

ADOPTION LEAVE GUIDANCE
**(incorporating leave for dual approved foster carers and the intended parents
in a surrogacy arrangement)**

Author (s)	HR Advisor
Document Version	Final
Date issued	23 November 2017

Contents

Section		Page
1	Introduction	3
2	Time off to attend adoption meetings	3
3	Adoption leave	3
3.1	Eligibility	3
3.2	Process for applying for adoption leave	4
3.3	Commencing adoption leave	4
4	Pay	4
4.1	Occupational adoption leave pay	4
4.2	Calculation of adoption pay	5
4.3	Statutory adoption pay	5
5	Changing the adoption leave start date	6
6	Fostering for adoption	6
7	Surrogacy	6
8	Keeping in touch during adoption leave	6
9	Returning to work following adoption leave	7
10	Failure to return to work	7
11	Fixed-term contracts and rotational training contracts	8
12	Shared parental leave	8
13	Annual leave and bank holidays	8
13.1	Staff on term-time only contracts	8
14	Deductions from salary	9
14.1	Pensions	9
14.2	Trade union / hospital fund subscriptions	9
14.3	Lease cars	9
14.4	Salary sacrifice schemes	9
14.4.1	Salary sacrifice car scheme	9
14.4.2	Cycle to work scheme	10
14.4.3	Childcare vouchers / nursery salary sacrifice scheme	10
15	Employee care services	10
Appendix		Page
1	Frequently asked questions	11
2	Application form for adoption leave and pay	13
3	Calculation of accrual of annual leave and bank holidays for term time staff	15
4	Useful contacts / information	17

Related policies:

Managing Attendance Policy
 Health, Safety and Welfare Policy
 Risk Management Policy and Procedure
 Parental Leave Guidance

Flexible Working Policy
 Annual Leave Policy
 NHS Terms and Conditions of Service
 Handbook

1 Introduction

This guidance applies to all staff irrespective of their Age, Disability, Gender reassignment, Marriage and Civil partnership, Pregnancy and Maternity, Race, Religion and Belief, Sex and Sexual orientation.

This guidance is intended for any employee wishing to take adoption leave.

Adoption leave is available to any member of staff wishing to adopt a child and who has primary carer responsibilities for that child.

Dual approved prospective adopters who have a child placed with them under section 22C of the Children Act 1989 with a view to adopting the child (sometimes referred to as fostering for adoption) are also entitled to take adoption leave.

The intended parents in a surrogacy arrangement where they are eligible for and intend to apply for a Parental Order are also entitled to take adoption leave.

This guidance outlines eligibility and entitlement; however, further advice can be obtained from the Human Resources Department.

2 Time off to attend adoption meetings

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), one of the adopters will be entitled to paid time off to attend up to 5 adoption appointments. The other adopter will be entitled to unpaid time off to attend 2 adoption appointments.

Important note: Where there are joint adopters, the adopter who took paid time off to attend adoption appointments cannot claim paternity leave and pay. This means that the parent who intends to take adoption leave and pay is likely to take the paid time off and the other parent is likely to take the unpaid time off.

Where the employee is the intended parent in a surrogacy arrangement and intends to apply for a Parental Order, they are eligible to take paid leave to attend up to 2 antenatal appointments with the surrogate mother.

3 Adoption leave

All employees are entitled to take up to 52 weeks' adoption leave, regardless of length of service.

3.1 Eligibility

To qualify for adoption leave you must be an adoptive parent who is newly matched with a child under 18 years of age by an approved adoption agency.

If you are a joint adopter, you and your partner must decide who will take adoption leave.

You are not entitled to take adoption leave or pay if:

- you arrange a private adoption;
- you adopt a family member or step-child;
- you become a special guardian or kinship carer.

3.2 Process for applying for adoption leave

It is recommended that you inform your manager of your intention to take adoption leave when you are approved for adopting.

The adoption leave and pay application form should be submitted to your manager within 7 days of being matched with a child.

The manager should forward the application form and original matching certificate to the HR Department, 2nd Floor, Stockdale House, Headingley Office Park, 8 Victoria Road, Leeds LS6 1PF.

The manager can choose to scan and send the application form and matching certificate to the HR Department via lch.hr@nhs.net However, should they chose to do this, they should confirm by email that they have seen the original copy of the matching certificate.

If the child is being adopted from overseas, a copy of the official notification, stating when the child is due to enter / or has entered the country must be provided.

The manager should inform IT of the absence to ensure NHS Mail and system log-in is not disabled.

