

MATERNITY AND ADOPTION LEAVE (NON-TEACHING EMPLOYEES)

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MATERNITY AND ADOPTION LEAVE (NON-TEACHING EMPLOYEES)

1.0 **SCOPE**

- 1.1 This document summarises the rights and obligations of all employees under National and Local Conditions of Service for Maternity and Adoption Leave.
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2.0 **QUALIFYING CONDITIONS FOR MATERNITY/ADOPTION LEAVE**

- 2.1 **Maternity** – All pregnant employees, regardless of their length of service, are entitled to 26 weeks Ordinary Maternity Leave (OML) followed immediately by 26 weeks Additional Maternity Leave (AML) which commences at the end of the Ordinary Maternity Leave. This provides a right to one years' maternity leave in total.
- 2.2 If an employee resigns or is dismissed before the date she has notified to commence maternity leave, or before she has notified a date then she loses the right to Maternity Leave.
- 2.3 **Adoption** – All employees regardless of their length of service are entitled to Adoption Leave where the following criteria is met:
- the employee is adopting a child as a single or joint adopter and can be either the mother or the father.
 - the employee is a dual approved prospective adopters who has a child placed with them under section 22C of the Children Act 1989 with a view to them adopting that child (also known as fostering for adoption).
 - the employee is an intended parent in a surrogacy arrangement where they are eligible for and intend to apply for a Parental Order (or where they have obtained such an order) making them the legal parent of the child that they are having with the help of a surrogate mother (also known as Parental Order parent).
 - the employee has notified the relevant Social Security Department/Adoption Agency (as applicable) that he/she agrees that the child should be placed with him/her and on the date of the placement.
 - the employee has given the correct notice to their employer and has provided a copy of the official notification of adoption or statutory declaration in relation to the surrogacy arrangement.
- 2.4 Employees who qualify for adoption leave may take 26 weeks Ordinary Adoption Leave (OAL) immediately followed by 26 weeks Additional Adoption Leave (AAL), which commences at the end of the Ordinary Adoption Leave (OAL). This provides for one year's adoption leave in total. If both adoptive parents work for the Council, only one parent will qualify for Adoption Leave.
- 2.5 The second parent, if an employee, may be entitled to Maternity/Adoption Support Leave. For further guidance, employees should view the Maternity/Adoption Support Leave procedure on the Human Resources Intranet Site.
- 2.6 Employees who qualify for Maternity/Adoption Leave may also be able to convert a period of their Maternity/ Adoption Leave into a period of Shared Parental Leave which can be taken by either parent on a flexible basis. For further guidance, employees should view the Shared Parental Leave policy on the Human Resources Intranet.
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2.7 **Maternity & Adoption**

In instances where there are multiple births/children adopted, the employee will only be entitled to one period of Maternity/Adoption leave.

Throughout the **full period** of Maternity and Adoption Leave including the period of Ordinary and Additional Leave, employees are entitled to the benefits of their normal terms and conditions of employment, with the exception of terms relating to remuneration.

3.0 **NOTIFICATION**

- 3.1 **Maternity** – The employee must notify their Manager/Headteacher that they are pregnant no later than the end of the 15th week before their Expected Week of Childbirth.
- 3.2 The employee must give a minimum of 28 days' notice to commence Maternity Leave specifying that they are pregnant, the Expected Week of Childbirth and the intended start date of Maternity Leave. Employees should complete a Notification of Maternity Leave ML1 form and submit it along with their MATB1 form (supplied around 20 weeks by their GP/Midwife) to their Manager/Headteacher who will then forward it on to the Council's Financial Services Payroll and Pensions. In the case of school based employees, this will be to the external payroll provider if applicable.
- 3.3 When notification of an employee's pregnancy is received, the Financial Services Payroll and Pensions will write to the employee, issuing the Standard Maternity Letter advising the employee of the date upon which they must return to work i.e. the last day of Additional Maternity Leave.
- 3.4 An employee may vary the date they wish to commence their maternity leave by notifying their Manager/ Headteacher of the new start date either 28 days before her original date or 28 days before the new date whichever is sooner. The Manager/Headteacher should inform the Council's Financial Services Payroll and Pensions (and external Payroll Provider if applicable) of the revised date.
- 3.5 **Adoption** - The employee must provide the following information to their Manager/Headteacher who will then forward this to the Council's Financial Services Payroll and Pensions. In the case of school based employees, this will be to the external payroll provider if applicable:
- adopters must inform their employer of their intention to take adoption leave, the dates due for placement and start of adoption leave, within at least seven days of being notified that they have been matched for adoption (or, if this is not reasonably practicable, as soon as is reasonably practicable).
 - the employee may commence their Adoption Leave on either the date on which the child is placed with them or a pre-determined date no earlier than 14 days before the expected week of placement and no later than the expected date of placement.
 - the employee may vary the start of their adoption leave by giving 28 days' notice to their Manager/Headteacher before the original date or new date they want the leave to start, whichever is later.
 - the employee must provide evidence, in the form of one or more documents issued by the Adoption Agency that matched the employee with the child.

