



TUDHOE LEARNING TRUST

**ADOPTION, MATERNITY AND PATERNITY POLICY
(NON-TEACHING)**

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1. Policy Outline

1.1 What is the policy about?

The Government is committed to ensuring that working parents have a greater choice in balancing work and family life. The Work and Families Act 2006 provided employees with increased maternity and adoption leave rights which came into force from 1 April 2007. In addition the Paternity Leave Regulations 2010 provide for additional paternity leave. Under the new scheme mothers will be able to transfer the last six months of their maternity/adoption leave to their partner. This right will apply where the child is due on or after 3 April 2011 or is expected to be placed on or after this date.

This policy provides guidance on the School's maternity and adoption scheme. This includes risk assessment, maternity/adoption leave and pay arrangements, provisions for return to work maternity/adoption support leave and paternity leave and pay factors.

1.2 Who does the policy apply to?

This policy covers all non-teaching school-based employees. However, where this policy is varied to suit the requirements of the individual schools it must still meet the minimum statutory demands that form the foundation of this document.

1.3 Responsibility

The policy is recommended as good practice to all other groups associated with the Council who have the discretion in their employment to adopt our policies. Apart from schools, this will include such groups as voluntary sector organisations.

The policy is applicable to all non-teaching employees, including temporary, of the School who meet the eligibility criteria, regardless of the number of hours worked. Part-time employees also receive the same entitlement as full-time employees - where appropriate this will be on a pro-rata basis.

The content of the policy is linked to the National Joint Council for Local Government Services national conditions of service. It is recognised that other relevant national conditions may include some variations on these details.

Head Teachers will be responsible for the operational management of the policy.

1.4 Support

An employee can seek advice from their Head Teacher or contact the telephone counselling service. This service operates 24 hours a day throughout the year and can be accessed by calling 0800 716017.

1.5 Confidentiality

All information will be handled sensitively and used only for its proper purpose.

Under the Data Protection Act 1998 individuals have the right to see their own personal data held subject to the rights of confidentiality of any third parties involved in that information.

1.6 Dealing with abuses of the policy

Employees who attempt to abuse this policy may face disciplinary action. The school takes false or misleading accusations very seriously which may result in further action taken through the Disciplinary Procedure. This will not include ill-founded allegations that were made in good faith.

1.7 Publicising/distribution of the policy

A copy of this policy is available from the Head Teacher and will be made available to employees on request. A copy can also be viewed via the Trust website.

New employees will be informed of the existence of this policy in recruitment and induction information.

1.8 Reviewing the policy

The operation of this policy will be kept under review and such changes will be made to the policy as deemed appropriate following necessary consultation with the trade unions.

1.9 Equality and Diversity

The Trust's vision is that of an inclusive and diverse working and learning environment where everyone is welcome. Within this vision our three key equality aims set out in the Single Equality Scheme are to provide high quality accessible services to all, be a diverse organisation and work with others to promote equality countywide. These objectives apply both in the delivery of our services and in relation to our employment practices. We are committed to including equalities in everything we do. This includes the elimination of unlawful discrimination, promoting diversity as a positive force and valuing & celebrating our diverse workforce and community.

If necessary, an equality impact assessment will be carried out in the preparation of this policy and the assessment will be reviewed on an ongoing basis.

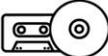
1.10 Alternative formats

Where any alternative format is required, any initial enquiry should be made through your headteacher or by following the instructions below:

Please ask us if you would like this document summarised in another language or format.

العربية (Arabic)	(中文 (繁體字)) (Cantonese)	اردو (Urdu)
polSKI (Polish)	ਪੰਜਾਬੀ (Punjabi)	Español (Spanish)
বাংলা (Bengali)	हिन्दी (Hindi)	Deutsch (German)
Français (French)	Türkçe (Turkish)	Melayu (Malay)

office@tudhoelearningtrust.co.uk

 Braille  Audio  Large Print

1.11 Forms

Forms relating to this policy and procedure can be downloaded from office@tudhoelearningtrust.co.uk.

Sample forms are included at the back of this document for information purposes only.

1.12 Further information

If you would like any further advice on this document you can contact Human Resources at office@tudhoelearningtrust.co.uk.

2. Procedure

2.1 Maternity leave criteria

The main entitlements to maternity leave are based on the following criteria:

- All female employees have a right to 52 weeks of maternity leave - the 'maternity leave period';
- All female employees have a right to 26 weeks of ordinary maternity leave (OML) and 26 weeks of additional maternity Leave (AML), regardless of the number of hours worked or length of service;
- Employees must comply with notification procedures;
- During the period of OML, the contract of employment and benefits continue - the employee is seen as temporarily absent from work;
- The contract of employment continues throughout the AML period;
- Maternity Leave can start no earlier than 11 weeks before the EWC;
- Leave can also be triggered by the actual childbirth, or by a pregnancy related absence if this happens from the start of the 4th week before the Expect Week of Childbirth (EWC);
- No employee is allowed to work during the first 2 weeks after giving birth - this is a compulsory maternity leave period.

2.2 Maternity Notification requirements

The employee must advise their Head Teacher at least 28 days before her absence starts, or as soon as reasonably practicable. Details to be provided include:

- Confirmation of the pregnancy;
- Details of the EWC - this can include a certificate (MATB1) from a registered medical practitioner or a certified midwife;
- Confirmation of the date of the beginning of her absence - this can be in writing.

Other factors relevant to notification requirements include:

- The employee may be asked about whether she intends to return to work for the purpose of receiving occupational maternity pay. However, the employee can choose not to respond to this request;
- The employee can also change her mind about the start of her leave. However, she must provide 28 days notice, unless this is not practicable;
- The Head Teacher must write to the employee within 28 days of receiving the notice of the leave plans. Details sent out must include advising her about her expected date of return to work. This will be 52 weeks from the start of her leave. A model letter is included within the Toolkit section of this document, in connection with this requirement.

If maternity leave is triggered by the birth of the child, the employee must advise her Head Teacher about the date of the birth as soon as reasonably practicable. Similarly, if she is absent due to a pregnancy related issue, confirmation of the start of maternity leave must be advised as soon as possible. In these situations, the maternity leave actually starts on the day following the first day of absence or the day of childbirth.

Once an employee notifies a Head Teacher that she is expecting a baby, the following issues will need to be considered:

2.3 Risk assessments for new and expectant mothers

The School's responsibility for the health and safety of our employees comes into sharp focus when considering the requirements for an expectant or new mother. It is important that the Head Teacher carries out a formal risk assessment for an employee when she declares her pregnancy. It is also likely that the risk assessment should be reviewed on a regular basis during the pregnancy and on her return to work. Bear in mind that the risk assessment also relates to the unborn child or the child of a woman who is breastfeeding.

A starting point for any risk assessment could be the Code of Practice for the Protection of New and Expectant Mothers at Work which can be found within the Health and Safety pages on the extranet under New and Expectant Mothers. The Performance Standard states that:

"All risks that may affect new and expectant mothers will be assessed and all reasonably practicable action will be taken to prevent or control those risks."

Head Teachers who are aware of the operating environment should ensure that regular workplace risk assessments are provided while the pregnant employee is at work. Where risks are identified, which may adversely affect the health and safety of the employee or their baby, the Head Teacher should look at certain options:

- A temporary adjustment of her working conditions and/or her hours of work;
- An offer of suitable and appropriate alternative work if it is available - her normal rate of pay should be provided;
- Where the above opportunities are not feasible, provide her with paid leave for as long as necessary to protect her, and/or the child's, health and safety.

Within the assessment, the Head Teacher should look to see if any hazards may affect the employee.

The following are examples of the type of risks that can arise in the workplace:

- For pregnant women and women who have had a caesarean section, lifting heavy items can lead to injury. The amount of physical work should be reduced or suitable aids supplied;
- Physical fatigue from standing or poor posture position for long periods of times can lead to miscarriage, premature birth and low birth weight. Potential remedies include avoiding excessive volume and hours of work, seating being made available, longer rest breaks or work stations being adjusted;
- Work involving substantial vibration or movement may lead to miscarriage. Tasks should be avoided if they risk whole body vibration or jolts to the abdomen;
- Prolonged exposure to noise could lead to blood pressure problems. Consideration should be given to the requirements under the relevant legislation.

