



## **MATERNITY, PATERNITY, ADOPTION & NEONATAL CARE POLICY**

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## 1. Introduction

- 1.1. Dover District Council (“the Council”) recognise the need to support employees who are looking to start a family.
- 1.2. This policy sets out the obligations and responsibilities of both the Council and employees who are looking to enter into a period of maternity, paternity or adoption leave.
- 1.3. The policy applies to all employees (including those on zero hours) of the Council, irrespective of grade. Where this policy conflicts with an employee’s statutory entitlement, and this has the effect of causing detriment to the employee, the statutory entitlement will prevail.
- 1.4. Separate arrangements for maternity, paternity or adoption may apply to individuals who are engaged by the Council on casual contracts, and who are classified as “workers”. Such individuals should contact HR for advice.
- 1.5. Employees continue to be employed during any period of maternity, paternity or adoption leave and, therefore, this period counts towards continuous employment for the purpose of calculating any entitlements based on length of service.
- 1.6. Definitions of some key terms are provided in Section 19.

## 2. Obligations on the Employee

- 2.1. The employee must continue to be employed by the Council (whether at work or not) until immediately before the beginning of the 15th week before the Expected Week of Childbirth (“EWC”) or the expected date of placement in the case of adoption.
- 2.2. The employee must not remain at work if certified medically unfit to do so.
- 2.3. The employee must provide a MATB1 certificate from a registered medical practitioner or a certified midwife stating the expected week of childbirth for maternity pay (this is not required for paternity pay). In the case of adoption, the employee must provide documentary proof that they have the right to paid Statutory Adoption Leave. This is usually a matching certificate from an adoption agency which is recognised in the UK.
- 2.4. Employees are subject to all requirements of the employment contract, other than the requirement to attend work, during any period of maternity, paternity or adoption leave.

## 3. Maternity and Adoption Leave

- 3.1. Subject to correctly notifying the Council, all employees are entitled to 26 weeks Ordinary Maternity or Adoption Leave and 26 weeks Additional Maternity or Adoption Leave.
- 3.2. The earliest date that maternity leave can commence is 11 weeks before the EWC.
- 3.3. Maternity leave will commence on the day after the date of birth if this is earlier than the notified leave date.
- 3.4. Adoption leave may start on the date on which the child starts living with the employee (the placement date) or on a date no earlier than 14 days before the placement date. In any case, leave must start no later than the placement date, unless the child is being adopted from abroad, in which case the leave may start on the day the child arrives in the UK or within 28 days of that date.

- 3.5. If a couple jointly adopt a child, only one may take adoption leave.
- 3.6. An employee who acts as the birth mother in a surrogacy arrangement has the same entitlement to maternity pay and leave irrespective of what they do with the child following the birth.
- 3.7. An eligible employee who, through a parental or adoption order, becomes the legal parent of child following a surrogacy arrangement is entitled to adoption leave. Adoption leave can start the day of the birth or the day after. Employees must tell their employers at least 15 weeks before the baby is due and that they intend to take adoption leave.

#### 4. Maternity and Adoption Pay

- 4.1. To be eligible for statutory maternity or adoption pay, an employee must have average earnings at least equal to the lower earnings limit for National Insurance contributions. Employees in this position may be able to make a claim for Maternity Allowance.
- 4.2. An eligible employee who, through a parental or adoption order, becomes the legal parent of a child following a surrogacy arrangement is entitled to adoption pay.
- 4.3. Subject to 4.1 and to correctly notifying the Council, employees with more than 1 years' service at the beginning of the 15th week before the EWC (in the case of maternity pay) or at the end of the week in which the employee is notified of being matched with the child (in the case of adoption pay) are entitled to:
  - 6 weeks at 90% of average weekly earnings, followed by:
  - 12 weeks at 50% of normal earnings in addition to Statutory Maternity / Adoption Pay (SMP/SAP), dependent on entitlement and not exceeding normal earnings, followed by:
  - a further 21 weeks at SMP/SAP only, followed by:
  - 13 weeks of unpaid Statutory Maternity / Adoption Leave.
- 4.4. Subject to 4.1 and to correctly notifying the Council, employees with less than 1 years' service but more than 26 weeks' service at the beginning of the 15th week before EWC (in the case of maternity pay) or at the end of the week in which the employee is notified of being matched with the child (in the case of adoption pay), regardless of hours of work are entitled to:
- 4.5. Employees with less than 26 weeks' service at the beginning of the 15th week before the EWC (in the case of maternity pay) or at the end of the week in which the employee is notified of being matched with the child (in the case of adoption pay), are not eligible for SMP/SAP. The Council will provide pregnant employees in this position with a copy of form SMP1 which may enable the employee to make a claim for Maternity Allowance. Further information can be found at <https://www.gov.uk/maternity-allowance/overview>.