3.6 **Surrogacy arrangement (Parental Order)** – employees must inform their Manager/Headteacher at least 15 weeks before the due date, when the baby is due and when they want to start their leave.

3.7 **Overseas Adoption** – employees must inform their Manager/Headteacher by giving 28 days' notice;

- the date of their “official notification” and the expected date the child arrives in the UK.
- the actual date the child arrives in the UK.
- how much leave they want to take and when they want it to start.
- if the date of placement changes.

If an employee is jointly adopting from abroad they will need to decide which adopter will receive Statutory Adoption Leave and Pay and which adopter will receive Statutory Adoption Support Leave and Pay. If the employee chooses to receive Statutory Adoption Leave and Pay they will need to complete the “declaration” on Form SC6. If the employee chooses to receive Statutory Adoption Support Leave they must fill in the “Dates for Pay and Leave” and “Declaration” on Form SC5. Once the form is completed your Manager/Headteacher will pass it to Financial Services Payroll and Pensions. In the case of school based employees this will be to the external payroll provider if applicable.

3.8 Employees should complete a Notification of Adoption Leave AL1 form and attach the original copy of the following and submit them to their Manager/Headteacher who will be responsible for forwarding them to Financial Services Payroll and Pensions (or external payroll provider if applicable):

- Matching certificate (UK Adoptions)
- Official notification and declaration form SC6 (Overseas Adoptions)
- Certificate of declaration (Surrogate Arrangement/Parental Order)

When notification of an employee’s intention to take adoption leave is received, the Council’s Financial Services Payroll and Pensions will require notification from the Manager/Headteacher in order to write to the employee, issuing the Standard Adoption Letter advising the employee of the date upon which they must return to work i.e. the last day of Additional Adoption Leave.

3.9 **Absence due to childbirth before the intended start date**

If childbirth occurs before the expected date when maternity leave was to commence (or before any date was notified), the maternity leave period starts automatically on the day after the date of birth (even if this is before the beginning of the 11th week before the Expected Week of Childbirth).

3.10 In order to preserve the employee’s rights to maternity leave and Statutory Maternity Pay, the employee must as soon as is reasonably practicable inform their Manager/Headteacher in writing of the date of childbirth. The Manager/Headteacher must then immediately forward the letter on to the Council’s Financial Services Payroll and Pensions and ensure Fiori is completed accurately reflecting the reason for absence.

3.11 **Returning to Work – Maternity Leave**

- If an employee intends to return to work immediately after the end of Additional Maternity Leave, indicated this on their ML1 form, and have not notified the Council

otherwise they do not have to give notice of their return to work date. However it is customary for employees to give notice of their intended date of return.

- If an employee wishes to return before their return date, they must give at least 8 weeks written notice of their intention to return back to work.
- Where an employee changes their mind about the date they intend to return, where they have already notified the Manager/Headteacher of an early return date but decide to return to work even earlier they must give at least 8 weeks' notice before the new date.
- Where an employee has already notified their Manager/Headteacher of an early return date then decides to postpone their return they must give at least 8 weeks' notice before the original intended return date.

3.12

Returning to Work – Adoption Leave

- If an employee intends to return to work immediately after the end of Additional Adoption Leave, indicated this on their AL1 form and have notified their Manager/Headteacher otherwise, they do not have to give notice of their return to work date. However, it is customary for employees to give notice of their intended date of return.
- If an employee wishes to return before the end of their Additional Adoption Leave return date, they must give at least 8 weeks written notice of their intention to return back to work.
- Where an employee changes their mind about the date they intend to return, where they have already notified their Manager/Headteacher of an early return date but decide to return to work even earlier they must give at least 8 weeks written notice before the new date.
- Where an employee has already notified their Manager/Headteacher of an early return date then decides to postpone their return they must give at least 8 weeks written notice before the original intended return date.

3.13

Employees wishing to end their Maternity/Adoption Leave early in order to opt for Shared Parental Leave must provide at least 8 weeks written notice to their Manager/Headteacher. Please refer to the Shared Parental Leave Policy for further advice.

