



# Adoption Policy Teachers

West Sussex Adopted



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## Policy Section

### School Vision

At Chesswood Middle School we inspire our whole school community to enjoy their learning adventure and have fun along the way. We ignite a passion for learning throughout the school community, securing excellence, empathy and equality in all that we do.

### School Mission

We will strive to achieve the highest standards of academic achievement and behaviour within a vibrant, exciting learning environment so that all children leave this school with confidence and the ability to take advantage of future opportunities.

## 1. Policy Links

This policy should be read in conjunction with the following school policies

Supporting Material

## 2. Policy Development

<b>It was developed by</b>	<b>West Sussex Local Authority</b>
<b>Consultation</b>	<b>West Sussex Led</b>
<b>Governing Sub Committee</b>	<b>Personnel</b>
<b>It has been presented to the governors.</b>	<b>Autumn 2011</b>
<b>Communication: This policy is hosted on the school website and available for copying from there.</b>	
<b>It will be reviewed:</b>	<b>In response to any changes from WSLA</b>



### **3. Aim**

The aim of this policy is to outline an employee's entitlements to adoption leave, statutory and occupational adoption pay and to explain the steps that need to be taken by an employee and their headteacher/line manager before and during adoption leave.

### **4. Scope**

This policy only applies to employees who are employed on teachers' terms and conditions of employment, holding permanent, temporary or fixed term contracts and who are adopting a child.

Adoption leave is open to employees of either gender but only ONE adoptive parent is entitled to take adoption leave, regardless of whether they work for different employers.

Adoption leave is only available to employees who are adopting a child through an adoption agency. It does not apply to special guardians, foster carers or to step parents adopting a child outside of an adoption agency framework.

### **5. Key Information.**

Subject to meeting certain qualifying criteria an adoptive parent is entitled to:

- 52 weeks adoption leave, which must be taken as a continuous block.
- The right to return to their job, or similar job on terms and conditions no less favourable, at the end of their adoption leave.
- Statutory adoption pay and/or occupational adoption pay, subject to meeting certain qualifying criteria.

## Guidance Section

### 1. Entitlement to Adoption Leave.

Providing an employee has at least 26 weeks continuous service with WSCC, ending with the week they are notified that they are matched with a child, they are entitled to 52 weeks adoption leave. This must be taken as a continuous block. The adoption leave is split into two parts, which attract different employment rights. The first 26 weeks leave is referred to as ordinary adoption leave (OAL) and subsequent 26 weeks period is referred to as additional adoption leave (AAL).

Only one period of leave is available irrespective of whether one or more children are placed together at the same time.

#### **1.1. *Employment Rights during ordinary adoption leave (OAL).***

- During ordinary adoption leave, the employee is entitled to benefit from all their normal terms and conditions of employment with the exception of pay.
- This period is counted as continuous service for calculation of statutory employment rights, and other contractual payments based on length of service. This means this period is included in the calculation of entitlement to sick pay.
- On return from OAL an employee is entitled to return to the same job on the same terms and conditions as before their leave began.
- If there has been a re-grading or pay award applied to their post during the period they were on OAL then they are entitled to receive these as if they hadn't been away.

#### **1.2. *Employment Rights during additional adoption leave (AAL).***

- Employees are entitled to benefit from all their normal terms and conditions of employment with the exception of pay during Additional Adoption Leave.
- Continuity of employment is preserved during additional adoption leave for the purpose of calculating entitlement to statutory employment rights (such as redundancy, unfair dismissal rights, notice requirements).
- The period of additional adoption leave will be counted as continuous for the purpose of calculating contractual sick pay.
- On return from additional adoption leave the employee is entitled to return to the same job on the same terms and conditions as before his/her leave, as if s/he had not been absent. If this is not reasonably practicable then s/he should be offered a similar



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job on conditions that are not less favourable.

For information about how pension is affected by Adoption Leave please refer to section 5.

## 2. Entitlement to Adoption Pay.

There are two types of adoption pay and these have different qualifying criteria. An employee may qualify for none, one or both of the entitlements set out below.

An employee's entitlement to adoption pay will be closely related to their length of service at the week they are notified that they have been matched with a child.

### **2.1. Statutory Adoption Pay (SAP) – The basic statutory adoption pay scheme provided by the Government.**

To be entitled to statutory adoption pay the employee must have:

- At least 26 weeks continuous service with WSCC (the school if a Voluntary Aided School) ending with the week they are notified that they have been matched with a child

And

- Average weekly earnings, which are not less than the lower earnings limit for national insurance contributions.