#### 5. Paternity Leave

- 5.1. Employees whose partner is having a child or adopting a child may be entitled to paternity leave and pay. Employees who are genetically related to a child they are having through a surrogacy arrangement may also be entitled to paternity leave and pay.

- 5.2. Employees are entitled to paternity leave and pay if they:
- Have or expect to have responsibility for the child's upbringing.
  - Are the biological father of the child or the mother's husband or partner (including same sex relationships);
  - Have worked continuously for their employer for 26 weeks ending with the 15th week before the EWC, or the end of the week in which the child's adopter is notified of being matched with the child (UK adoption), or the date the child enters the UK (overseas adoptions).
- 5.3. Employees should tell their employer as soon as possible that they wish to take paternity leave, but no later than 28 days prior to the date they wish for the paternity leave to start. They should say when the baby is due, if they are going to take one or two weeks off, and when they expect their paternity leave to start. Those who are eligible can choose to take either one week, two consecutive weeks' or two separate one-week blocks of paternity leave (not odd days).
- 5.4. Employees can take their paternity leave anytime within the first 52 weeks after the actual date of birth of the child. Paternity leave cannot start until the birth of the baby. However, employees may be able to take some annual leave beforehand, subject to normal approval.
- 5.5. A period of Paternity leave when adopting a child can start:
- An agreed number of days after the date of placement.
  - On the date the child arrives in the UK or an agreed number of days after (for overseas adoption).
  - The day the child is born or the day after for surrogate parents.

## 6. Paternity Pay

- 6.1. Paid paternity leave of 1 week (pro rata) is granted to all employees whose partner is having a child, adopting a child or having a child through a surrogacy arrangement, irrespective of length of service. A week is the same number of days the employee normally works in the week. The employee will be paid their normal earnings (which includes Statutory Paternity Pay). Employees who have claimed paid paternity leave may not also claim Maternity Support Leave.
- 6.2. Thereafter, employees with 26 weeks continuous service at the beginning of the qualifying week may be entitled to take a further 1 week of paternity leave, which will be paid at the Statutory Paternity Pay rate only.
- 6.3. To be eligible for Statutory Paternity Pay, an employee must have average earnings at least equal to the lower earnings limit for National Insurance contributions.

## 7. Relationship with Sickness

- 7.1. Maternity leave will not be treated as sick leave and will not therefore be taken into account for the calculation of the period of entitlement to sick leave. If the employee falls ill after the

36 week, i.e. 4 weeks before the EWC and if it is pregnancy related the maternity leave will automatically commence.

- 7.2. Both Ordinary and Additional Maternity & Adoption Leave shall be regarded as continuous service for the purposes of the Council's sickness scheme.
- 7.3. If an employee becomes ill following the start of Ordinary or Additional Maternity or Adoption Leave, they must give the Council 8 weeks' notice that they wish to end their Maternity or Adoption Leave and commence sick leave. Sick leave will commence on the first day after the day on which Ordinary or Additional Maternity or Adoption Leave ends. If the employee becomes ill within 8 weeks of the end of Additional Maternity or Adoption leave, and is unable to return to work as planned, they are requested to inform the Council following the normal absence reporting procedures.

## 8. Notional Deductions

- 8.1. There is an obligation on the employee, with no entitlement to SMP, to both claim and declare their entitlement to maternity allowance. Account will only be taken of the amount of SMP or maternity allowance actually received.

## 9. Maternity and Adoption Support Leave

- 9.1. Maternity or adoption support leave of 5 days pro rata with pay shall be granted to the child's father or partner or nominated carer of an expectant mother or main adopter at or around the time of birth. A nominated carer is the person nominated by the mother or main adopter to assist in the care of the child and to provide support to the mother or main adopter at or around the time of birth.
- 9.2. Requests can be made after the 15th week before the EWC. Leave must be approved by the relevant Head of Service or Director in conjunction with HR.
- 9.3. Maternity Support Leave and Paternity Leave (and pay associated with both) are corresponding rights, therefore an employee will only be eligible for one or the other.