3.14

Employees not wishing to return to work following either Maternity or Adoption Leave must give at least their contractual notice to terminate their contract of employment. However, they may still have an entitlement to receive their full entitlement of Leave and Statutory Maternity Pay/Statutory Adoption Pay up to the point of termination.

4.0

TIME OFF FOR ANTE-NATAL CARE AND PRE-ADOPTION TRAINING/INTERVIEWS

4.1

All pregnant employees are entitled to time off with pay to attend appointments for antenatal care. Antenatal care can include not only medical examinations but also, e.g. relaxation classes and parent craft classes. Except in the case of the employee's first appointment, the employee must be prepared to show their Manager/Headteacher on request:

- a certificate from a registered Medical Practitioner, registered Midwife or registered Health Visitor confirming that the employee is pregnant; and

- an appointment card or some other document showing that an appointment has been made.
- 4.2 All employees qualifying for Adoption Leave have a right to time off with pay to attend adoption appointments. Each appointment is limited to a period of 6.5 hours. The entitlement to paid time off differs for adopters as follows;
- Single adopters are entitled to paid time off to attend up to 5 adoption appointments.
 - In the case of joint adopters (i.e. a couple who have been jointly matched to adopt a child) where both are Council employees, one of the adopters will be entitled to time off to attend up to 5 adoption appointments. The other employee/ joint adopter may be entitled to unpaid time off to attend up to 2 adoption appointments.
 - Parental Order parents are entitled to take unpaid leave to enable them to accompany the surrogate mother to up to 2 of her antenatal appointments.
- 4.3 The time off to attend adoption appointments must be taken between being notified of a match with a child and the date that the child joins the family. If more than one child is being adopted at the same time, the number of appointments will still be the same.
- 4.4 Employees must be prepared to show their Manager/Headteacher appropriate documentation confirming their required attendance.

5.0 **WORKING DURING MATERNITY/ADOPTION LEAVE (KEEPING IN TOUCH DAYS)**

- 5.1 Employees are entitled to undertake up to 10 days work, known as Keeping in Touch Days (KIT), during their Maternity/Adoption without bringing their Maternity/Adoption Leave to an end or losing Statutory Maternity Pay/Statutory Adoption Pay. This can take place at any time during their Maternity/Adoption Leave with the exception of the first two weeks following the birth OR with the exception of the first two weeks of Adoption Leave. It is an offence to allow an employee to carry out ANY work during this Compulsory Maternity/Adoption Leave Period.
- 5.2 Regardless of the number of hours worked on a KIT day this will still constitute as 1 full day from the 10 allowed.
- 5.3 Any time worked over 10 days will result in the employee losing their Statutory Maternity/Adoption Pay for any week in which they do any further work and therefore the Council will not consider allowing employees to work above 10 days.
- 5.4 Work is defined as any work done under the contract of employment and includes training or any activity undertaken for the purposes of keeping in touch with the workplace.
- 5.5 The Manager/Headteacher cannot insist that the employee carries out any work and the employee should not suffer any detriment for refusing to do so. Equally the employee cannot insist on working.
- 5.6 An employee's Maternity/Adoption Leave will not be extended due to having carried out some work during this period.
- 5.7 An employee's pay will be calculated based on the actual number of hours worked on a KIT day. However, employees should be aware that the pay for working a KIT day will be offset against Occupational Maternity/Adoption or Statutory Maternity/Adoption Pay. For example;

If an employee earns £50 for a KIT day, she will be paid her full SMP/SAP for that week as the flat rate of SMP/SAP is more than £50. Her SMP/SAP will be offset against the £50 earned, meaning that she will be paid £172.48 for the week. She will not be paid £50 as well as the SMP/SAP for that week as her SMP/SAP has been offset against the contractual pay.

If she works for three KIT days in the same week and earns £300 for the KIT days, she will be paid £300 for the KIT days. Her SMP/SAP of £172.48 is offset against the contractual pay paid to her for the same week so she does not receive both.

Employees will be required to complete a Keeping In Touch Day Payments Form to reflect the number of days/hours worked for a KIT day. The Manager/Headteacher will then forward the completed form to the Financial Services Payroll and Pensions or external payroll provider where applicable.

6.0 **REASONABLE CONTACT**

- 6.1 Managers/Headteachers and employees can make reasonable contact during Maternity/Adoption Leave to discuss issues such as their return to work. This does not constitute work and therefore does not count towards the 10 days specified above and would therefore not bring the Maternity/Adoption Leave to an end.
- 6.2 The Manager/Headteacher should ensure that employees are kept informed of relevant issues e.g. job vacancies, significant workplace developments, training opportunities, restructuring etc.
- 6.3 It may be useful for Managers/Headteachers and employees to discuss and agree prior to the commencement of Maternity/Adoption Leave the way in which contact will happen and how often this may occur.