SAP is paid for a total of 39 weeks and is a flat rate payment of statutory adoption pay or 90% of the employee's average weekly earnings whichever is less. The rate payable for statutory adoption pay changes regularly in April and employees should consult [www.direct.gov.uk](http://www.direct.gov.uk) for up to date information.

SAP payments start when an employee begins their adoption leave. They will continue for a period of 39 weeks unless the employee returns to work before that time.

If an employee is not entitled to statutory adoption pay they will still be able to take unpaid adoption leave. They may also be entitled to income support whilst on adoption leave. Employees should contact their local Job Centre Plus or Benefits Office to find out whether they are entitled to this.

### **2.2. Occupational Adoption Pay (OAP) – An enhancement to the statutory scheme.**



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To be entitled to Occupational Adoption Pay the employee must have:

- One year's continuous service as a teacher with one or more Local Authority, by the week that they are notified that they have been matched with a child.

And

- At the end of adoption leave return to work for a minimum period of 13 weeks equivalent to the employee's hours at the time of commencing adoption leave. School closure periods are included for this purpose. (If the employee does not they will be required to repay any half pay paid to them).

Occupational adoption pay is paid for a total of 18 weeks and is split into three levels of payment:

- 4 weeks at full pay. (If the employee also qualifies for statutory adoption pay, and this amount is more than the SAP payment, then her OAP payment is inclusive of the SAP entitlement. The employee does not receive both.
- 2 weeks at 90% of their actual weekly pay. If the employee qualifies for statutory adoption pay and this amount is more than the SAP payment, then the OAP payment is inclusive of the SAP entitlement the employee does not receive both.
- Followed by 12 weeks at half pay. If the employee also qualifies for statutory adoption pay this payment is made in addition to half pay. (Employees who qualify for both OAP and SAP will not receive more than full pay when the two are combined).

Where an employee is entitled to both statutory and occupational adoption pay the entitlements will run concurrently.

An employee can choose to make the half pay last for longer by having it paid over 20 weeks at a rate of 3/10ths of pay; the amount received overall is the same. If an employee is not sure whether they will return to work, they can ask for the half pay to be withheld until they have made a decision.

Employees **not** intending to return to work after adoption leave may be entitled to SAP.

### 3. Adoption Assessment Process



### **3.1. *Notifying Management***

Once an employee has made an application to become an adoptive parent and they are notified that they will be assessed by the Local Authority/ Adoption Agency they should inform their headteacher/line manager. The purpose of this is:

- To ensure their headteacher/line manager is aware that the employee is going through the adoption process.
- To enable the headteacher/line manager and the employee to start planning for the employee's adoption leave

### **3.2. *Time off for the assessment process***

Before an employee is approved to be an adoptive parent they are required to go through an assessment process, consisting of training, meetings and observations. There is no legal entitlement to paid time off for any part of the adoption assessment process. Where possible meetings and training should be arranged to take place outside of work time. Where this is not possible, where business needs allow, this should be considered within the school's arrangements for dealing with special leave or by flexible working arrangements agreed between the headteacher/line manager and the employee.

Any time off must be agreed in advance with the headteacher/line manager. The headteacher/line manager may ask to see confirmation of the course/meeting the employee is required to attend.

## **4. Applying for Adoption Leave.**

Where possible an employee should keep their headteacher/line manager advised of when they think they may be commencing adoption leave so that arrangements can be made to cover the employee's absence.

When an employee is notified that they have been matched with a child, they should inform their headteacher/line manager that they intend to take adoption leave. This should not be less than 7 days of receipt of the notification of matching.

The earliest date adoption leave can start is 14 days before the date the child is expected to be placed for adoption with them, but an employee can work up to the day before the child is placed with them for adoption.

Employees applying for adoption leave should complete form ADO/L1 as soon as



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possible. As this form triggers the payment of statutory adoption pay, the form should ideally be completed no later than 28 days before the date they wish their statutory adoption pay to commence. An employee may alter the date they wish to start their adoption leave providing the notification periods set out below, are followed.

Once completed the employee should give their headteacher/line manager the ADO/L1 form and the matching certificate. The headteacher/line manager should take a photocopy for their own records, before both **original** documents are forwarded to Employment Services.

Adoption Pay cannot be paid until the matching certificate is received by Employment Services.

### ***4.1. Starting Adoption Leave earlier or later than notified***

If the employee wishes to alter the planned date they want to start adoption leave they must notify their head teacher/line manager of the new date:

- 28 days before adoption leave was originally due to start.

