

10. Adoption

The legislation on Adoption Rights can be found here:

Employment Rights Act 1996
Employment Relations Act 1999
Employment Act 2002
Work & Families Act 2006
The Children and Families Act 2014
Protection from Redundancy (Pregnancy and Family Leave) Act 2023
Equality Act 2010
Neonatal Care (Leave and Pay) Act 2023

UK Gov: Protection from Redundancy (Pregnancy and...)

UK Gov: Equality Act 2010

UK Gov: Employment Rights Act 1996

UK Gov: Paternity and Adoption Leave Regulations 2002

UK Gov: Employment Relations Act 1999

UK Gov: Employment Act 2002

UK Gov: Children and Families Act 2014

UK Gov: Neonatal Care (Leave and Pay) Act 2023

Adoption Leave and Pay

An employer has a duty of care for its employees, and it is best practice that contracts of employment and company policies set out any contractual Adoption Leave and Pay.

Employees wishing to adopt a child under the age of 18 years, may be entitled to claim statutory leave available to them, they can only do this if they have been matched with a child for adoption through an agency or if they have had a child placed with them for adoption.

If an employee adopts 2 or more children at the same time then this will only count as one period of Statutory Adoption Leave.

The main or primary adopter has the right to take Statutory Adoption Leave.

There is no minimum qualifying period for Statutory Adoption Leave.

Adoption Leave can be for a period of up to 52 weeks, the same as Maternity Leave.

In order to qualify for Statutory Adoption Leave there are prescribed rules which employees must adhere to, they must:

- notify their employer in writing no later than 7 days of being matched with a child (or as soon as soon as reasonably possible)
- include the date which the child is expected to be placed with them.
- This notice must not be later than 14 days before the child is placed with the adoptive parent and must not be any later than the actual day the adoptive placement starts.

ACAS: Adoption leave, pay and other rights

Although Statutory Adoption Leave is available to employees, they can as an alternative, claim Paternity Leave or Statutory Shared Parental Leave.

If it's a couple that is adopting a child, for the partner to be able to qualify for Paternity Leave the employee must be married to, the civil partner or the partner of the child's adopter.

Only one parent may take Paternity Leave and the other parent may take Adoption Leave.

If employees qualify, both can take Shared Parental Leave, however, this is in place of Adoption Leave.

ACAS: How shared parental leave works

Employees who are intending to permanently foster a child and become their legal parent may also be eligible to claim Statutory Adoption Leave and/ or Statutory Adoption Pay.

Employees who are having a child through surrogacy may also be entitled to claim Adoption Leave and/or Statutory Adoption Pay, however, they must apply to become the child's legal parent within 6 months of its birth.

ACAS has prepared information on the rules and rights for employees who have a child through surrogacy.

ACAS: Surrogacy rights at work

Employees intending to adopt a child have the right to paid time off work for antenatal care.

The government has prepared information on adoption leave:

UK Gov: Adoption pay and leave

Citizens Advice Scotland: Adoption leave and pay

Statutory Adoption Pay is paid in the same way as Statutory Maternity Pay the employee must have worked for the employer for at previous 26 weeks by the end of the week when they receive the official notification of the adoption.

An employee must inform their employer of their intention to take Statutory Adoption Leave, within 7 days of receiving notification of being matched with a child for adoption, they should give an employer at least 28 days' notice of when they want to Statutory Adoption Pay to start.

An employer must acknowledge an employee's request in writing within 28 days of receipt of a request and also confirm the end date of the adoption leave.

An employee would be eligible for Statutory Adoption Pay if they have been continuously employed in the previous 26 weeks and have earned at least £125 per week, before tax during the previous 8 weeks prior to them being matched with a child.

The government has an online calculator to assist employers check entitlements to Adoption Leave and pay.

UK Gov: Maternity, Adoption and paternity calculator for employers



If you need more help with employment rights, contact your nearest **Citizens Advice Bureau**.

Statutory Adoption Pay is paid for 39 weeks;

- 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

UK Gov: Statutory Adoption Pay and Leave: employer guide

Employers must retain records of any employee payments of Statutory Adoption Leave for 3 years for HMRC purposes.

Employers can find additional information on employees' rights here;

Employers must ensure that they are providing their employees with their full benefit package during the period of Statutory Adoption Leave other than their pay.

Annual leave is accrued as normal and the 5.6 weeks' can be carried over into the next annual leave year where an employee was unable to take it, due to family leave, this does not include any additional contractual annual leave over the statute.

ACAS: Planning your leave

Performance Related Bonuses

Employers should be paying employees any bonus for periods they have worked including the corresponding compulsory periods of Statutory Adoption Leave.

Pension Contributions

Employers must continue to make employer pension contributions at the employee's normal rate of pay of pay throughout the entire period of Statutory Adoption Leave. There is no requirement for employers to make pension contributions during unpaid periods of additional Adoption Leave.

UK Gov: The Employment Rights (Amendment, Revocation...

Keeping in Touch (KIT) days

There is no obligation on an employee to work any KIT days, and even if an employee only works for a half day, this should be counted as working a full day, the employee should be paid for working a full day.

Where an employee works more than the maximum of 10 KIT days, then this would automatically bring an end to the Adoption Leave and Pay.

Right to return to work

Employees have the right to return to the same job after the period of Statutory Adoption Leave (26 weeks)

Where an employee has exercised the right to take additional Adoption Leave and there has been a significant change within the organisation, e.g. a restructure, it may not be possible for the employee to return to the same job role they had prior to taking Statutory Adoption Leave, in this case the employer has right to offer the employee a similar job which cannot be on worse terms than prior to commencing Statutory Adoption Leave.

ACAS: Returning to work



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Employees should not suffer detriment because they took a period of Adoption Leave.

The Protection from Redundancy (Pregnancy and Family Leave) Act 2023

Additional redundancy protection for pregnancy, those who suffer a miscarriage and those on maternity leave, adoption leave or shared parental leave (for a defined period) came into force on 6 April 2024.

UK Gov: Protection from Redundancy (Pregnancy...

Shared Parental Leave

The government has prepared a guide for Shared Parental Leave and Pay

An employee and their partner may be able to get Shared Parental Leave (SPL) and Statutory Shared Parental Pay (ShPP) if they are:

- having a baby
- using a surrogate to have a baby
- adopting a child
- fostering a child who you're planning to adopt

Information and eligibility criteria are set out in the links below:

UK Gov: Shared Parental Leave and Pay

UK Gov: The Maternity Leave, Adoption Leave and Shared...

Employers can normally reclaim 92% of payments for Statutory Adoption Pay and the rate of reimbursement for small business employers is currently 108.5%. Employers are reimbursed via HMRC.

UK Gov: Get financial help with statutory pay

South of Scotland Employment Rights Advice Service

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