Exposures to radiation, chemical & biological agents, lead, infectious diseases, work related stress, other people's smoke in the workplace or extremes of cold and heat should also be avoided. Although the level of radiation from display screen equipment poses no significant risks to health, any concerns should be sympathetically addressed and the employee encouraged to seek medical guidance if they require further reassurance. The outcomes of the risk assessment may mean alternative work or alternative hours need to be offered to the employee. In some situations, it may even lead to the employee being suspended and given paid leave.

The following table gives some examples of the aspects of pregnancy that may lead to changes in the work environment:

Aspects of pregnancy	Factors in work
Morning sickness	Early shift work Exposure to nauseating smells
Backache	Standing, manual handling, posture
Varicose veins	Standing, manual handling, posture
Haemorrhoids	Working in hot conditions
Frequent visits to toilets	Difficulty in leaving work area
Increasing in size	Use of protective clothing Work in confined spaces Lifting & handling Dexterity, agility & coordination Speed of movement & reach
Tiredness	Overtime, night work/evening work
Balance	Working on uneven, wet or slippery surfaces
Comfort	Problems of working in tightly fitting workspaces

A risk assessment form can be obtained via the Extranet Health and Safety web page in respect of new and expectant mothers.

Further guidance about risks assessments and related health and safety information can be obtained through:

- The CYPS Health & Safety Team - telephone 0191 3836513
- The Health & Safety Code of Practice and Guidance Note on New and Expectant Mothers - on the Extranet through the Health and Safety web page.

2.4 Antenatal care

All pregnant employees, regardless of hours worked, pay or length of service, have the right to paid time off for antenatal care. They must provide evidence of appointments if requested to do so. Antenatal appointments can also include parentcraft and relaxation classes where an appointment is recommended by a registered midwife, doctor or health visitor.

All time off, including travelling time, must be paid at a normal hourly rate of pay (i.e. the normal rate of pay for normal working hours). Where an employee does not have normal working hours, the rate of pay during any time off should be her average rate in the last 12 complete weeks prior to the time off.

Fathers-to-be, partners/civil partners and nominated carers can also be granted paid time off for appointments connected to antenatal care where the following provisions have been met:

- The employee has provided reasonable notice of the appointment and has agreed the time-off provisions with their Head Teacher;
- The school will not be adversely affected by the absence of the employee;
- It is not possible to attend the appointment in the employee's own time;
- The employee provides evidence of their attendance at any appointment

2.5 Premature births

If a baby is born prematurely, the Head Teacher will consider each case on an individual basis as to what assistance may be relevant. For example, it may be appropriate to extend the maternity leave arrangements.

2.6 What if something goes wrong?

As well as meaning the live birth of a child, the reference to childbirth can also mean a stillbirth or a pregnancy lasting 24 weeks. Therefore, in the unfortunate event that the baby is lost, the employee can take maternity leave if they have been pregnant for at least 24 weeks.

Where something happens before 24 weeks through a miscarriage or there is a termination, the Head Teacher will give sympathetic consideration to the individual circumstances. Where necessary, compassionate leave, special leave or sick leave may be appropriate, depending on the needs of the employee and any medical opinion.

2.7 Sickness and holiday arrangements (Maternity)

The main details in relation to maternity are as follows:-

Any pregnant employee absent through sickness before the 4th week before the EWC will receive Occupational/Statutory Sick Pay (SSP), if appropriate. Before this time, where the employee is affected by a pregnancy related absence, it is not automatic to trigger the maternity leave immediately. It may be acceptable to let the employee carry on working if the absence is for a short period and they actually wish to remain at work. Clearly medical advice should be taken if there is any doubt.

- Occupational sick pay/SSP may still be allowable after the 4th week before the EWC if any absence is due to anything other than a pregnancy related condition.
- Employees who are sick during their maternity leave period are not entitled to SSP as they will be receiving SMP.
- Maternity leave will not be treated as sick leave and will, therefore, not be taken into account when calculating a person's sickness record.
- Where an employee cannot attend work at the end of her maternity leave due to sickness, the normal contractual arrangements for sickness absence will apply.
- Maternity and leave will be classed as continuous service for the purposes of existing sickness, annual leave and maternity schemes.
- Annual leave continues to accrue during OML and AML. In cases of non-term time non-teaching employees holiday arrangements need to be discussed and agreed between the Head Teacher and employee before maternity leave commences. Holidays can be carried forward from one Leave year to the next when maternity leave continues between two leave years. However, during the year when the maternity absence commences, the employee should take a proportionate amount of their holiday allocation, before the actual OML begins. The remaining holiday from that leave year should then be 'tagged on' to the end of the overall maternity absence.
- Bank Holidays also accrue during both the OML and AML periods - a substitute day of leave should be provided.

2.8 Adoption leave criteria

The main entitlements to adoption leave are based on the following criteria:

- All employees have the right 52 weeks of adoption leave that may be taken around the time of the adoption process. Where a couple are adopting, only one parent, the main carer, can make a claim (the other partner may be entitled to adoption paternity leave and payments). In addition, only one period of Adoption Leave can be taken at any one time, regardless of the number of children adopted. The leave can be taken for any child placed for adoption up to the age of 18.
- All employees have a right to 26 weeks Ordinary Adoption Leave (OAL) followed by 26 weeks of Additional Adoption Leave (AAL). It will be presumed that an employee will be taking the full 52 weeks of leave unless the employee notifies their Head Teacher otherwise.
- Employees must comply with notification procedures;
- During the period of OAL, the contract of employment and benefits continue - the employee is seen as temporarily absent from work;

Adoption leave and pay are not available in circumstances where the child is not newly placed for adoption i.e. a step-parent adopting a partner's child.

The contract of employment continues throughout the AAL period.

2.9 Adoption notification requirements

The employee should advise their Head Teacher within 7 days of being told that they have been matched with a child. Details to be provided include:

- The date the child is to be placed with the primary adopter;
- The date the employee wants the Adoption Leave to begin.

The employee will also have to provide documentary evidence of the adoption through the provision of a matching certificate which can be obtained by the adopting person through their agency.

The employee can choose to start their OAL on the date the child is placed or another pre-determined date. The pre-determined date should be no more than 14 days before the date the child is expected to be placed and no later than that date. An employee's can choose to vary their leave date provided they give 28 days' notice.

Leave can start on any day of the week.

2.10 Pre adoption

An employee seeking to adopt may also be entitled to no more than 3 days of paid leave in any 12-month period for pre-adoption purposes.

2.11 Sickness and holiday arrangements (Adoption)

- Where an employee cannot attend work at the end of their adoption leave due to sickness, the normal contractual arrangements for sickness absence will apply.
- Adoption leave will not be treated as sick leave and will, therefore, not be taken into account when calculating a person's sickness record.
- Adoption leave will be classed as continuous service for the purposes of existing sickness, annual leave and maternity schemes.
- Annual leave continues to accrue during OAL and AAL.
- Holiday arrangements need to be discussed and agreed between the Head Teacher and employee before adoption leave commences. Holidays can be carried forward from one holiday year to the next when adoption leave continues between two leave years. However, during the year when the adoption absence commences, the employee should take a proportionate amount of their holiday allocation, before the actual OAL begins. The remaining holiday from that leave year should then be 'tagged on' to the end of the overall maternity absence.
- Bank Holidays also accrue during both the OAL and AAL periods - a substitute day of leave should be provided.

2.12 Communication during maternity and adoption leave

A number of measures have been introduced through the Work and Families Act 2006 to encourage communication and contact between employers and employees during maternity or adoption leave in the form of 'reasonable contact from time to time' and 'Keep in Touch' (KIT) days.

2.12.1 Reasonable contact

This can be arranged through the Head Teacher or with another contact person, if this is thought to be more appropriate. Discussions should be held with the employee before maternity or adoption leave starts to agree ways of doing this.

