoption Pay

These regulations apply to employees who are notified of being matched with a child on or after 1 April 2007 or who have a child placed with them for adoption on or after this date.

Statutory Adoption Pay (SAP) is available to you while you are on adoption leave.

The rules governing SAP are complicated and you need to understand one legal term, which is your 'qualifying week'. This is the week beginning with the Sunday that you received notification of having been matched with the child and ends on the following Saturday. You also need to satisfy certain conditions in order to receive SAP:

- you must have been notified of being matched with a child who will be placed with you by a UK adoption agency; and
- you must have been continuously employed by the same employer for 26 weeks ending with the qualifying week – there may be some breaks in your employment that don't stop you from qualifying for adoption leave or pay, but you should talk to your trade union or a legal specialist about this; and

- your gross average earnings per week must be at, or above, the Lower Earnings Limit (LEL) for the eight weeks up to the end of your qualifying week.

You must give your employer certain evidence of the adoption in order to qualify for SAP. This can come in the form of a 'matching certificate', which the adoption agency will provide you with. This certificate should state:

- your name and address, and the name and address of the adoption agency;
- the date that the child will be placed for adoption with you, or if the placement has already been made, the date that the placement was made on; and
- the date that you were told by the adoption agency that the child would be placed in your care.

You must give your employer the information listed above at least 28 days before the date you have chosen your pay period to start on, or as soon as reasonably practicable. You must also give your employer a signed declaration that you have chosen to receive Statutory Adoption Pay rather than Statutory Paternity Pay: you cannot be in receipt of both.

Your employer will tell you whether you qualify for SAP, but if they state that you do not and you do not agree with them you have the right to challenge their decision. You should talk to your employer to start with, and your trade union representative may also be able to help. If you still don't agree with your employer's decision, you should contact the HMRC, formerly the Inland Revenue, **(see contacts)** who will be able to make a formal decision. If you find that you don't qualify for SAP pay, then you may qualify for other benefits and you should talk to your adoption agency about this or you can contact your local social security or Jobcentre Plus office for more information.

If you are entitled to receive adoption pay, you can choose when it will start. You can choose that it starts on:

- the date the child is placed with you for adoption, or if you are at work on that day, the following day; or
- a pre-determined date that you have chosen and which falls no more than 14 days before the child's placement with you is expected to take place, and which starts no later than the date that the child is placed with you.

You can be paid SAP continuously for up to 39 weeks and you will receive either a flat rate per week, or 90 per cent of your average earnings if they are less than the flat rate per week.

If you are paid weekly, then your adoption pay will be paid to you weekly. If you are usually paid your wages monthly, then your SAP will be paid monthly.

Your SAP will be stopped if, after your child is placed, you start working for a new employer who did not employ you in your qualifying week.

If you leave your job after the qualifying week, for whatever reason (including dismissal), you will still be entitled to SAP, providing you do not start working for another employer. However, additional rules apply if you are dismissed, and you should check with your trade union, or the HMRC in this instance for more information.

If you are part of a couple who is adopting, then your partner may be entitled to claim paid paternity leave for up to two weeks around the time that the placement of the child in your care is made. You should see the *Know Your Rights* booklet *Paternity Leave and Pay* for more information.

Questions and answers

What happens if I am adopting more than one child during the same placement?

If you adopt more than one child at the same time then you are only entitled to the adoption leave as if you were adopting one child. The entitlement to Ordinary Adoption Leave is not affected by there being more than one child placed for adoption as part of the same placement.

Can my employer penalise me if they think that I'm going to take or have asked to take adoption leave (either ordinary or additional)?

Your employer cannot penalise you if you seek to take Ordinary or Additional Adoption Leave, or even if they think you are likely to take it. If you think that this is the case, you must talk to your trade union representative and seek specialist legal advice to find out what rights you have.

Can I do any work for my employer while I'm on adoption leave?

You may carry out up to ten days' work for your employer (or employers if you have more than one) without losing any

adoption pay. These are known as 'Keeping in Touch (KiT) Days and they can include attending a training day or staff meeting or actually doing a full day's work. Anything you do on any day will count as though you have worked a full day, even if you have only gone into work for two hours, although KiT Days cannot be used to extend your adoption leave period.

If you choose to work on a KiT Day, your employer does not have to pay you your normal wages, but your adoption pay is not affected by working such a day. Some good employers might decide to pay you your normal wages, although you should check that this does not jeopardise your adoption pay. Some might offer time off 'in lieu' when your adoption leave period ends and you return to work.

Working a KiT day has to be by agreement between you and your employer and you cannot be forced to work at any point during your adoption leave period. If you feel that you are being forced to work or that you are suffering detrimental treatment for not working during your adoption leave period then you should seek legal advice as this is against the law.

What happens if I want to take unpaid parental leave of more than four weeks on top of my adoption leave?