Or

- 28 days before the new date s/he wants to start her leave.

Whichever of these two deadlines is the latest.

If an employee does not give the correct notification of their intention to take adoption leave and to claim statutory adoption pay, the school may delay the start of adoption leave and pay, until the correct notification is given.

## **5. During Adoption Leave.**

### ***5.1. Pension Contributions***

Where an employee is a member of the Teacher's Pension Scheme, pension contributions will continue to be deducted during the paid maternity leave period, providing they are in receipt of SAP or contractual adoption pay.

Contributions will be based on the actual remuneration that is received.



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If the employee is no longer receiving any pay, they will no longer be a member of the scheme and the period will not count as service for pension calculation purposes.

On return to work, and providing they have not opted out of the scheme, obtained a refund of contributions or transferred service to another pension scheme, the service will be aggregated together.

If the employee has a break in service of more than 5 years, then they would be treated as a new entrant.

The Teachers Pension Scheme produces a factsheet, that can be downloaded from their website [www.teacherspension.co.uk](http://www.teacherspension.co.uk)

### **5.2. Annual Leave**

Teachers do not have a contractual right to paid annual leave but they do have a right to statutory annual leave under the Working Time Regulations. When an employee is on adoption leave their entitlement to statutory annual leave continues to accrue. Teachers will normally take this leave either before or after their adoption leave during school closure periods. In cases where a teacher does not return to work after a period of adoption leave and there is outstanding annual leave accrued, this can be taken as payment in lieu at the rate of 1/260th of pay for each day accrued. For the purposes of calculation of statutory annual leave entitlement, the leave year runs from 1st September to 31st August.

### **5.3. Contact whilst on Adoption Leave**

Whilst they are on adoption leave the employee's headteacher/line manager should maintain reasonable contact with an employee to keep them updated about developments at work and matters concerning their job. The headteacher/line manager and employee should agree the level and frequency of contact prior to the employee commencing adoption leave.

The school has an obligation to keep an employee informed of any other information relating to their job that they would normally be made aware of if working. This may fall outside of the individual agreement referred to above.

### **5.4. Keeping in Touch Days**

Whilst on adoption leave an employee may not carry out any work without bringing the adoption leave to an end. This is with the exception of 'Keeping in Touch' Days



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To assist an employee with their return to work, they may by mutual agreement work up to ten 'Keeping in Touch' (KIT) days during the nil pay period of adoption leave to help them prepare for returning to work. A KIT day can be used to attend training sessions or meetings (providing these are related to the employee's job) as well as carrying out aspects of the employee's job. In exceptional circumstances a KIT day may be worked during the paid period of adoption leave.

There is no obligation for an employee to work a KIT day if it is offered, likewise an employee cannot insist that the school provide them with a KIT day.

Any work done by an employee on a particular day is counted as using one KIT day. For example, if an employee agrees with their headteacher/line manager that they will attend a training course and the course lasts two hours, this is counted as using up one of their KIT days.

An employee working a KIT day will be paid their normal hourly rate of pay for the hours actually worked. Claims for payment must be made on a DOC 33 timesheet and authorised by the employee's headteacher/line manager. The employee must clearly state the date worked, and the actual number of hours worked on that day (lunch breaks are excluded). If a KIT day is worked during the paid period of adoption leave an employee will be paid their adoption pay, plus the hours worked. The total payment will be limited to no more than what they would receive for a normal full day's pay.

KIT days do not extend the period of adoption leave. Payment for KIT days will always be made in arrears at the next available payroll.

## **6. Returning to work.**

### **6.1. *Returning to Work as Notified***

An employee does not need to give notice that they wish to return to work if:

- They have elected to take the full 52 weeks adoption leave.

Or

- When they applied for adoption leave, they specified an earlier return date and they return on this date.

At the end of adoption leave an employee is entitled to return to the job in which they were employed under their original contract of employment, and on terms and



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conditions not less favourable than those which would have been applicable to them if they had not been absent.

The only exception to this is where an employee returns to work during or after additional adoption leave, and it is not reasonably practicable for them to return to their old job. In this case they should be offered a similar job on terms and conditions no less favourable to their original job.

There is no automatic entitlement to return to work on a part time basis. However an employee is entitled to apply for a change in their working pattern/hours and to have this request seriously considered. Such a request should only be denied if there are clear business reasons. Please refer to the school's policy on the Statutory Right to Request Flexible Working, for further information.