## 10. Notification of Maternity Leave

- 10.1. Employees are required to notify the Council of their intention to take maternity leave by the 15th week before the EWC.
- 10.2. The maternity leave notification form should be completed online, confirming:
  - That the employee is pregnant and when the baby is due.
  - The date on which maternity leave starts.
- 10.3. HR will respond to the notification within the 28-days of receipt, setting out the date they expect the employee to return to work.
- 10.4. The employee should notify their line manager of any changes to the date of commencement of maternity leave at least 28 days in advance.

## 11. Notification of Adoption Leave

- 11.1. Employees are required to notify the Council within 7 days of being informed that they have been matched with a child or, if this is not possible, as soon as is reasonably practicable afterwards.

## 12. Annual Leave and Bank Holidays

- 12.1. Employees continue to accrue annual leave and bank holiday entitlement during both Ordinary & Additional Maternity & Adoption leave and during Paternity Leave.
- 12.2. Any accrued outstanding annual leave and bank holiday entitlement due at the point of maternity or adoption leave should ideally be taken prior to going on maternity or adoption leave.
- 12.3. Any annual leave and bank holiday entitlement accrued during maternity or adoption leave may be carried forward to the next leave year.

## 13. Antenatal Care and Adoption Appointments

- 13.1. Any pregnant employee has the right to reasonable paid time off to attend antenatal care and should produce evidence of appointments (except for the first appointment) to their line manager.
- 13.2. An employee who is adopting a child (as the main adopter) is able to take paid time off for up to 5 adoption appointments. A secondary adopter (i.e. the father, partner or civil partner of the main adopter) may take unpaid time off for up to 2 adoption appointments.
- 13.3. A father, partner or civil partner has the right to take unpaid time off to accompany their partner to up to two antenatal appointments. This includes the intended parents if they are having a baby through a surrogacy arrangement and if they expect to satisfy the conditions for, and expect to apply for, a Parental Order for the child.

## 14. Benefits during Maternity, Paternity and Adoption Leave

- 14.1. All normal terms and conditions of employment prevail during any period of maternity, paternity or adoption leave, with the exception of:
  - Remuneration and any pay-related benefits;
  - Pension contributions will continue during ordinary maternity, paternity and adoption leave and paid additional maternity or adoption leave, based on an average of the employee's pay prior to the leave commencing (the employee will only pay contributions on any pay they receive);
  - Pension benefits will not continue to accrue during any period of unpaid additional maternity, paternity or adoption leave. Employees may elect to cover the period of pension "lost" by taking out a Shared Cost Additional Pension Contribution (SCAPC) contract within 30 days of their return to work.
  - Essential Car users lump sum allowance, this will be paid at 90% for the first 6 weeks, and at half pay for 20 weeks.

- Cash for car allowance will continue in full
- Private medical insurance.
- Salary sacrifice payments will continue, where confirmed in your agreement.

## 15. Neonatal Care Leave and Pay

- 15.1. The Council is committed to supporting parents who have a baby born which needs neonatal medical care during this incredibly challenging time. The Council will enable parents to spend more time with their babies who are having specialist care, without the worry of taking unpaid leave or having to return to work due to leave running out.
- 15.2. For the purposes of this policy, the definition of neonatal care will be deemed to be a baby receiving seven or more days of medical or palliative care in the first 28 days after birth.
- 15.3. To be eligible to take neonatal care leave and pay, the employee needs to be either the baby's parents, married to, in a civil partnership with or living with (and in a relationship with) the baby's parent or expected to have parental responsibility for bringing up the child.
- 15.4. Parents will have the right to take up to 12 weeks of additional neonatal care leave in addition to other leave entitlements such as paternity, maternity, and shared parental leave.
- 15.5. The length of leave the employee is entitled to will correspond with how long the baby spends in hospital, up to a maximum of 12 weeks.
- 15.6. There are two categories of neonatal leave depending upon when the leave is taken, and these are referred to as Tier One or Tier Two periods. In 'Tier One' periods, the period of leave is taken whilst the baby is still receiving care. It begins with the day the child starts receiving neonatal care and ends seven days after the day the neonatal care ends (7 days after discharge). Tier One leave must be taken in whole weeks but can be in non-consecutive periods. In 'Tier Two' period - the remainder of the 68-week period – the neonatal leave must be taken in one continuous block.
- 15.7. Neonatal care leave must be taken within the first 68 weeks of the baby's life.
- 15.8. Neonatal care leave should be taken after other types of leave e.g. maternity leave, adoption leave, shared parental leave, have ended. For a mother taking maternity leave, they would take neonatal care leave once they have ended their maternity leave.
- 15.9. Although the Council acknowledges that it will be difficult to provide advanced notice to take neonatal care leave, advanced notice is required. The notice periods differ for Tier One and Tier Two neonatal leave. For each week of Tier One leave, notice must be given before the employee is due to start work on the employee's first day of absence from work that week, or as soon as is reasonably practicable. For Tier Two neonatal leave, for a single week of leave, notice must be given no later than 15 days before the first day of the intended period of leave. For more than two weeks of Tier Two neonatal leave, notice must be given no later than 28 days before the first day of the intended leave.
- 15.10. The notice must include:
  - The name of the parent
  - Confirmation of the employee's relationship to the baby
  - The baby's date of birth
  - The date the neonatal care started (and ended if applicable)
  - The required dates of absence