7.0 **PERIOD OF ABSENCE**

- 7.1 **Maternity** – An employee can start Maternity Leave no earlier than 11 weeks before their Expected Week of Childbirth, but has the right to work up to the birth of their baby if they so wish.
- 7.2 An employee can choose how much leave to take but must be absent for a minimum of 2 weeks after the birth (Compulsory Maternity Leave). The onus is on the Council not to allow women to return to work during this period.
- 7.3 **Adoption** – The date that the employee can start Adoption Leave varies as follows;
- UK Adoptions - An employee can take Adoption Leave up to 14 days before the date that the child starts living with them.
 - Overseas Adoption - An employee can take Adoption Leave when the child arrives in the UK or within 28 days of this date.
 - Parental Order (Surrogate Arrangement) - An employee can take Adoption Leave on the day the child is born or the day after.

An employee can choose how much leave to take but must take at least 2 weeks Ordinary Adoption Leave.

- 7.4 **Shared Parental Leave** – An employee is entitled to end their Maternity/Adoption Leave early in order to opt for Shared Parental Leave. The employee must provide at least 8 weeks written notice to their Manager/Headteacher. Please refer to the Shared Parental Leave Policy for further advice.
- 7.5 **Parental Leave** – An employee is entitled to take an additional 4 weeks (maximum) unpaid Parental Leave following their Maternity/Adoption Leave. To take Parental Leave the employee must give a minimum of 21 days’ notice to their Manager/Headteacher. For further guidance, employees should view the Parental Leave Scheme on the Human Resources Intranet Site.

8.0 **MATERNITY/ADOPTION PAY**

- 8.1 Entitlements to Statutory Pay is dependent on the length of continuous service the employee has and whether the employee’s weekly earnings are above the Lower Earnings Limit, (this is the level at which the employee’s earnings become relevant for National Insurance purposes).
- 8.2 Statutory Maternity Pay/Statutory Adoption Pay will commence on the day the employee specifies in their notice, provided they start their leave on this day. If the birth occurs before the start of maternity leave or following absence due to pregnancy after the start of the fourth week before the Expected Week of Childbirth then Statutory Maternity Pay will commence the following day.

If an employee leaves their employment after the beginning of the 15th week before the Expected Week of Childbirth but before they have started to receive Statutory Maternity Pay then Statutory Maternity Pay will be payable from the day following which their employment ended.

Employees will be entitled to receive one of the following pay options:

8.3 **EMPLOYEES WITH 1 YEAR’S SERVICE OR MORE**

Employees who have at least 1 years’ service before the 11th week before the Expected Week of Childbirth (qualifying week)/date of adoption and their earnings are above the lower earnings limit.

Weeks 1 - 6	Employees will receive 6 weeks’ pay at 90% of the employee’s average weekly earnings.
Weeks 7 - 18	Where the employee has indicated by completing their ML1/AL1 form that they intend to return to work, they will receive 12 weeks half pay Occupational Maternity/Adoption pay*. This is paid on the understanding that a woman will return to local authority (not just the current authority) employment for at least 3 months. The employee will also receive either the current rate of Statutory Maternity Pay/Statutory Adoption Pay per week or 90% of the

	employee's average weekly earnings, whichever is the lower. In accordance with the Conditions of Service Document an employee cannot receive a payment which is more than a normal weeks pay therefore in instances where half pay and SMP/SAP exceeds full pay the difference the amount that exceeds full pay will be deducted.
Weeks 19 - 39	For the remaining 21 weeks the employee will receive their Statutory Maternity Pay/Statutory Adoption Pay entitlement.

8.4 **Employees who have at least 1 years' service before the 11th week before the Expected Week of Childbirth/ date of adoption and their earnings are below the lower earnings limit.**

Weeks 1 - 6	Employees will receive 6 weeks' pay at 90% of the employee's average weekly earnings.
Weeks 7 - 18	Where the employee has indicated by completing their ML1/AL1 Form that they intend to return to work, they will receive 12 weeks Half Pay Occupational Maternity/Adoption Pay.*
Weeks 7 - 39	The employee will not receive the additional Statutory Maternity Pay/ Statutory Adoption Pay. The employee may be entitled to Maternity/Adoption Allowance which is payable by the Department of Social Security/Job Centre Plus.