In addition the employee needs to be informed of issues like vacancies, workplace developments and training opportunities. This contact could include discussions on the right to request flexible working. For example, it may be appropriate to explore options like part-time working, job-share, teleworking, family leave etc., alongside the needs of overall service provision. Further information on the right to request flexible working can be found in the Flexible Working Guidance on the Extranet within the Document Library.

Any discussions should also consider the practicality of any other support facilities that the employee may need. For example, the needs of breast-feeding employees must be taken into account.

It is important to note that 'reasonable contact' is quite distinct from KIT days. It simply encourages communication and contact without the employee doing any actual work.

2.12.2 Keeping in touch (KIT) days

The new legislation includes Keeping in touch days (KIT days). These are up to 10 mutually agreed days where an employee can work during her maternity or adoption leave without bringing their leave period to an end or her losing a week's Statutory Maternity Pay (SMP) or Statutory Adoption Leave (SAP), provided no more than 10 days are worked. However KIT days are not allowed to be worked during the compulsory leave period (i.e. the first two weeks after the birth).

KIT days are not limited to the employee's normal job. It can include attending training events, appraisals, meetings as well as easing an employee's return to work. Working part of a day will count as one full day for the purpose of calculating KIT days.

The 10 days are allocated per person, not per job, where an employee may have multiple contracts.

A person's normal rate of pay, offset against any SMP or SAP paid will be paid for such days. Payment arrangements should be discussed and clearly understood and agreed before any work is undertaken.

However, an employer cannot insist that work be carried out during the statutory maternity/adoption leave period. Indeed the Regulation provides the employee with protection from detriment and unfair dismissal in this situation. Similarly, an employee cannot insist on working during the period - it must be mutually agreed.

2.13 Returning to work

Apart from a redundancy situation detailed below, the employee should return to the job in which he/she was employed under the original contract of employment. The employee should also come back on terms and conditions not less favourable than those that would have applied if he/she had not been absent. "Job", for this purpose, refers to the nature of the work in which she is employed to do, along with the place and capacity of work.

It may not be possible for the employee to return to their original job if it has been affected by redundancy. The school must offer a suitable alternative vacancy where one exists.

There are a number of practical issues to consider when an employee is returning to work:

- An employee cannot return to work within 2 weeks of the actual date they give birth.
- The Head Teacher should have maintained appropriate contact with the employee while on maternity or adoption leave.
- It will be assumed that an employee will return to work at the end of her AML or AAL, unless different information is provided.
- An employee must advise the Council at least 21 days before the day he/she intends to return, if this is before the end of 52 weeks of leave entitlement. This notification can be in writing if requested. If the notice given is less than 21 days, the school can postpone the return to ensure 21 days of notice. However, any postponement like this must not go beyond the end of the maternity or adoption leave period.
- If the school has not written to the employee then they cannot postpone any return to work.
- Where an interruption to work - for example, industrial action - stops an employee returning to work, it is unreasonable to expect the employee to return on the due date. Therefore, he/she may instead return when work actually resumes, or as soon as reasonably practicable after that point.
- An employee who does not want to return to work after maternity/adoption leave must give their employer the notice required by their contract of employment.
- A woman coming back to work may have particular wishes and needs connected to the new baby. This could range from changes in the working environment to assistance with breastfeeding arrangements (see below).
- Time should be put aside to re-induct the employee into work.

2.13.1 Breastfeeding on return to work

When a woman returns to work after maternity leave, she may have particular wishes and needs connected to the new baby, including needing time and facilities to help with breastfeeding. Breastfeeding has been shown to provide positive health benefits for both babies and mothers.

A risk assessment may identify issues connected to this subject. Consideration should be given to any health and safety implications for breastfeeding employees. Although it is appreciated that space is often at a premium in many buildings, every effort should be made to provide suitably quiet and private facilities for women who are breastfeeding or expressing milk. The ladies toilets are not an acceptable facility.

2.14 Payments

2.14.1 Statutory Maternity Pay (SMP)

Statutory Maternity Pay (SMP) is an entitlement that the school pays on behalf of the Government. SMP is payable for the first 39 weeks where the qualifying conditions are met. Payments can start on any day of the week, provided that the maternity leave starts on the same day. However, where maternity leave is triggered by childbirth or a pregnancy related absence, the SMP can start on the following day.

The payment consists of:

Weeks 1 - 6	=	90% of a week's pay
Weeks 7 - 39	=	SMP payment
Weeks 40 - 52	=	No payment

Details of the current rate and the qualifying conditions can be found through individual service staffing sections.

Please note: If an employee does not qualify for SMP, they may qualify for maternity allowance (MA) or other benefits. These are paid directly by the Department for Work and Pensions (DWP)

2.14.2 Occupational Maternity Pay (OMP)

OMP is an enhanced maternity pay package available to Local Government employees - this can vary between schemes.

To receive OMP, an employee (school - non teaching) must have more than one year of continuous local government service at the start of the 11th week before the EWC. If an employee does not have the required service, they may still be entitled to Statutory Maternity Pay (SMP).

OMP is paid during weeks 7 to 18 of the maternity leave absence on the understanding that the employee will return to her employment for at least 3 calendar months. She will be considered as having returned to work even if she is unable to return to work because of sickness, or she chooses to add holiday on to the end of maternity leave.

If the employee decides not to return to work after OMP has been paid then the OMP paid for weeks 7 - 18 will need to be refunded to the Council.

Payment for OMP will be as follows:

Weeks 1 - 6	=	90% of a week's pay offset against SMP payments
Weeks 7 - 18	=	*half-pay plus SMP payment
Weeks 19 - 39	=	SMP payment
Weeks 40 - 52	=	No payment

* OMP plus SMP (or MA and any other dependent's allowances) is paid without deduction, unless this amount exceeds full pay. In this case, the OMP part will be reduced.

If the employee decides not to return to work after OMP has been paid then the OMP paid for weeks 7 - 18 will need to be refunded to the school.

2.14.3 Statutory Adoption Pay (SAP)

SAP is an entitlement that the school pays on behalf of the Government. SAP is payable for the first 39 weeks where the qualifying conditions are met. Payments can start on any day of the week, provided that the adoption leave starts on the same day.

To be eligible, an employee must:

- Have parental responsibility for a child and be classed as the primary adopter through the adoption process;
- Have been continuously employed for at least 26 weeks by the week the adopter is notified of being matched with a child;
- Be 'newly matched' with a child for adoption by an approved agency;
- Be aware of the date of the placement.

It is not available where a child is not newly matched for adoption, for example, where a step-parent is adopting a partner's child.

Where a couple are adopting jointly, only one partner will be entitled to take adoption leave. Their spouse or partner may be entitled to paternity leave/additional paternity leave.

The payment consists of:

Weeks 1 - 6	=	90% of a week's pay
Weeks 7 - 39	=	SMP payment
Weeks 40 - 52	=	No payment

Details of the current rate and the qualifying conditions can be found through individual service staffing sections.

2.14.4 Occupational Adoption Pay (OAP)

To receive OAP, an employee must have more than one year of continuous local government service at the date of notice given by the adoption agency for matching with the child. If an employee does not have the required service, they may still be entitled to Statutory Adoption Pay (SAP).

OAP is paid during weeks 7 to 18 of the adoption leave absence on the understanding that the employee will return to their employment for at least 3 calendar months. He/She will be considered as having returned to work even if he/she is unable to return to work because of sickness, or he/she chooses to add holiday on to the end of maternity leave.

If the employee decides not to return to work after OMP has been paid then the OMP paid for weeks 7 - 18 will need to be refunded to the school.

Payment for OAP will be as follows:

Weeks 1 - 6	=	90% of a week's pay offset against SAP payments
Weeks 7 - 18	=	*half-pay plus SMP payment
Weeks 19 - 39	=	SMP payment
Weeks 40 - 52	=	No payment

* OAP plus SAP (and any other dependent's allowances) is paid without deduction, unless this amount exceeds full pay. In this case, the OAP part will be reduced.

Payments of OAP are made on the understanding that the employee will return to local authority employment for at least three months. If he/she does not return for that length of time, the money paid for weeks 7 - 18 will need to be refunded to the Council less SAP payment.