- The number of weeks requested
  - That the leave is in order to look after the baby
  - That they meet the eligibility criteria
- 15.11. For any period where more than one child is in receipt of neonatal care at the same time, entitlement can only be accrued in that period in respect of one child. The maximum number of weeks in respect of which the employee is entitled to neonatal care leave remains unchanged where more than one child is receiving neonatal care. The 68-week period in which an employee may take their leave begins with the date on which the first child is born.
- 15.12. The Council will not require parents to provide evidence that specifies what condition(s) the baby has that necessitates inpatient medical care, but parents may have to provide some sort of evidence that their baby is receiving inpatient care and for what duration.
- 15.13. The right to take neonatal care leave will be a day 1 right, however, statutory neonatal care pay can only be claimed if the parent has been employed by the Council for a continuous period of at least 26 weeks ending with the relevant week (which is the 15th week before the week in which the baby is due (approximately the 25th week of pregnancy) and earns on average more than lower earnings limit (currently £123 per week) over the 'relevant period' as determined by the Act.
- 15.14. Neonatal care leave pay will be paid at the same rates as statutory maternity pay and statutory paternity pay.
- 15.15. Employees will be entitled to return to the same job if they return to work after an isolated period of neonatal care leave. Employees will be entitled to return to the same job if they returned to work after the last of two or more consecutive periods of statutory leave which did not include more than 4 weeks of parental leave or which did not total more than 26 weeks (excluding parental leave) of statutory leave. So for example, if an employee took a period of maternity leave as well as neonatal care leave, they would be entitled to return to the same job if the total amount of leave did not exceed 26 weeks.
- 15.16. In all other cases employees are entitled to return to the same job or, if that is not reasonably practicable, they have the right to return to another job which is both suitable and appropriate. This is the same right as those returning from Additional Maternity Leave.
- 15.17. If the employee has taken neonatal care leave for at least 6 continuous weeks, they will have priority for suitable alternative employment during the neonatal care leave and from the day after they have taken 6 continuous weeks of neonatal care leave until 18 months from the date of childbirth.

## 16. Returning to Work

- 16.1. All employees are prohibited from returning to work within 2 weeks of childbirth. If an employee wishes to return before their statutory maternity or adoption leave entitlement finishes, they must give 8 weeks' notice in writing. The Council may be prepared to waive some of this notice after discussion with the manager, individual and HR.