***Occupational Maternity/Adoption Pay** (applicable to employees who have at least 1 years' service).

Employees can opt to receive their 12 weeks half pay in the following ways:

- from weeks 7 to 18 as specified in the table above
- some employees prefer to have the 12 weeks half pay retained until they return to work. Employees wishing to do this should endorse the ML1/AL1 Form accordingly. (Please note that this option may have an impact on the amount of National Insurance payable).

Employees who do not return back to work should note that any excess monies will be recovered. For employees not intending to return, payment will be the employee's entitlement to Statutory Maternity Pay/Statutory Adoption Pay.

8.5 **EMPLOYEES WHO HAVE LESS THAN 1 YEAR'S SERVICE**

Employees who have 26 weeks service into the 15th week before the Expected Week of Childbirth or 26 weeks service by the week they are matched with a child for Adoption, but have less than 1 years' service and their earnings are ABOVE the lower earnings limit and they meet the following criteria:

- the employee's average earnings must be above the Lower Earnings Level in the 8 weeks ending with the 15th week before the Expected Week of Childbirth to qualify for Statutory Maternity Pay.
- the employee's average earnings must be above the Lower Earnings Level in the 8 weeks before the date of Adoption to qualify for Statutory Adoption Pay.

The employee will receive the following payment:

Weeks 1 - 6	Pay at 90% of the employee's average weekly earnings.
Weeks 7 - 39	The employee will receive either the current rate of Statutory Maternity Pay/Statutory Adoption Pay or 90% of the employee's average weekly earnings, whichever is the lower.

8.6

Employees who fall under the following categories do not qualify for Statutory or Occupational Maternity/Adoption pay:

- less than 26 weeks service into the 15th week before the Expected Week of childbirth
- less than 26 weeks service by the date of Adoption
- less than 1 years' service and earnings are below the Lower Earnings Limit.

8.7

However, employees may be entitled to Maternity/ Adoption Allowance payable by the Department of Social Security/Job Centre Plus. The following process should be followed in these circumstances.

Maternity	Employees in this circumstance need to submit their MATB1 along with their ML1 Form to Financial Services Payroll and Pensions who will then copy these Forms and return to the employee along with a SMP1 Form, entitled "Why I can't pay you SMP". The employee must complete this form and submit along with their MATB1 to their Department of Social Security/Job Centre Plus who will then deal with any entitlement to Statutory Maternity Allowance.
Adoption	Employees will need to submit the letter of confirmation of acceptance of adoption from the relevant Department of Social Security/Job Centre Plus or Adoption Agency as applicable along with the "matching certificate" (this is equivalent to a MATB1) to Financial Services Payroll and Pensions . These forms will then

	be copied and returned to the employee, advising them to submit these to the Local Department of Social Security/Job Centre Plus Office who will deal with any entitlement to Statutory Adoption Allowance.
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9.0 **ANNUAL/ADDITIONAL DISCRETIONARY AND STATUTORY LEAVE**

9.1 Employees continue to accrue Annual, Statutory and Additional Discretionary Leave during the period of Ordinary Maternity/Adoption Leave and Additional Maternity/ Adoption Leave period.

9.2 An employee cannot take Annual, Statutory or Additional Discretionary Leave during Ordinary Maternity/Adoption Leave. Employees must ensure they take their full entitlement for the current leave year either before the commencement of their Maternity/Adoption Leave period or after the end of the Maternity/Adoption Leave period, or a combination of both. This should be planned in advance and agreement reached with the Manager/Headteacher in the usual manner.

9.3 Where an employee takes Additional Maternity/Adoption Leave they will have the option to add their leave entitlements onto the end of the unpaid Additional Maternity/Adoption Leave if this can be accommodated within the leave year. If Annual Leave cannot be accommodated, there is no statutory or contractual entitlement to payment in lieu of untaken annual leave.

9.4 Where an employee is unable to take their contractual leave within the leave year in which it was accrued the employee will be able to carry over the outstanding balance. This should be taken at the earliest opportunity, in consultation with their Line Manager, and in accordance with the needs of the service. All outstanding annual leave must be taken within 18 months of the end of the leave year in which it was accrued.

9.5 If an employee fails to return to work and resigns from their post, then all contractual leave entitlements will be calculated to the date of resignation and monies reclaimed if excess leave has been taken.

9.6 **Term Time Employees**

A Term Time employee who takes Maternity/Adoption Leave is entitled to take their contractual Annual, Statutory and Discretionary Leave entitlement outside the Maternity/Adoption Leave period. A School/Service must not take any part of the Maternity/Adoption Leave period either Ordinary or Additional Maternity/Adoption Leave as Annual Leave.

