



MIDDLESEX
LEARNING
PARTNERSHIP

SHARED PARENTAL LEAVE & PAY (ADOPTION) POLICY

APPROVED BY:	HR & Pay Committee
DATE:	10 November 2021
NEXT REVIEW DUE BY:	9 November 2024

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1. Scope

This policy applies to employees in the Middlesex Learning Partnership (Academy Trust) who have a child placed with them and/or their partner for adoption. If you or your partner are pregnant or have given birth, please see the Shared Parental Leave and Pay (Births) Policy.

2. Policy

The Shared Parental Leave regulations provide an opportunity for parents to take advantage of additional flexibility in the way they choose to care for their child in the first year of the child being placed with them for adoption.

This policy sets out the arrangements for shared parental leave and pay for adoptive parents. The right to shared parental leave applies to employees who will have a child placed with them and/or their partner for adoption. Entitlement to adoption leave and pay for employees remains unchanged and is covered under separate procedures.

3. Shared Parental Leave

Shared parental leave is a period of leave which is available to working parents (both mothers and fathers or partners) following the adoption of their child.

Shared parental leave will be created where an eligible mother brings her adoption leave to an end early. This is called 'curtailing' adoption leave. The untaken weeks of adoption leave can be taken as shared parental leave, up to a maximum of 50 weeks. This takes into account the first 2 weeks of Compulsory Adoption Leave which must be taken.

Leave can be taken from the day the child placed with you for adoption up to one year. Leave must be taken in complete weeks, with a minimum of one week. It can be taken in one continuous period or in a number of discontinuous blocks where the employee intends to return to work between periods of leave. An employee can make 3 separate requests for shared parental leave.

4. Statutory Shared Parental Pay

Statutory shared parental pay will be created where the employee chooses to bring their adoption pay or allowance to an end early. This is called reducing the adoption pay period and the adoption allowance period respectively. The untaken adoption pay or adoption allowance will become available as statutory shared parental pay, up to a maximum of 37 weeks. This takes into account the 2 weeks' statutory adoption pay paid to the employee to coincide with her period of Compulsory Adoption Leave. Statutory Shared Parental Pay is paid at the statutory rate or 90% of your average weekly earnings, whichever is lower.

5. Eligibility

For a parent to be able to take shared parental leave they must satisfy the following eligibility criteria. The right of one parent to take leave is not only dependent on them satisfying their own eligibility criteria, but is also dependant on their partner also satisfying certain conditions.

An employee can check their eligibility for shared parental leave and pay using the calculator available on the Gov.uk website at <https://www.gov.uk/plan-shared-parental-leave-pay>

5.1 Eligibility for adopters

To be eligible for **shared parental leave and statutory shared parental pay, both adoptive parents must:**

- Share responsibility for the child on the date they are placed for adoption
- Meet the work and earnings criteria – these are different depending on which one of you wants to use the shared parental leave and pay

5.1.1 If both parents want to share the **shared parental leave** and **shared parental pay**, you and your partner must satisfy the following criteria in addition to the above:

- Have been employed continuously by the same employer for at least 26 weeks by the end of the week your child was placed with your family
- Stay with the same employer until you start your shared parental leave
- Earn an average of £120 or more a week each
- Intend to care for the child during each week in which shared parental pay is paid to you
- Be absent from work on shared parental leave during each week in which shared parental pay is paid to you (apart from in those situations where it is permissible for you to work e.g. Shared Parental Leave in Touch (SPLIT) days).

5.1.2 If only one of the parents wants to take **shared parental leave and shared parental pay**

The parent who wants to take the leave and pay must:

- Have been employed continuously by the same employer for at least 26 weeks by the end of the week your child was placed with your family
- Stay with the same employer until you start your shared parental leave
- Earn an average of £120 or more a week
- Satisfy the notice requirements to take shared parental leave, and evidence of adoption, and declaration of their own and the partner's eligibility

The other parent must:

- Have been working for at least 26 weeks out of the 66 weeks before the week the child was placed with you (the 26 weeks do not need to be in a row)
- Have earned at least £390 in total in 13 of the 66 weeks (add up the highest paying weeks, they do not need to be in a row)

6. Notice Requirements

Where an employee is going to take shared parental leave they must give their employer a number of notices.