- 16.2. If adoption leave has started and the placement is not made or the child returns to the adoption agency, leave will normally finish 8 weeks later. Statutory adoption pay will also finish 8 weeks later, or at the end of the statutory adoption pay period if earlier.
- 16.3. No adoption leave or pay can be taken if the employee finds out that the placement is not taking place prior to the start of leave or pay.
- 16.4. Subject to 15.5, an employee has the right to return to the job in which they were employed under their original contract of employment and on terms and conditions no less favourable than those which would have been applicable had they not been absent.
- 16.5. Where it is not practicable, by reason of redundancy, for the Council to permit the employee to return to work in their job as defined in 15.4 above, the employee shall be entitled to be offered a suitable alternative vacancy where one exists. This is provided that the work to be done in that post is suitable to them and appropriate to the circumstances, and that the capacity and place in which they are to be employed, and the terms and conditions of employment are not substantially less favourable than if they had been able to return to the job in which they were originally employed.
- 16.6. If exceptional circumstances other than redundancy (e.g. a general reorganisation), which would have occurred if the employee had not been absent, necessitate a change in the job in which they were employed prior to the absence, the Council may offer suitable alternative employment. The work to be done should be suitable and appropriate to the circumstances and the capacity and place in which they are to be employed, and their terms and conditions of employment should not be less favourable than if they had been able to return to the job in which they were originally employed.
- 16.7. If the employee decides not to return to work after maternity or adoption leave, they will be required to pay back the occupational maternity or adoption pay element. HR will be able to provide further information. Employees will be required to give notice in accordance with the Council's policy. The employee may elect, prior to the start of their maternity or adoption leave, not to receive the occupational maternity or adoption pay element, if they do not intend to return to work after the leave.
- 16.8. Any return of three months or more will be classed as a return to work for the purposes of 16.7 above.
- 16.9. Employees are entitled to return to the same job on the same terms and conditions of employment after a period of Paternity Leave (unless a redundancy situation has arisen).
- 16.10. On return to work from maternity leave, employees have the right to be offered suitable alternative employment in a redundancy situation, for up to 18 months from the child's date of birth if notified to the Council before the end of maternity leave (or 18 months from the Expected Week of Childbirth if not notified), or for adoption leave for 18 months from the date of placement or entry to Great Britain (if adoption is overseas).

## 17. Keeping In Touch Days

- 17.1. Employees may, by prior agreement, with the line manager and HR, do up to 10 days paid work known as Keeping in Touch (KIT) Days, under their contract of employment during the maternity or adoption pay period.

- 17.2. The line manager should complete the online KIT Days Notification Form after the KIT Day has taken place.
- 17.3. KIT Days may be worked at any time during the maternity or adoption pay period except within the 2 weeks Compulsory Leave Period.
- 17.4. Working during the maternity or adoption leave period may only take place by agreement between both parties. The Council may not require an employee to work during maternity or adoption leave if they do not wish to, nor does the employee have the right to work if the Council does not agree to it.
- 17.5. KIT Days should be agreed in advance and the payments do not affect the employee's rights to receive Statutory Maternity or Adoption Pay. Payment will be made based on the employee's normal earnings less any maternity or adoption payments that are due for that period. Employees will be paid for a full day, based on their normal earnings prior to the commencement of leave, irrespective of how many hours are worked.

## 18. Health and Safety

- 18.1. Upon notification of your pregnancy, your line manager will be responsible for the ongoing risk assessment process and will conduct a risk assessment, using the Council's Maternity Risk Assessment Form, to identify any hazards or risks to the employee at work and any control measures to be taken.
- 18.2. Where reasonable adjustments or a suitable alternative role (with no less favourable terms and conditions) cannot be provided, employees who can no longer continue in their role due to health and safety risk will be suspended on full pay.

## 19. Definitions

- 19.1. The term "normal earnings" for employees whose remuneration for normal working hours does not vary with the amount of work done in the period, is the amount payable by the authority to the employee under the current contract of employment for working their normal hours in a week. Where there are no normal working hours, normal earnings are the average remuneration in the period of 12 weeks preceding the date on which the last complete week ended, excluding any week in which no remuneration was earned.
- 19.2. "Average weekly earnings" for the purpose of calculating Statutory Maternity, Adoption or Paternity Pay includes all earnings on which class 1 NICs are or would be due in the period 8 weeks prior to the Qualifying Week (for Statutory Maternity Pay purposes) or the Matching Week (for Statutory Adoption Pay purposes).
- 19.3. The "Qualifying Week" is the 15th week (Sunday to Saturday) before the baby is due.
- 19.4. The "Matching Week" is the week (Sunday to Saturday) when the adoption agency told the employee they have been matched with a child.
- 19.5. "Childbirth" means the birth of a child, whether living or stillborn, after 24 weeks of pregnancy.
- 19.6. Ordinary Maternity Leave ("OML") is the first 26 weeks of maternity leave. If they return to work at the end of OML employees have the right to return to their old job.

- 19.7. Additional Maternity Leave (“AML”) is the second 26 weeks of maternity leave, which starts on the day after OML finishes. If the employee returns to work during or after a period of AML, they have the right to return to their old job, unless it is not reasonably practical for the Council to do so. In this case, the employee must be offered a similar role on no less favourable terms and conditions.