The Annual, Statutory and Additional Discretionary Leave entitlement should be taken either before or after the Maternity/Adoption Leave and this should be during periods of school closure. Leave entitlement can be offset by any period of school closure that has taken place in the leave year in question i.e. either before or after the Maternity/Adoption Leave period. The employee should be advised prior to commencing their Maternity/Adoption Leave that their Annual, Statutory and Additional Discretionary Leave should be taken before or after the maternity/adoption leave period during school closure periods.

Where an employee is unable to take their contractual leave within the leave year in which it was accrued the employee will be able to carry over the outstanding balance. This should be taken at the earliest opportunity, in consultation with their Line Manager, and in accordance with the needs of the service. All outstanding annual leave must be taken within 18 months of the end of the leave year in which it was accrued.

It is not possible for the employee or school/service to decide to carry over the leave into the next leave year if there is time to take the leave in the current leave year i.e. in school closure or term time.

9.7 **Nursery Nurses**

Nursery Nurses do not have any contractual entitlements to be paid annual leave nor a specified leave year.

Nursery Nurses are entitled to 28 days Statutory Annual Leave under the Working Time Regulations.

A Nursery Nurse who takes Maternity/Adoption Leave must be able to take 28 days Statutory Annual Leave at a time outside their Maternity/Adoption Leave period. A school/service must not take any part of the Maternity/Adoption Leave period i.e. Ordinary or Additional Maternity/Adoption Leave as Annual Leave.

Statutory Annual Leave entitlement can be offset by any period of school closure that has taken place in the leave year in question i.e. either before or after the Maternity/Adoption Leave period.

The leave year for Nursery Nurses for the purpose of establishing Statutory Annual Leave has been agreed locally as commencing on 1 September, in line with the start of the academic school year.

A Nursery Nurse should be advised prior to commencing her Maternity/Adoption Leave that they have a statutory entitlement to 28 days Annual Leave and that this should be taken before or after the Maternity/Adoption Leave period during school closure periods. On their return from Maternity/Adoption Leave a Nursery Nurse must be allowed to take any outstanding leave during term time if there is insufficient school closure time to accommodate their leave in that leave year

Where there is not enough time to take all their annual leave, a Nursery Nurse must be allowed to carry over any balance of their contractual leave to the following leave year to be taken during the remaining periods of school closure after the 28 days annual leave for that year has been taken.

It is not possible for the Nursery Nurse or Service to decide to carry over the annual leave into the next leave year if there is time to take the leave in the current leave year i.e. in school closure or term time.

10.0 **SICKNESS**

10.1 **Maternity** - An employee cannot claim Statutory Maternity Pay and Statutory Sick Pay at the same time.

10.2 If an employee is absent due to a pregnancy related illness, within the 4 week period before the Expected Week of Childbirth, the Statutory Maternity Pay period and Maternity Leave start on the day after the first complete day of absence from work.

10.3 If the employee is absent from work due to illness **unrelated** to their pregnancy, the employee may take sick leave and receive Statutory Sick Pay/Incapacity Benefit until their maternity leave period begins. The employee's Ordinary Maternity Leave period will begin either on the date they have notified or (if the employee has yet to notify a date) on the date of the birth.

10.4 As soon as is reasonably practicable the employee must notify their employer of the reason for their absence.

11.0 **RETURNING TO THE SAME JOB AFTER MATERNITY/ADOPTION LEAVE**

11.1 An employee who returns to work after Maternity/Adoption Leave is entitled to return to the same job on the same terms and conditions as if they had not been absent.

11.2 Employees who are on Maternity Leave during the period of a restructure have special protection under the Maternity and Parental Leave Regulations (Amendments) 2014. The legislation (Regulation 10) provides that should the employee's position become redundant during the employee's maternity leave the employee **must** be offered any suitable alternative vacancy that is available in the organisation. The terms and conditions of this new post must not be substantially less favourable than the employee's original terms and conditions. The post offered is considered a suitable alternative therefore there is no requirement for the employee to undertake an interview. Those employees have priority status over all other employees who are potentially being made redundant.

11.3 In addition, from 6 April 2024, The Maternity Leave, Adoption Leave and Shared Parental Leave (Amendment) Regulations 2024 extends the protections for redeployment opportunities in a redundancy situation for pregnant employees and those who have recently returned from maternity/adoption leave and shared parental leave.

11.4 These protections will be discussed with affected individuals during any Managing Change process.

12.0 **BREASTFEEDING**

12.1 **Employee Responsibilities**

Before you return to work, to ensure you get the support you need, let your manager know you are planning to return to work breastfeeding and negotiate any changes which may be required to your working day. There are no legal restrictions on breastfeeding at work or any time limits on how long this should take but you are able to take up to one hour in your own time (over the course of your workday) to express or breastfeed your baby.