The employee must let her employer know that she intends to take leave by providing a notice of entitlement and intention to take leave. If she has not returned to work, she must also provide her leave curtailment notice at this time. She must also provide a notice to curtail her adoption pay (if she is eligible). Finally, either at the same time or at a subsequent point she must provide a period of leave notice, which tells the employer when she wants to take the leave.

If the partner intends to take leave they must give notice of entitlement and intention to take leave and, either at the same time or subsequently, a period of leave notice.

The scheme works on the basis of these notices, which contain declarations from both parents about amount of leave they are entitled to and the consent of the other parent to the taking of leave. There is no requirement for the employer to contact their employee's partner's employer to verify their details, although the employee is required to provide their partner's employer's details if their employer requests them.

6.1 Mother's notice curtailing adoption leave

The employee can curtail her adoption leave in two ways. She can give 21 days' notice to return to work early from adoption leave. Alternatively, she can give her employer a leave curtailment notice. The adoption leave curtailment notice must be in writing and state the date on which adoption leave is to end. That date must be:

- After the 2 week compulsory adoption leave period
- At least 8 weeks after the date on which the employee gave the adoption leave curtailment notice to her employer

The employee must provide her adoption leave curtailment notice at the same time she gives her notice of entitlement and intention to take leave or a declaration of consent and entitlement. The latter notice is provided if the mother does not intend to take shared parental leave herself. It is a written declaration signed by the mother stating that her partner has given notice of entitlement and intention to take leave and the mother has consented to the amount of leave that her partner intends to take.

6.2 Revoking notice curtailing adoption leave

The circumstances in which the employee may change her mind about ending her adoption leave are very limited. She can give her employer a revocation notice (which must be provided before the leave curtailment date) if:

- a) it is discovered in the 8 weeks following the notice that neither the employee or her partner are entitled to shared parental leave or shared parental pay
- b) in the event of the death of her partner
- c) the leave curtailment notice was given before the birth and the employee revokes her adoption leave curtailment in the six weeks following the placement

If the employee revokes their notice in the first two circumstances, there is no further opportunity to opt into shared parental leave at a later date for the same child.

In respect of **c)** above the mother will be able to opt into shared parental leave at a later date with the same partner either by returning to work and then giving notice of entitlement to shared parental leave, or by giving another notice to curtail her adoption leave.

If the employee revokes her notice to end her adoption leave, she remains on adoption leave. Their entitlement to adoption leave is restored to a total of 52 weeks, even if their partner has taken shared parental leave prior to the employee revoking her leave curtailment notice.

Where the partner has already started taking shared parental leave or agreed a period of shared parental leave which is due to start within the 8 weeks following the revocation, their employer may require them to be absent from work on unpaid leave for some or all of the period. This protects an employer who has put cover in place for when the employee is on shared parental leave. The employer will not have to accept the employee back into the workplace with no notice.

6.3 Employee's notice curtailing adoption pay

Where the employee is entitled to statutory adoption pay she can give 8 weeks' notice to curtail her entitlement to pay to allow the unused amount to become statutory shared parental pay.

A pay curtailment notice is also required where the employee has already ended her adoption leave by returning to work. This is due to the fact that the adoption pay period continues to run (albeit lying dormant when an employee is at work) throughout the 39 week period. She must give her employer a notice to end her adoption pay period at least 9 weeks before the expiry of the 39 week period. The adoption pay period will end on the last day of the pay week in which the notice is given.

The employee can revoke her notice to curtail their adoption pay if their partner dies and curtailment occurs a reasonable period after this.

In addition, in the 6 weeks following birth, the employee can revoke notice to end adoption pay where the notice was given before the birth.

6.4 Employee's Notice of entitlement and intention

The employee's written notice to her employer must include the following:

- her name
- her partner's name
- the start and end dates of her adoption leave
- the total amount of shared parental leave available (52 weeks minus any maternity leave taken/to be taken) and the total number of weeks shared parental pay available
- the expected week of the placement of the child
- the number of weeks' shared parental leave and pay the employee and her partner each intend to take and an indication of the start and end dates of the periods of shared parental leave the employee intends to take. This indication is not binding.