2.15 Maternity support leave/Adoption support leave

Maternity/Adoption support leave (MSL or ASL) provides a right to time off for some employees. The main entitlements are based on the employee meeting the following qualifying criteria:

- The employee must be the child's father or the partner, civil partner or nominated carer of the expectant mother/adopter.
- A nominated carer is the person nominated by the mother/ adopter to assist in the care of the child. This person may be anyone other than the child's father or the partner/civil partner of the mother.

These entitlements provide time off for some employees to help expectant or new parents at or around the time of childbirth/ placement. Eligible employees will be able to take 1 week of Maternity/ Adoption Support Leave (ASL/MSL) and 1 week of paternity leave. Paternity leave is not available to nominated carers of an expectant or new mother.

Some conditions of service do not include support leave. In these circumstances, 2 weeks of paternity leave is available to any employee meeting the criteria. This time off will be paid at the standard rate of Statutory Paternity Pay (SPP).

The school allows the week of support leave to be taken flexibly - for example, a few days at a time. As this does not comply with the SPP requirements, this will affect the school's ability to reclaim a full rebate on SPP payments.

Suitable notification must be provided when applying to take either leave. A copy of the MSL/ASL application form and a model self-certification form for paternity leave are available in the toolkit to assist with this process. The parental leave form is required to process the claim for SPP. Any manager should accept the declarations made at face value unless they have good reasons to believe it is false.

This leave amounts to one week at normal pay, taken at or around the time of the birth. Arrangements may be made to take the time off on a flexible basis, but this should normally be within 56 days of the birth. There are no service requirements.

The employee should complete a MSL/ASL application form - see the Toolkit section of this document. The expectant mother/ adopter will need to certify this form and it should be returned with a copy of her maternity certificate (MATB1) or adoption placement certificate.

The MSL/ASL form includes a declaration that the person taking the leave is the only person nominated as a carer - this requirement may be adjusted in exceptional circumstances.

2.16 Paternity leave

2.16.1 Paternity Leave criteria

Paternity leave provides a right to further time off for some employees and applies to:-

- The biological father of the child
- partners and civil partners of mothers
- the partner or civil partner of a person adopting a child from Great Britain
- and those adopting from overseas where the child enters Great Britain on or after 3 April 2011.

The main entitlements are based on the employee meeting the following qualifying criteria:

- Have been continuously employed for 26 weeks by the end of the 15th week before the EWC or in the case of adoption the date of placement ;
- They must expect to have responsibility for the upbringing of the child;
- Time off must be taken for a reason connected to caring for the child or supporting the child's mother/ adopter.

If the employee has already taken 1 week of MSL/ASL, they are entitled to 1 further week of paternity leave. Anyone not eligible for MSL/ASL is entitled to a maximum of 2 weeks of paternity leave.

Anyone taking paternity leave must take it in a full block of one week. Where the employee is entitled to 2 weeks of paternity leave they must be taken consecutively or the second week will be lost

The leave must be taken at or around the time of the birth or placement - normally within 56 days of the child's birth or placement to ensure paternity payments can be made. If the baby is born early, this time limit is extended to within 56 days of the EWC. Leave can start on any day of the week.

The employee should normally choose to start their leave from a specific date. This will be either:

- The date the child is born; or
- A certain number of days or weeks after the child is born; or
- From a pre-determined date after the first day of the EWC - if the child has not been born by this date, the employee must choose another date.
- The adoption placement date but within 56 days of this date

If the employee chooses to start his/her leave on the date of the child's birth or placement date and they are at work that day, then the leave will actually commence on the following day.

Only one period of leave is available per pregnancy. Therefore, if the employees' partner/civil partner gives birth to twins or adopts two children at the same time, the maximum entitlement will still be 2 weeks.

2.16.2 Notification requirements for paternity leave

The employee must advise the Head Teacher of the following by the end of the 15th week before the EWC or as soon as reasonably practicable:

- The EWC/or adoption placement certificate;
- The length of the leave requested;
- The date that the leave will start;

This information can be provided in writing.

In addition, the employee should provide a signed declaration confirming the reason for taking the leave. A model format for this type of declaration can be found in the Toolkit section of this document.

The employee should also advise their Head Teacher of the date the child was born.

People can change their minds about the start date for leave. However, they should normally provide 28 days of notice of any change, unless this is not reasonably practicable.

2.16.3 Paternity pay

The father (including partner, civil partner, adopter) must have been eligible for Statutory Paternity Leave (i.e. have been continuously employed by Durham County Council for at least 26 weeks by the 15th week before the baby is due, or in the case of adoption be employed for 26 weeks by the week the adopter is matched with the child for adoption) and still be in the same employment until the week before he starts Additional Paternity Leave

Where an employee has already taken 1 week of MSL, they will also be entitled to 1 week of Statutory Paternity Pay (SPP). If the person has not been entitled to MSL, then they will be entitled to a maximum of 2 weeks of the employee's entitlement to SPP.

SPP will only be paid if the average weekly earnings are at or above the lower earnings limit for National Insurance contributions. Employees who do not qualify for SPP may be able to get income support while on paternity leave.

To qualify for SPP, the employee should tell their manager that they want SPP at least 28 days beforehand. The self-certification model in the Toolkit should be utilised for this purpose.

2.16.4 Additional Paternity Leave

The right to Additional Paternity Leave (APL) under the new Regulations will apply to parents of babies born, or in the case adoption placed on or after 3rd April 2011. Eligible employees will have the right to take up to six months of leave to care for the child if the child's mother or primary adopter returns to work without exercising their full entitlement to maternity or adoption leave.

Additional paternity leave can only be taken once the mother has returned to work and the child is over 20 weeks old and under one or the child has been with its adoptive parents for 20 weeks, in the first year of being placed for adoption. The minimum period of APL is two consecutive weeks and the maximum period is 26 weeks.

APL will be the same rate as the prescribed rate of statutory maternity pay, provided the mother (or primary adopter) has not exhausted their entitlement to SMP/SAP. The total amount of paid leave will remain at 39 weeks; the balance of what the mother has not used will be payable to the father.

The employee will qualify for additional paternity leave in a birth situation, if he or she is the child's father, or is married to, the partner of, or the civil partner of the child's mother. The employee must also have at least 26 weeks' continuous employment with Durham County Council, ending with the 15th week before the expected week of childbirth, and remain in continuous employment with the employer until the week before the first week of the additional paternity leave. The employee must have, or expect to have, the main responsibility (apart from the child's mother) for the child's upbringing.

In an adoption situation, an employee who is one of a couple adopting a child will qualify for additional paternity leave if he or she has at least 26 weeks' continuous employment with the employer, ending with the week in which he or she is notified of the adoptive match (or for an adoption from overseas, 26 weeks' continuous employment ending with the week in which official notification was sent from the relevant domestic authority,

The employee taking additional paternity leave "takes over" the period of maternity leave or adoption leave. If the child's mother, or the other adoptive parent, dies in the first year of the child's life, the additional paternity leave can begin at any time after the death and last until the child's first birthday.

Additional paternity leave must be taken as one continuous period, in multiples of complete weeks.

2.16.5 Additional paternity leave notification requirements

In a birth situation, the employee must give their Head Teacher at least eight weeks' notice of his or her additional paternity leave, and at the same time must provide two written declarations, one by the employee and one by the child's mother. The employee's declaration must state that:

- the purpose of the leave is to care for the child;
- the employee is the child's father, or is married to, or the partner or civil partner of, the child's mother; and
- the employee has, or expects to have, the main responsibility (apart from any responsibility of the child's mother) for the upbringing of the child.

The mother's declaration must state:

- her name and address;
- the date that she intends to return to work;
- her national insurance number;
- that the employee is the child's father, or is the mother's spouse, partner or civil partner;
- that the employee has, or expects to have, the main responsibility (apart from any responsibility the mother has) for the upbringing of the child;
- that the employee is, to the mother's knowledge, the only person exercising the right to take additional paternity leave in respect of the child; and
- that she consents to the council processing this data.

In an adoption situation, the employee must give their manager at least eight weeks' notice of his or her additional paternity leave, and at the same time must provide two written declarations, one by the employee and one by the child's primary adopter. The employee's declaration must state that:

- the purpose of the leave is to care for the child;

- he or she is married to, or the partner or civil partner of, the adopter; and
- he or she has been matched with the child for adoption.