If you work in an area where it is safe for your baby to be brought into work, this should where possible, be facilitated by your manager. If your baby is in childcare near to work you can negotiate time to leave work to breastfeed your baby, however it is important to have realistic expectations regarding this. Flexible working arrangements must be discussed with your manager if you are unable to accommodate breastfeeding.

If you would like to talk to someone from Barnsley Council's Infant Feeding Team about returning to work breastfeeding, please contact (01226) 775700 (Monday to Friday, 9am to 4pm) and they will be able to support you through your journey.

12.2 **KIT Days**

If you are breastfeeding and want to attend work for a KIT Day, speak to your manager about identifying a safe and private place to breastfeed your baby or express and store your breastmilk. If you are expressing breastmilk, it is your responsibility to ensure that this is stored in appropriately labelled containers.

12.3 **Manager's responsibilities**

Health and safety legislation requires managers to complete a health and safety risk assessment for breastfeeding mothers returning to work.

Before your employee returns from maternity leave you should ask for written confirmation if they are breastfeeding and intend to do so on their return to the workplace. This will give you the opportunity to provide a healthy, safe and suitable rest environment for them to do this. If a mother intends to continue breastfeeding upon her return to work, you must complete the New and Expectant Mothers Risk Assessment and guard against inappropriate behaviour towards the employee who is breastfeeding.

If a mother intends to express breastmilk at work, you must ensure that suitable facilities have been identified:

12.4 **A private space**

A breastfeeding employee may ask for a private, hygienic, safe and secure area where she can express milk, this could be an unoccupied office, or an area used for meetings that can be discreetly screened. If in doubt an employer should ask the employee what would be most appropriate. It would be inappropriate to use toilets or sick rooms as there may be a hygiene risk. If, after careful consideration, an employer is physically unable to provide an appropriate space, they should discuss the issue with the employee to see if there is any alternative facility.

N.B. If an employee works out in the community, BMBC Family Centres can be utilised for breastfeeding and/or expressing.

12.5 **Fridge and storage**

Employers should consider enabling expressed milk to be stored in a fridge or cool area, perhaps secured in a re-sealable container for hygiene purposes. It would be good practice to discuss storage preferences with the employee.

13.0 **DEDUCTIONS FROM SALARY**

13.1 All the usual deductions, National Insurance, Superannuation, and Tax etc. will be made during the 39 weeks of pay.

13.2 All voluntary deductions from salary will continue throughout the whole of the period of Paid Maternity/Adoption Leave (i.e. 39 weeks). Where an employee takes the unpaid Additional Maternity Leave/Additional Adoption Leave, there will be no facility to continue deductions whilst they are receiving no pay.

13.3 All usual pension deductions will continue to be paid for the whole of the period of Ordinary Maternity/Adoption Leave (whether or not the employee is receiving Statutory and/or Occupational Maternity/Adoption pay) and any period of paid Additional Maternity/Adoption Leave. The Council will calculate the employer's contributions as if the employee is receiving their normal salary. Where an employee takes the unpaid Additional

Maternity/Adoption Leave, they will not pay any pension contributions whilst they are receiving no pay.

13.4

Employees have the right to make voluntary contributions for the period of unpaid leave; however, elections must be made within 30 days of the employee returning to work.

14.0 **SALARY SACRIFICE SCHEMES/EMPLOYEE DEVELOPMENT LOANS**

14.1 Monthly deductions will continue to be made whilst the employee is in receipt of their salary from the Council. The employee will then be invoiced each month for the period when no salary is due, so that on their return to work, no payment has been missed.

15.0 **RISK ASSESSMENTS FOR PREGNANT EMPLOYEES**

15.1 Where a workplace or work activities could involve a risk to the health or safety of an expectant mother, employers are required under the Management of Health and Safety at Work Regulations 1999 to assess those risks. Where risks are identified appropriate controls measures must be identified and implemented. Both the risks and control measures must be recorded. Expectant mothers need to be informed of any additional risks they may face and the control measures to control these risks.

15.2 When an employee informs their Manager/Headteacher that they are an expectant mother, the Manager/Headteacher should carry out a risk assessment based on the Council's Generic Risk Assessment for Expectant Mothers. This can be found on the Health & Safety Intranet Site.