You have the right to return to the same job you were in before the parental leave period, but if your employer can argue that the job no longer exists or they could not hold it open while you were away then they have to offer you suitable alternative employment. This can be with the employer themselves, or with an associated employer. It also applies if the employer you work for is taken over by another. The job must be very similar to your previous job and have similar terms and conditions.

What happens if my employer attempts to avoid paying me SAP?

Your employer is not allowed to terminate your contract of employment simply because they want to avoid paying you SAP. If your employer does this, and you would have been employed by them in the qualifying week if they hadn't terminated your contract, and you have been employed by them for at least eight weeks continuously before your contract was terminated, then you will be viewed as having worked continuously for your employer up to the child's placement with you for adoption.

Your normal weekly earnings will be calculated using the earnings you had in the eight weeks immediately before your contract was terminated.

Are there any circumstances where my employer does not have pay me SAP?

You cannot receive SAP whilst you are in receipt of Statutory Sick Pay.

If you die while in receipt of SAP, your employer can stop paying it in the week following the week in which you die.

Your employer is not liable to pay you SAP if, during any week that you are receiving it, you are taken into legal custody, or sentenced to imprisonment (not a suspended sentence). However, if you are taken into custody and then released without charge, found not guilty of any offence, receive a suspended sentence or are convicted of an offence but not given a sentence then you are entitled to continue receiving SAP from your employer.



What happens if the adoption placement is disrupted or terminated?

In cases where disruption to the placement occurs and your placement is terminated, you are entitled to continue receiving adoption pay for up to eight weeks after the week that the disruption occurs. The same rules apply regardless of whether you are on ordinary or additional adoption leave when the placement is terminated. The most important thing is that the leave period ends eight weeks after the week that the termination of the placement takes place, and that you give the employer eight weeks' notice that the leave has ended and you intend to return to work. In all cases, a week is calculated as a seven-day period that starts on a Sunday.

Contacts

ACAS

General advice for workers and employers on legal rights.
T: 08457 47 47 47 (9am-4.30pm)
www.acas.org.uk

BAAF Adoption and Fostering

Offers advice and information for people thinking of adopting and fostering as well as services for children separated from their families of origin.
T: 020 7421 2600
www.baaf.org.uk

Citizens Advice Bureaux

Your local CAB office will be listed in the phone book. You can also visit www.citizensadvice.org.uk to find advice and information online.

Department of Trade and Industry

The DTI has produced guidance on rights available to working parents.
www.direct.gov.uk

Employment Tribunal Service

Information about making a claim:
www.employmenttribunals.gov.uk.
There is also an enquiries helpline which can give general information but cannot provide legal advice.
T: 08457 959775

Equal Opportunities Commission

Advice and support on sex discrimination and maternity/parental rights legislation.

T: 08456 015 901

www.eoc.org.uk

Fathers Direct

Provides information for fathers, and fathers-to-be.

T: 0845 634 1328

E: enquiries@fathersdirect.com

www.fathersdirect.com

Health and Safety Executive

Advice on pregnancy/maternity and health and safety). Infoline provides access to the HSE's health and safety information, and access to expert advice and guidance.

T: 0845 345 0055 (8am-6pm).

www.hse.gov.uk

HMRC (tax credits)

For calls in England, Wales, Scotland:

T: 0845 300 3900 (8am-8pm)

For calls in Northern Ireland:

T: 0845 603 2000 (8am-8pm).

www.hmrc.gov.uk

Jobcentre Plus

Your local office will be in the phone book or is available from the Department of Work and Pensions.

www.dwp.gov.uk

Law Society

Information on specialist solicitors.

T: 020 7242 1222

www.lawsociety.org.uk

Law Centres Federation

T: 020 7387 8570

www.lawcentres.org.uk

Working Families

Free advice and information, including a helpline and a website for families including those on low incomes.

T: 0800 013 0313 (helpline number)

T: 020 7253 7243

www.workingfamilies.org.uk



Unions today – your friend at work

The new rights described in this booklet – and many others such as the minimum wage – have been won by union campaigning. Without union help and assistance many workers won't get the full benefit of new rights at work.

Every day unions help thousands of people at work and every year they win hundreds of millions of pounds in compensation for their members through legal action.

Unions also help negotiate better pay and conditions, including far better provisions for family-friendly employment than the legal minimums.

To find out more about joining a union call the *TUC Know Your Rights* line on **0870 600 4 882**.

www.worksmart.org.uk is the one-stop site for everyone at work. The website provides a range of information about working life and your rights at work – whether you are a union member or not. The full text of this booklet, plus the whole range of rights materials, is on the site – just a click away!



Trades Union Congress

Congress House, Great Russell Street, London WC1B 3LS

Tel: 020 7636 4030

www.tuc.org.uk