The adopter declaration must state:

- the adopter's name and address;
- the date that the adopter intends to return to work;
- the adopter's national insurance number;
- that the employee is married to, or the partner or civil partner of, the adopter; and
- that the adopter consents to the employer processing this data.

2.16.6 Additional paternity Pay

If the child's mother, or the main adopter in an adoption situation, ends his or her period of maternity or adoption leave before using the maximum entitlement to 39 weeks' statutory maternity pay, statutory maternity allowance or statutory adoption pay, the employee taking additional paternity leave is entitled to be paid for the remainder of the 39-week period, assuming that he or she has average earnings of at least the lower earnings limit for national insurance purposes. In effect, the couple will be paid for 39 weeks between them. Additional paternity leave pay will be paid at the statutory maternity pay rate, or 90% of the employee's earnings, if this is less than the statutory rate.

2.17 Protection from dismissal and victimisation

An employee should not be dismissed during the period from the beginning of the pregnancy to the end of maternity leave for any reason connected to the pregnancy. Similarly, an employee should not be dismissed for taking or seeking to take maternity leave, adoption leave, maternity support leave or paternity leave. Exceptionally, dismissals can occur if the reason is not connected to the employee's condition or circumstances and correct procedures are followed. In addition, the employee must not be victimised or suffer a detriment for taking approved maternity leave, adoption leave, maternity support leave or paternity leave.

It is automatically unfair to dismiss a woman/adopter:

- For a pregnancy related reason;
- At the end of her maternity leave because she has given birth or a related reason;
- After maternity/adoption leave because he or she has availed themselves of maternity/adoption benefits;
- Where a requirement to suspend on health and safety grounds is the reason for dismissal;
- Where he or she is made redundant during her maternity/adoption leave, or when she is returning to work, and has not been offered suitable alternative employment.

Where a woman is dismissed at any time during her pregnancy or maternity/adoption leave she should automatically be provided with written reasons for the dismissal.

After a period of ordinary or additional paternity leave, an employee has the right to return to the same job on the same terms and conditions of employment as if he or she had not been absent. An employee who takes a period of parental leave after his or her paternity leave has same right of return provided that the period of parental leave does not exceed four weeks.

2.18 Pensions

During OML, AML and OAL and OAL, the employee pays pension contributions on the actual payment received - for example, during the first 6 weeks, contributions are deducted on the

employee's 90% pay. During the next 12 weeks they are deducted on the half-pay (if that is the payment method selected) plus SMP or SAP.

The employee's service during this period therefore counts in full if contributions are paid. However, during the part of the AML or AAL period where the employee receives no pay the service does not automatically count for pension purposes. Any decision to pay contributions must be made within 30 days of either the return to work or the actual end of employment, whichever comes first.

Similarly, any employee being paid while taking MSL or paternity leave will pay contributions to the pension scheme. Their contributions will be based upon the pay received.

Further guidance can be obtained from:

- The Pensions Division - telephone 0191 3833572
- The Members Guide for Maternity Leave leaflet - on the Intranet through 'Document Library' and then 'Staff Issues'.

2.19 Keeping records

Head Teachers should ensure that all relevant records are consistently maintained for the purposes of leave and payment issues connected to this policy. Particular attention should be made to maintaining records of the notification sent to the employee about their expected to return to work date.

2.20 Families Information Services

The 'Families Information Service' (FIS) is part of Sure Start County Durham. The service provides detailed information on childcare within County Durham e.g. nurseries, playgroups, childminders and out of school clubs and provides family information.

Further information can be found through the FIS helpline on 0800 9172917 or by e-mailing fis@durham.gov.uk, or by accessing the Community Information Database on the Internet.

2.21 Childcare Vouchers

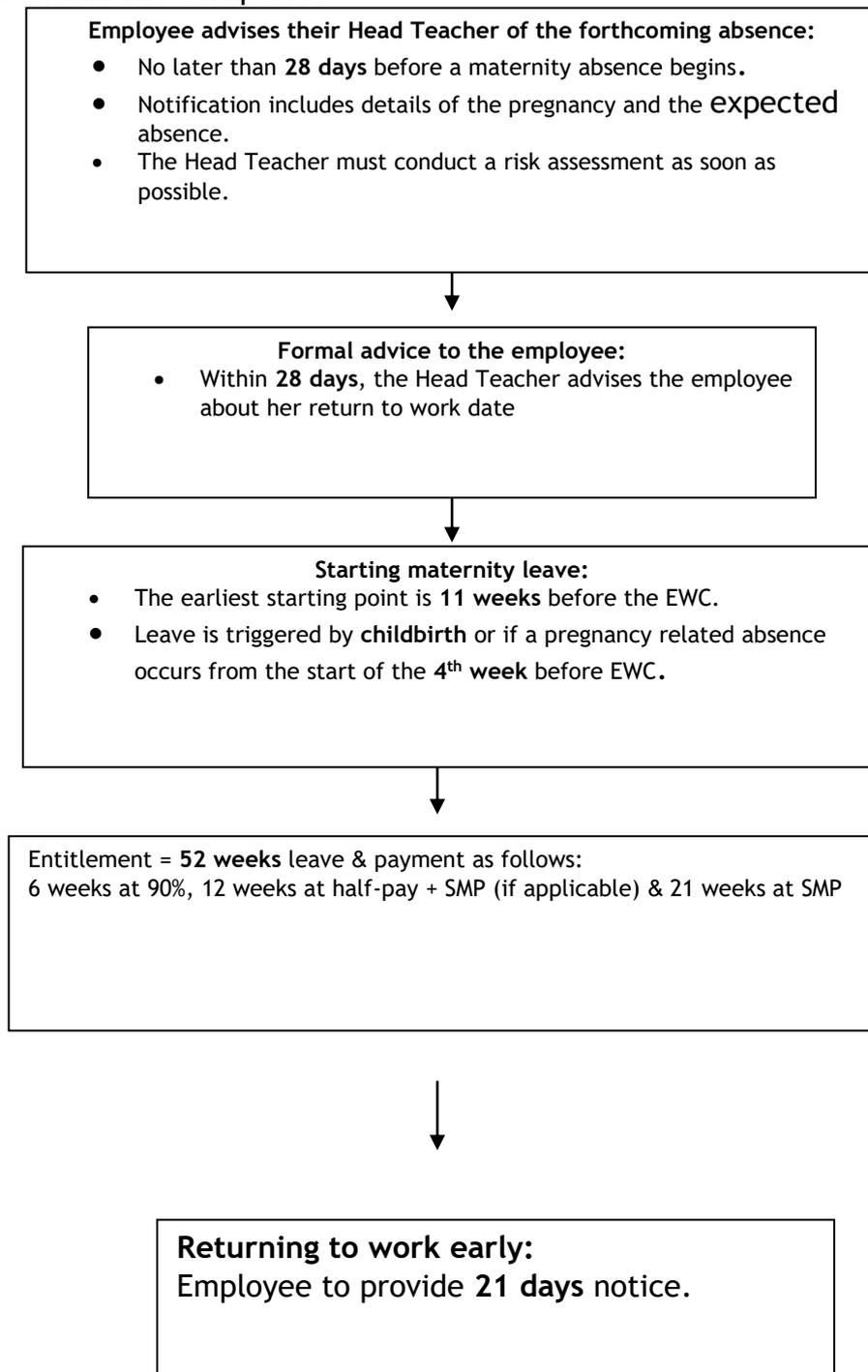
Childcare Vouchers are an alternative method of payment for childcare. They are a Government led initiative designed to support working parents with their childcare costs. The Council operates a childcare vouchers scheme, run by Kiddivouchers. The vouchers are available in both paper and e-voucher formats. Further information can be found at www.kiddivouchers.com or by telephoning 0800 612 0915.