15.3 Where a risk has been identified the Manager/Headteacher has to decide how best to avoid the risk, this may be:

- implement suitable control measures; or if it is not reasonable to do so or would not avoid the risk.
- temporarily adjust the expectant mother's working conditions and/or hours of work; or if it is not reasonable to do so or would not avoid the risk.
- offer the expectant mother suitable alternative work if any is available; or if that is not feasible you must suspend the expectant mother from work (with pay) for as long as necessary to protect their safety or health or that of their unborn child.

15.4 Managers/Headteachers must consult with their Human Resources Business Partner before any decision is taken regarding Points 2 to 3 above to discuss the necessary action.

15.5 Advice on Health and Safety with regard to expectant mothers can be obtained from the Occupational Health Unit or the Health & Safety Intranet Site.

16.0 **PREGNANCY AND VDU'S**

16.1 Guidance issued by the National Joint Council for Local Government Service states the following:

"The current medical view outlined by the Health and Safety Executive (HSE) is that radiation emissions from Display Screen Equipment (DSE) would not put either a pregnant

employee or their unborn child at risk. The Health and Safety Executive further take the view that the latest research studies have not been able to show a link between miscarriage and birth defect and Display Screen Equipment and advise that there is no reason for women who are pregnant or thinking of becoming so to stop working with Display Screen Equipment.

However, some employees may be anxious about continuing to work with Display Screen Equipment during pregnancy and this in itself may lead to stress. When a pregnant employee is concerned about continuing to carry out Display Screen Equipment work the Council may give sympathetic consideration to reorganisation of the workload or provide suitable alternative work where practicable for the period of the pregnancy. It is expected that the alternative work will be on terms and conditions not less favourable than those of the original contract.”

17.0 **TEMPORARY COVER DURING PERIOD OF ABSENCE**

17.1 The Council’s Recruitment and Selection Procedure must be followed when recruiting temporary staff.

18.0 **DIRECTORATE/BUSINESS UNIT PROCEDURES**

18.1 Directorates/Business Units are responsible for applying the conditions of service regarding Maternity/Adoption Leave and liaising with Financial Services Payroll and Pensions regarding pay.

18.2 They should contact their Human Resources Business Partner for advice on particular problems and for temporary cover.

18.3 Employees who would like further information on Maternity/Adoption within BMBC and/or obtain a copy of the Council’s Questions & Answers Maternity booklet should in the first instance access the information on the Human Resources Intranet Site.

19.0 **IMPACT ASSESSMENT**

19.1 This policy has been impact assessed by Human Resources. If on reading this policy/procedure you feel there are any equality and diversity issues, please contact your Human Resources Business Partner who will, if necessary, ensure the policy/procedure is reviewed.

20.0 **INCOME TAX AND NATIONAL INSURANCE IMPLICATIONS**

20.1 Maternity and adoption pay is assessable to tax under Schedule E (75) [ICTA 1988, S150; FA 2002, S35].

Therefore, payments made by the Council to employees during maternity or adoption leave, whether they are entitlements to pay, half Occupational pay or Statutory Maternity pay/Statutory Adoption pay are subject to Tax and National Insurance in the normal manner, having regard to Tax and National Insurance levels and rates at the time these payments are made.

21 **GLOSSARY OF TERMS**

OML – Ordinary Maternity Leave, first 26 weeks of maternity leave
AML – Additional Maternity Leave – weeks 27 – 52 of maternity leave
OAL – Ordinary Adoption Leave – first 26 weeks of adoption leave
AAL – Additional Adoption Leave – weeks 27 – 52 of adoption leave
Expected Week of Childbirth – Expected Week of Childbirth, the week in which the GP or midwife calculates the baby will be born
ML1 Form – The form the employee completes to confirm the details of their maternity leave/pay
AL1 Form – The form the employee completes to confirm the details of their adoption leave/pay
MATB1 Form – The official maternity certificate signed by the employee’s GP or midwife, issued around the 20th week of pregnancy confirming their Expected Week of Childbirth

SMP – Statutory Maternity Pay – the 39 week payments made to those employees above the lower earnings limit
SAP – Statutory Adoption Pay – the 39 week payments made to those employees above the lower earnings limit
SMA – Statutory Maternity Allowance – the payment which may be payable by the Benefits Agency to those employees who’s earnings do not entitle them to SMP
SAA – Statutory Adoption Allowance – the payment which may be payable by the Benefits Agency to those employees who’s earnings do not entitle them to SAP
Occupational Maternity Pay – 12 weeks pay – payable to those employees with at least 1 years service and whose earnings are above the lower earnings limit
Occupational Adoption Pay – 12 weeks pay – payable to those employees with at least 1 year’s service and who’s earning are above the lower earnings limit.
KIT Day – The term used for working a Keeping in Touch Day.

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