If an employee is not able to return to their old job for reasons of redundancy, they will be entitled to be offered a suitable alternative vacancy where one exists. Any such offer should be of work that is suitable and appropriate to the employee and the place, capacity and terms and conditions of employment must not be substantially less favourable than if they had been able to return to their original job.

Suitable alternative employment may also be offered where there are other exceptional circumstances other than redundancy, which necessitate a change in the job in which they were previously employed and would have occurred had the employee not been absent.

### ***6.2. Returning to work earlier or later than originally notified.***

If an employee wishes to return to work earlier or later than originally notified, they should discuss this with their headteacher/line manager as soon as possible.

They must notify their headteacher/line manager in writing no later than 8 weeks:

- Before the date they intend to return (if returning earlier than planned)

Or

- Before they were due to return to advise of the new return to work date. (if returning later than planned). Adoption leave cannot be extended beyond 52 weeks.

If insufficient notice is given of return to work then the school may postpone the employee's return to work until the full 8 weeks notice is given. If a return to work is



postponed in these circumstances an employee is not entitled to receive wages or salary.

Headteachers/line managers are responsible for notifying Employment Services of the revised return to work date.

### ***6.3. Return to work is delayed because of sickness absence***

If an employee is unable to return to work at the end of the adoption leave period due to sickness, they should notify their headteacher/line manager through the normal sickness absence reporting procedure. They will be required to provide medical certificates as normal. This absence will be treated as sickness absence and the usual sick pay provisions will apply.

### ***6.4. Return to work is delayed due to an interruption to work by industrial action or other unforeseen circumstances not related to the employee***

If an employee is prevented from returning to work at the end of their adoption leave because of industrial action or other unforeseen circumstances not related to the employee, they may instead return to work when work resumes, or as soon as is reasonably practicable thereafter.

### ***6.5. Taking parental leave immediately following adoption leave***

An employee can agree with their headteacher/line manager to take parental leave immediately following the end of adoption leave. The headteacher/line manager needs to ensure that they have maintained proper records and that Employment Services are informed so they can record the absence appropriately and ensure accurate pay calculations.

## **7. Adopting a child from outside the UK.**

Employees adopting a child from outside the UK, and outside the laws of the United Kingdom may be entitled to the same provisions as outlined above, providing they have received official notification from/or on behalf of the relevant domestic authority that the employee has been approved to be a suitable adoptive parent.

The scheme is broadly the same, but with the following differences to the notification requirements and the date adoption leave can start:



## **7.1. Notification Requirements.**

An employee must inform their headteacher/line manager:

- they have been matched with a child

And

- the date that the child is due to enter Great Britain within 7 days of receipt of notification of matching or of reaching 26 weeks continuous employment, if the notification was received before this point.

An employee must:

Give 28 days notice of when they wish to commence adoption leave.

Confirm and provide evidence to the school of the date the child entered Great Britain within 28 days of the child entering the country.

## **7.2. Starting Adoption Leave.**

When adopting from abroad the earliest date adoption leave may start is from the date the child enters Great Britain and the latest date it can start is 28 days after the child has entered Great Britain.

## **8. Adoption Leave and unfair dismissal provisions.**

It is automatically unfair to dismiss an employee because they have taken or are on adoption leave. Schools are advised to contact Employment Services before taking any action to dismiss an employee who is on adoption leave.

## **9. “Sharing” Adoption Leave/Adoption Pay – Known as Additional Paternity Leave**

For children matched for adoption on or after 3 April 2011 the adopter can choose to “share” part of his/her adoption leave. This is called “Additional Paternity Leave” (APL) and can be taken by the spouse or the partner (including same-sex partner or civil partner) of the main adopter for the purpose of caring for the child.

The adopter has to return to work with an entitlement to at least two weeks’ statutory adoption leave remaining. There may also be an entitlement to statutory adoption pay (SAP) remaining. The remaining entitlement to SAL and SAP can then be



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used by the spouse or partner of the adopter. This right to APL is in addition to any entitlement to Ordinary Paternity Leave.

Additional Paternity Leave can be taken any time from 20 weeks after the child is placed, but must have finished by 52 weeks after the adoption. A period from 2 weeks to a maximum of 26 continuous weeks can be taken and this leave must be for the purpose of caring for the child.

To qualify for APL the spouse or partner of the adopter must have at least 26 weeks' continuous employment ending with the qualifying week (the week they were matched for adoption) and continue to work from the qualifying week into the week before they wish to take APL.

For full details please see the Paternity Leave Policy in the Schools HR Guide.

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Statutory adoption pay qualifying criteria



Occupational adoption pay qualifying criteria.

When were you notified that you were matched with a child?