3. Toolkit - timelines, further information, glossary of terms, letters & forms

3.1 Timelines

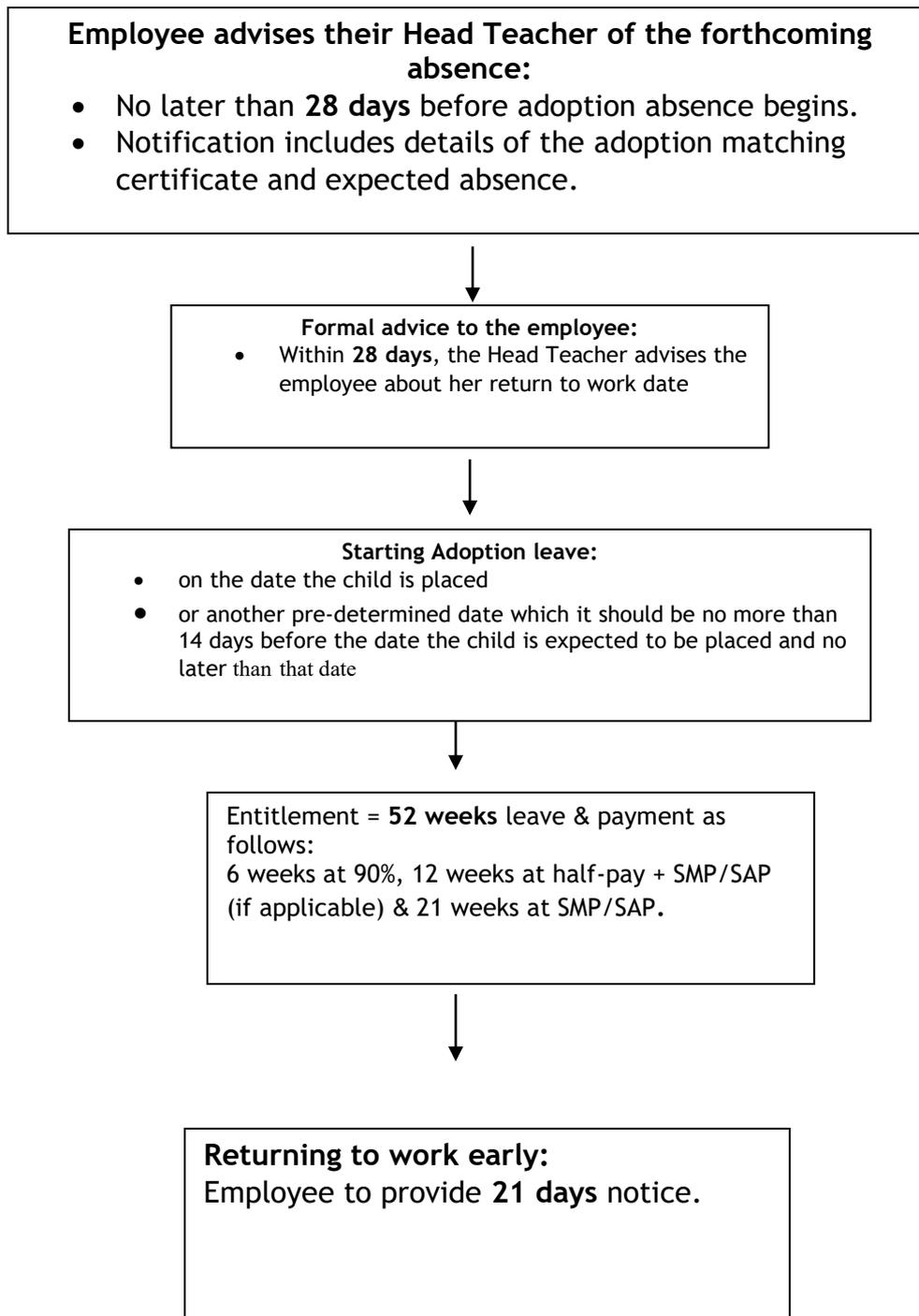
3.1.1 Maternity timeline

This timeline provides a helpful summary of the main times to be aware of where a maternity situation occurs within the workplace.



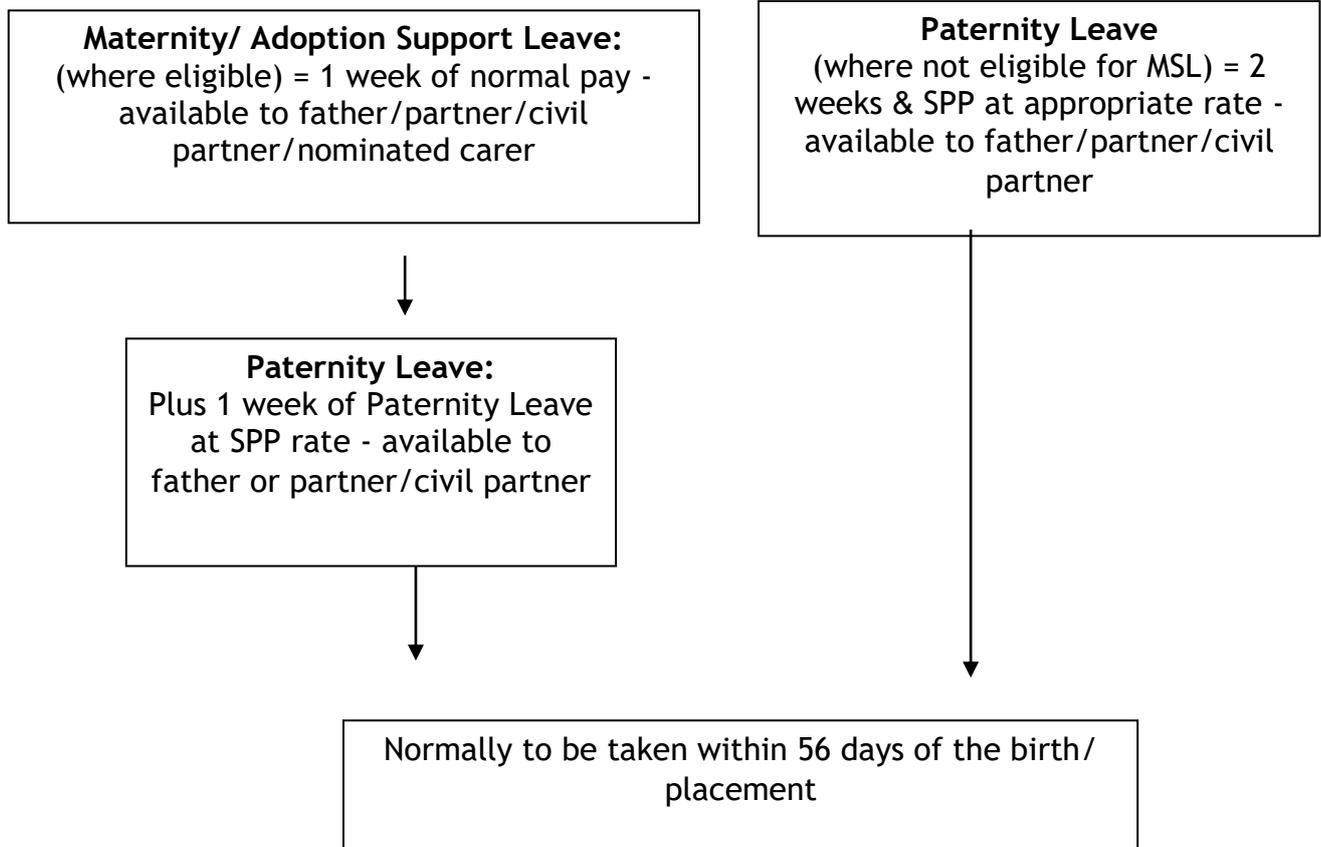
3.1.2 Adoption timeline

This timeline provides a helpful summary of the main times to be aware of where an adoption situation occurs within the workplace.