The employee also needs to give her employer:

- a) a declaration signed by herself confirming that:
 - she has been working with the employer for 26 weeks by the end of the 15th week before the child's placement date
 - she will have the main caring responsibility for the child (along with her partner), and will inform her employer immediately if this changes
 - she is entitled to statutory adoption leave and pay
 - she has returned to work before her adoption leave has ended or is committing to ending her adoption leave early
 - the information she has given is accurate
- b) a declaration signed by the employee's partner which must:
 - give their name and address, and national insurance number (or they must declare that they do not have a national insurance number)
 - confirm they have worked for 26 weeks out of the 66 weeks leading up to the expected week of childbirth and has earned at least £390 in total in 13 of the 66 weeks (they do not need to be consecutive weeks)
 - confirm they are the employee's partner, civil partner or spouse
 - confirm that they will have the main caring responsibility for the child (along with the employee)
 - confirm they consent to the employee taking amount of leave set out in the notice that the employee has given to her employer

- confirm that they consent to the employee's employer processing the information about them included in the declaration

6.5 Partner's Notice of Entitlement and Intention (where the partner is the employee)

The partner's notice of entitlement and intention to the employer must include the following:

- their name
- the name of their partner
- the start and end date of their partner's adoption leave or, if the partner is not entitled to adoption leave, the amount of statutory adoption pay or adoption allowance received or to be received
- the total amount of shared parental leave available (52 weeks minus any adoption leave taken/to be taken, or where the partner is not entitled to adoption leave, 39 weeks minus any statutory adoption pay or adoption allowance received or to be received)
- the total number of weeks shared parental pay available
- the expected date of placement of the child
- how the parents think they will split and take their shared parental leave

The partner also needs to give:

- a) a declaration signed by them confirming that:
 - they have been working with the same employer for 26 weeks by the end of the 15th week before the child's placement date
 - they will have the main caring responsibility for the child (along with their partner), and will inform their employer immediately if this changes
 - they are spouse, civil partner or partner of the partner
 - they will inform their employer if their partner evokes her curtailment notice
 - the information given is accurate
- b) a declaration signed by their partner which:
 - gives her name and address, and national insurance number (or a declaration that she does not have a national insurance number)
 - confirms she has worked for 26 weeks out of the 66 weeks leading up to the expected due date and has earned at least £390 in total across any 13 of the 66 weeks
 - confirms she is entitled to statutory adoption leave, statutory adoption pay or adoption allowance
 - confirms that she will have the main caring responsibility for the child (along with her partner)
 - confirms she has ended her adoption leave by returning to work or curtailing that leave and/or curtailed her statutory adoption pay or adoption allowance
 - confirms she will inform her partner immediately if she revokes her curtailment of leave and pay or allowance
 - confirms she consents to her partner taking the amount of leave set out in the partner's notice to their employer
 - confirms that she consents to her partner's employer processing the information about her included in the declaration

6.6 Following notice of entitlement and intention

In the two weeks following the mother/partner giving notice of their entitlement to and intention to take, shared parental leave, the employer may request:

- a copy of the adoption certificate
- the name and address of the mother's/partner's employer

The mother/partner has 14 days to respond. If the child has already been placed at the time their employer makes the request, the mother/partner must give their employer either a copy of the adoption placement certificate or, if the adoption placement certificate has not yet been issued, a signed declaration stating the date of the placement and stating that an adoption certificate has not yet been issued.

If the child has not yet been placed at the time of their employer's request, the mother/partner must provide a copy of the adoption placement certificate within 14 days of the birth, or if the adoption placement certificate has not yet been issued, a signed declaration stating the date of the adoption placement and stating that an adoption certificate has not yet been issued.

6.7 Variation of notice to take shared parental leave

The mother/partner can also give a variation notice to their employer to vary how much shared parental leave each of them intend to take or the periods during which they intend to take it.