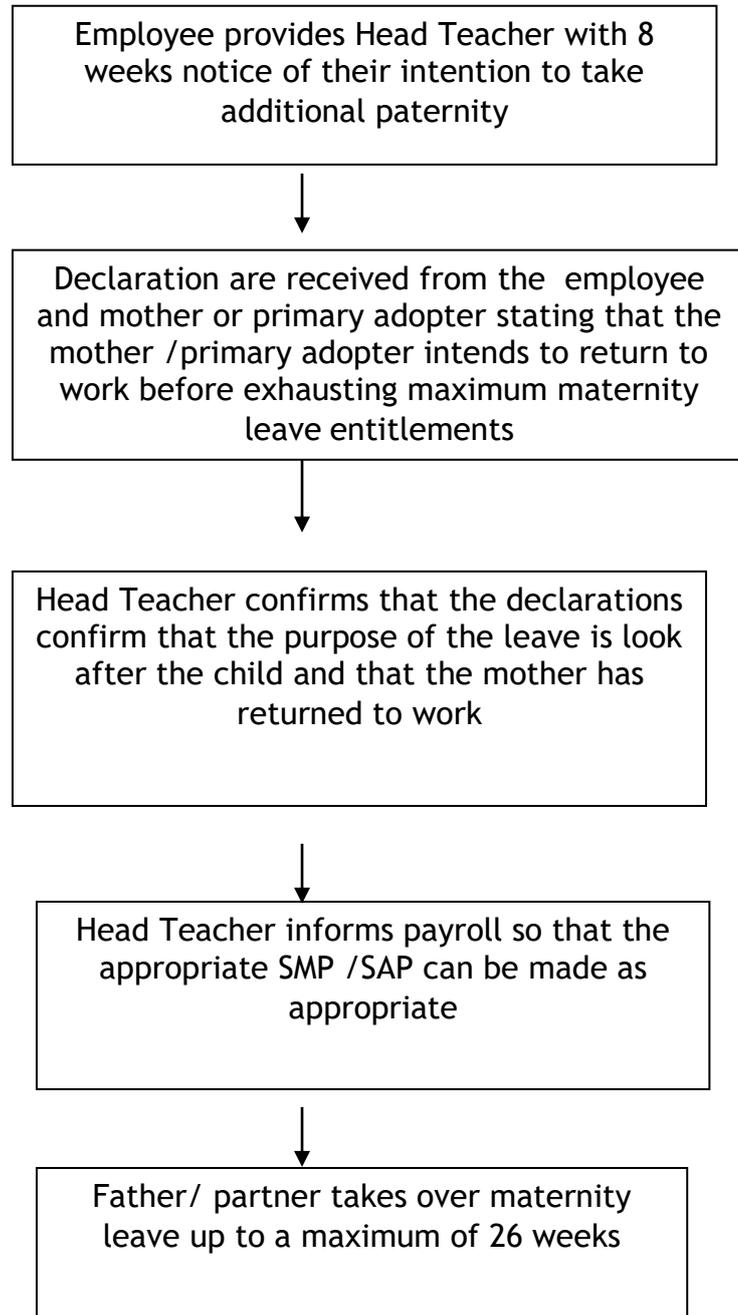
3.1.3 Paternity timeline

This timeline provides a helpful summary of the main times to be aware of where a maternity support leave and paternity situation occurs within the workplace.



3.1.4 Additional Paternity timeline

This timeline provides a helpful summary of where additional paternity situation occurs within the workplace with effect from 3rd April 2011.



3.2 Frequently asked questions

A number of examples that may provide some practical advice in relation to issues connected to maternity and paternity leave are shown below.

Q.	ONE OF OUR EMPLOYEES IS PREGNANT. THE SCHOOL ALSO EMPLOYS HER MOTHER AND HUSBAND. THE MOTHER HAS REQUESTED MSL AND THE FATHER HAS GIVEN NOTICE THAT HE INTENDS TO TAKE PATERNITY LEAVE. ARE THEY BOTH ENTITLED TO LEAVE?
A.	The purpose of MSL is to allow an employee leave where they are the main support for the mother and/or carer of the child. If the Head Teacher knows that the father plans to take his entitlement to MSL and Paternity Leave, then there will be no need for a nominated carer. Therefore, the mother would not be able to take MSL.

Q.	AN EMPLOYEE GAVE BIRTH ON THE TUESDAY BEFORE SHE WAS DUE TO START HER MATERNITY LEAVE. WHEN DOES HER MATERNITY LEAVE ACTUALLY START?
A.	Where a woman has not started her maternity leave when she gives birth, it will start on the following day. In this case, the leave starts on the Wednesday as does SMP that will then run for the full 39 weeks.

Q.	WHEN AN EMPLOYEE IS OFF WITH A PREGNANCY RELATED CONDITION, WHEN DOES HER MATERNITY LEAVE START?
A.	A woman's maternity leave can only be triggered from the beginning of the 4 th week before the EWC. If she goes off during this period with a pregnancy related illness, then her maternity leave starts on the day following the first day of absence. Her SMP will also start on this day and run for the full 39 weeks. For example, if a woman becomes sick on a Sunday and was off work on the Monday, her maternity leave and pay would begin on the Tuesday.

Q.	WHEN A WOMAN ACCRUES HOLIDAYS DURING HER MATERNITY LEAVE, DOES THIS INCLUDE BANK HOLIDAYS?
A.	Due to the fact that a woman is entitled to all her terms and conditions as if she was at work, a day of leave should be accrued for a bank holiday that falls during both OML and AML.

Q.	AN EMPLOYEE IS EXPECTING A BABY IN MAY AND WE HAVE RECEIVED SEPARATE APPLICATIONS TO TAKE PATERNITY LEAVE FROM THE WOMAN'S ESTRANGED HUSBAND, HER LESBIAN PARTNER WITH WHOM SHE SHARES A HOUSE AND THE CHILD'S BIOLOGICAL FATHER. WHICH ONE, IF ANY, IS ELIGIBLE FOR THE LEAVE
A.	The definition of a partner does not exclude a same sex partner. So, in principle, any of the 3 employees may be eligible. However, in order to be eligible the applicant must also have responsibility for the upbringing of the child and live with the mother and child in an enduring family relationship. Therefore, it is unlikely that the biological father or the estranged husband would be able to meet the requirements as they would not be able to demonstrate that they will have responsibility for the upbringing of the child. However, the same sex partner who lives with the child and the child's mother may be able to demonstrate that she will have the main responsibility for looking after the child (apart from the mother) and is also part of an enduring family relationship. In these circumstances, the same sex partner will be eligible for paternity leave.

Q.	WHAT SHOULD BE DONE WHEN AN EMPLOYEE INDICATES THAT SHE DOES NOT WISH TO RETURN TO WORK AFTER MATERNITY LEAVE?
A.	It is unlikely that anyone volunteering information that they will not be returning to work will be enough to bring her employment to an end. Unless the contract is formally terminated, then the employee may change her mind and exercise her right to return to work at the end of maternity leave. To avoid this situation, the Head Teacher could seek a formal notice of resignation or request a confirmation in writing that she consents to her employment terminating by mutual agreement on a specified date.

Q.	AN EMPLOYEE HAS REQUESTED PART TIME WORKING ON HER RETURN TO WORK - WHAT SHOULD BE THE RESPONSE?
A.	If the reason for her request is connected to childcare arrangements and she meets eligibility criteria, she will be entitled to submit a request under the 'Flexibility in the Workplace' provisions (see Family Leave Policy). The employee should be advised of the need to prepare a formal application and how the procedure will work. There is no reason why the meeting to discuss the request cannot be held while she is on maternity leave, if this is acceptable to both parties.

3.3 Glossary of terms

A number of phrases and abbreviations are used within the policy. This glossary provides a brief explanation of each one for ease of reference.