The notice must contain:

- an indication of when the mother/partner intend to take the leave and pay, including the start and end dates of each period
- the number of weeks shared parental pay that have already been taken
- details of the leave that the mother/partner has provided a period of leave notice for (or shared parental pay where leave is not to be taken)
- A declaration signed by the mother and the partner that they agree to the variation

The indication is not binding. There is also no limit on the number of times an employee can give a variation notice (unlike a period of leave notice, or variation of period of leave notice, where there is a limit of three).

6.8 Period of Leave Notice

Once an employee has notified the employer of their entitlement to take shared parental leave, they will also have to submit a notice to 'book' a period of leave. A notice to book leave must be given at least 8 weeks before leave can be taken. In many cases, a booking notice will be submitted at the same time as the notice of entitlement and intention is submitted.

The employee can only give 3 notices to book leave (including any notice to vary a previously agreed pattern of leave). The employer can choose to allow their employee more than 3 notices to book leave.

Each of the 3 notifications to book leave may notify a single continuous block of leave, or may request discontinuous periods of leave.

The employee can request a pattern of discontinuous leave (e.g. 2 weeks in June, 3 weeks in September, and all of November and December) in the same notification. An employer does not have to agree to this pattern of leave. There is a 2 week discussion period beginning with the date the employer received the notice during which the employer can discuss the pattern of leave requested by the employee and propose alternatives, or to refuse the pattern. An employer cannot stop their employee from taking the amount of leave requested in the notice, but an employer can change how and when it is taken. In the event that the employer refuses the pattern proposed and does not agree any other pattern with the employee, the weeks of leave in the notice may be taken in a single continuous block starting on a date specified by the employee (not less than 8 weeks from the date the original notice was given to the

employer). The employee has 5 days after the end of the 2 week discussion period in which to specify the date they will start their leave. If no date is specified, the leave will begin on the start date of the first period of discontinuous leave that the employee originally applied for.

If the employee has given a notice to book discontinuous weeks of leave, they can withdraw their booking notice in the 2 weeks after the booking notice is given (on or before the 15th day), unless the employer has agreed the pattern in the notice or has already reached an agreement with the employee in that period.

It is strongly recommended that the employer and the employee discuss the employee's proposals for taking the shared parental leave at the point of notifying entitlement when a non-binding indication of how they expect to take the leave must be submitted. Such a conversation will enable the employee and employer to understand what is most likely to work for both sides.

6.9 Variation to period of leave notice

Leave arrangements that have been notified can be changed by means of a notice to vary the agreed leave. An employee can give notice to end a period of leave earlier or later than previously notified, or to aggregate a number of discontinuous weeks into a single block using a variation notice.

A note to vary agreed leave counts towards the cap of 3 notifications to book leave.

7. Shared parental leave in touch (SPLIT) days

If the employer and employee agree, each employee can work for up to 20 days, either continuously or on odd days, during the period in which shared parental leave can be taken i.e., in the first year of the child's placement. These SPLIT days are in addition to the 10 KIT days that are available to the mother during adoption leave. Any work carried out on a day or part of a day shall constitute a day's work for these purposes.

Any employee taking a SPLIT day will receive full pay for any hours worked in that day. If a SPLIT day occurs during a week when the employee is received shared parental pay, this will be effectively 'topped up' so that the individual receives full pay for the day in question.

8. Terms and conditions during shared parental leave

As with adoption leave, an employee who takes shared parental leave is entitled to the benefit of their terms and conditions of employment apart from remuneration.

9. Right to return after shared parental leave

The employee will have been formally advised in writing by the employer of the date shared parental leave will end. The employee is expected to return on the next working day after this date. An employee is entitled to return to the same job they had before taking shared parental leave where their statutory leave taken in relation to that child is 26 weeks or less. This statutory leave could be made up of, for example, a certain number of weeks of ordinary adoption leave, plus a couple of periods of shared parental leave, but provided the total does not exceed 26 weeks the employee is entitled to return to their previous job.

If the shared parental leave amounts to 26 weeks or more the employee is entitled to return to the same job they held before commencing the last period of leave or, if this is not reasonably practicable,

to another job which is both suitable and appropriate and on terms and conditions that no less favourable.

10. Further information

<http://www.acas.org.uk/index.aspx?articleid=4911>

<https://www.gov.uk/shared-parental-leave-and-pay/overview>