EWC	Expected Week of Childbirth - this is the relevant week for calculating entitlement to maternity provisions where there are qualifying criteria. It is the week beginning on the Sunday the baby is due.
SMP	Statutory Maternity Pay - this is the allowance specified by Government which is payable subject to the mother meeting certain qualifying conditions. The amount is usually increased every April.
SAP	Statutory Adoption Pay
OMP	Occupational Maternity Pay - this is the enhanced maternity pay package available to Local Government Service employees, in accordance with their terms and conditions
OAP	Occupational Adoption Pay
MA	Maternity Allowance - this is a maternity benefit which mothers may be able to receive if they do not qualify for SMP.
SSP	Statutory Sick Pay - this is an allowance specified by the Government that is payable when an employee is off work through ill health. It is payable subject to the employee meeting certain qualifying conditions.
SPP	Statutory Paternity Pay - this is an allowance specified by the Government which is payable to the father or carer of a new child meeting certain qualifying conditions. The amount is usually increased every April.
OML	Ordinary Maternity Leave - this is the leave that all pregnant employees will receive and it lasts for a maximum of 26 weeks.
AML	Additional Maternity Leave - this runs from the end of OML for up to 26 weeks.
MSL	Maternity Support Leave - an occupational entitlement available to some fathers or carers to help them care for the expectant / new mother and their child.
A week's pay	The term "a week's pay" for employees whose payment for normal working hours does not vary with the amount of work done in the period, is the amount payable by the Council to the employee under the current contract of employment for working her normal hours in a week. Where there are no normal working hours, a week's pay is 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.
Nominated carer	A person nominated by the mother to assist in the care of the child and to provide support to the mother at or around the time of the birth. The

person is anyone other than the child's father, partner, or the civil partner of the mother.

Partner

A person (whether of a different sex or the same sex) who lives with the mother and the child in an enduring family relationship, but is not a relative of the mother - i.e., parent, grandparent, sister, brother, aunty or uncle.

Civil Partner

A person who registers a civil partnership with a person of the same sex. This provides the couple with equality of treatment in a wide range of legal matters with different sex couples who marry.

DWP (including Jobcentre Plus)

Department for Work and Pensions - the Government department responsible for delivering support and advice for families and children. This includes benefits related to expecting a baby and bringing up children.

MATB1 form

The certificate provided by the doctor or midwife which provides confirmation of a pregnancy and the expected week of childbirth (EWC).

Placement Certificate

The certificate provided by the adoption agency confirming the placement date.

Lower earnings limit

This is the amount of money that a person has to be earning to pay National Insurance contributions and qualify for NI related benefits, e.g. SMP. The amount is usually increased in April.

Average weekly earnings

This is the figure used for the purpose calculating maternity earnings and paternity pay.

Additional Paternity Leave

Additional Paternity Leave and Pay provides employed fathers/partners a right to take up to an additional 26 weeks off work with pay to care for their child in its first year, provided that the mother has returned to work and had not used her full entitlement to paid maternity leave.

3.4 Letters and forms

3.4.1 Model letter - maternity/ adoption leave

Dear (*employee*),

Congratulations and thank you for telling me about your *pregnancy/ adoption and the date your baby is due. I am writing to you about your *maternity/ adoption leave and pay.

You are eligible for:

*52 weeks' Maternity Leave/Adoption Leave (26 weeks Ordinary *Maternity/Adoption Leave (OML) plus 26 weeks Additional Maternity/Adoption Leave (AML)

Given your chosen start date of (*enter date*), your *maternity/ adoption leave will end on (*enter last date of Maternity / Adoption Leave*).

If you want to change this date you must, if at all possible, tell me at least 28 days before the your proposed new start date or 28 days before your original start date of (*enter date*), whichever is the sooner.

Unless otherwise advised I will expect you to return at the end of your full entitlement on (*enter date of expected return*).

*For the purposes of receiving *occupational maternity/ adoption pay (OMP), you have indicated to me that, at this stage, you intend to return to work.

If you do decide to return to work before (*enter date of expected return*) you must give me at least:

21 days notice (minimum notice period)

If you do not provide this notice period, I may have the right to postpone your return to work.

If you decide not to return to work you must still give me proper notice. Your decision will not affect any entitlement to *Statutory Maternity Pay (SMP) / Statutory Adoption Pay (SAP)* delete as appropriate. However, it will affect any entitlement to Occupational Maternity Pay (OMP)/ Occupational Adoption Pay* delete as appropriate.

*You are eligible for 39 weeks of *maternity/adoption pay. I will pay you

.....
.....

*You are not eligible for OMP/ OAP or SMP/ SAP. However, you may be entitled to Maternity Allowance or other benefits. More information can be found through your local Jobcentre Plus (part of the Department for Works and Pensions).

(* Delete if letter refers to adoption) As your employer I want to make sure that your health and safety as a pregnant mother are protected while you are working, and that you are not exposed to risk. Now that you have told me you are pregnant your manager will arrange for a specific risk assessment of your job and we will discuss what actions to take if any problems are identified. If you have any further concerns following this assessment and specifically in relation to your pregnancy, please let your manager know immediately (*delete this paragraph for adoption leave).

If you have any questions about any aspect of your * maternity/ adoption entitlement, please do not hesitate to get in touch with me. With all good wishes for the next few months.

Yours sincerely

* delete as appropriate

3.4.2 Maternity/ Adoption support leave application form

MATERNITY/ ADOPTION SUPPORT LEAVE APPLICATION FORM (Confidential)

Section A

Name

Address

.....

Contact No......

School and Job

Title:

Place of Work:

Payroll Reference Number:.....

Relationship to Expectant Mother:

Name of Expectant Mother/ Adopter

Address

.....

.....

.....

Expected Week of Childbirth/ Date of placement.....

Section C

Date(s) Leave is Requested

.....

.....

To be completed by the person named in Section B
I hereby declare that the person named in Section A above is the only person whom I have nominated as my carer to assist in the care of my child and provide support at or around the time of the birth/ placement.
Signed

Date

To be completed by the applicant (outlined in Section A above)
I declare that the above statement is true and accurate to the best of my knowledge. I understand that to give false or misleading information can result in disciplinary proceedings, which may lead to dismissal.
Signed

Date

All sections of this form must be completed and a copy of the expectant mother's MATB1 or adopters placement certificate should be attached before returning to.....

3.4.3 Model self-certification form - paternity leave and pay

Confidential

Please return this to your manager as early as possible, but no later than 28 days before you intend to take paternity leave.

Section A - Personal details

<u>Employee:</u> Name	<u>Head Teacher:</u> Name
Job Title	
School	Contact No.
Work Tel. No.	
Payroll Ref	
National Insurance (NI) Number	

Section B - Dates for pay & leave

The baby is due on, or the baby was born on
or the baby will be placed

I'd like my paternity leave and pay to commence on

I'd like to be away from work for *1 week *2 weeks

*tick as appropriate - note, that if you are eligible for 1 week of Maternity Support Leave, you will only be able to take 1 week of Paternity Leave.

Section C - Your declaration

You must be able to tick all 3 boxes to get paternity leave and paternity pay.

I am either the baby's biological father,
or married to/in a civil partnership with the mother/ primary adopter,
or living with the mother/ primary adopter in an enduring family relationship, but
not an immediate relative.

I have responsibility for the child's upbringing.

I will take time off work to support the mother/ primary adopter or care for the
child.

Section D - Signature

Signature

Date

Guidance for completion of this form

Terms and conditions

If you are in doubt about your entitlement talk to your Head Teacher.

Statutory paternity pay (SPP) and paternity leave are available to:

- a biological father;
- a partner/husband/civil partner that is not the baby's biological father;
- a partner in a same sex couple.

You must be able to declare that you are

- the baby's biological father, or
- married to/in a civil partnership with the mother/ primary adopter, or
- living with the mother/ primary adopter in an enduring family relationship, but not an immediate relative, and
- you will be responsible for the child's upbringing, and
- you will take time off work to support the mother/ primary adopter or care for the child.

You must be continuously employed during the pregnancy.

To get SPP you must also have average earnings over a set period over a set amount - the Council will work this out for you.

You can choose to take the leave at any time up to 8 weeks after the date of birth /placement. This may be one whole week or, if you are not entitled to Maternity/ Adoption Support Leave, two whole weeks that must be taken consecutively. If the baby is born early you can choose to take your leave at any time between the actual date of birth and the end of an 8 week period running from the Sunday of the week the baby was originally due. You cannot take odd days off work, but the weeks can start on any day, for example, from Tuesday to Monday.

You must discuss your leave plans with your manager and tell them what time off you want by the 15th week before the week the baby is due or in the case of adoption within seven days of being notified of being matched for adoption. Your Head Teacher can tell you when this is if you are not sure. You can change your mind, but you must give your manager 28 days notice of the dates. You and your Head Teacher may find it helpful if you filled in a new version of the form.