3.3 Commencing adoption leave

Adoption leave can commence:

- up to 14 days before the date the child starts living with you (for UK adoptions);
- when the child arrives in the UK or within 28 days of this date (for overseas adoption);
- the day the child is born or the day after (if you have used a surrogate to have a child).

4 Pay

4.1 Occupational adoption leave pay

An employee working full or part-time will be entitled to occupational adoption pay if:

- a) they have 12 months' continuous service¹ with one or more NHS employers prior to the end of the week in which they are notified of being matched with a child for adoption, or, if adopting from overseas, they have 12 months' continuous service with one or more NHS employers by the date the child enters the country;
- b) they notify their manager and submit the application form and proof of adoption within 7 days of being matched or, if adopting from overseas, within 7 days of the child entering the country.

Where an employee meets the eligibility criteria above, and has indicated their intention to return to work following adoption leave, the amount of contractual adoption pay is:

Weeks	Adoption pay
1-8	Full pay less any statutory adoption pay receivable
9-26	Half of full pay, plus any statutory adoption pay receivable, providing the total receivable does not exceed full pay
27-39	Statutory adoption pay as entitled under the statutory scheme
40-52	No pay

4.2 Calculation of adoption pay

Occupational and statutory adoption pay is calculated in the same way as maternity pay. Details can be found in section 15.23 of the NHS Terms and Conditions of Service.²

Earnings are defined as the **actual pay** you receive during the qualifying period rather than the hours worked (for example overtime / extra shifts which may be paid during the month after the qualifying period).

4.3 Statutory adoption pay

Employees who are not eligible for occupational adoption pay may be eligible for statutory adoption pay if:

- a) they have worked for the Trust continuously for at least 26 weeks up to the week they are matched with a child, or, for overseas adoption, they have worked for the Trust continuously for at least 26 weeks up to receiving the official notification³;
- b) they notify the Trust in writing of their intention to take adoption leave within 7 days of being matched with a child, or, for overseas adoption, within 28 days of getting the official notification;

¹ Paragraphs 15.61 to 15.65 of the NHS terms and conditions of service handbook define the service that can be counted towards the 12 month continuous service qualification set out in paragraph 15.7 (i) and which breaks in service may be disregarded for this purpose. T&Cs can be found at: <http://www.nhsemployers.org/tchandbook>

² NHS Terms and Conditions of Service Handbook can be found here: <http://www.nhsemployers.org/tchandbook>

³ The official notification is permission from a UK authority that you can adopt from abroad.

c) They earn the minimum qualifying amount⁴.

Where an employee meets the eligibility criteria above, the amount of statutory adoption pay is:

Weeks	Adoption pay
1-6	90% of average weekly earnings before tax
7-39	The statutory adoption leave rate ⁵
40-52	No pay

5 Changing the adoption leave start date

If the employee subsequently wants to change the date from which they wish the leave to start, they should notify their manager at least 28 days beforehand (or, if this is not possible, as soon as is reasonably practicable beforehand).

6 Fostering for adoption

If you are fostering a child with a view to adopting that child (dual approved prospective adopters who have a child placed with them under section 22C of the Children Act 1989) you are entitled to adoption leave and pay from when the child comes to live with you.

7 Surrogacy

You will be entitled to adoption leave and pay when you are:

- the intended parent in a surrogacy arrangement where you are eligible for and intend to apply for a Parental Order (or where you have already obtained such as order) making you the legal parent of the child that you are having with the help of a surrogate mother.

In these circumstances to qualify for statutory adoption pay you must:

- have worked continuously for the Trust for at least 26 weeks by the 15th week before the baby is due;
- intend to apply for a parental order and expect the order to be granted.

8 Keeping in touch during adoption leave

Keeping in touch (KIT) days are intended to facilitate a smooth return to work for employees returning from adoption leave.

Before going on leave, the manager and employee should discuss and agree any voluntary arrangements for keeping in touch during the employee's adoption leave.

⁴ Details of the minimum qualifying amount can be found at <https://www.gov.uk/adoption-pay-leave/eligibility>

⁵ The latest rate of SMP can be found at <https://www.gov.uk/adoption-pay-leave/pay>

To facilitate the process of keeping in touch, it is important that the manager and employee have early discussions to plan and make arrangements for 'keeping in touch' (KIT) days before adoption leave commences.

An employee may work for up to a maximum of 10 KIT days without bringing their adoption leave to an end. Any days of work will not extend the adoption leave period.

The work can be consecutive or not and can include training or other activities which enable the employee to keep in touch with the workplace.

Any such work must be by agreement and neither the manager nor the employee can insist on it.

The employee will be paid at their basic daily rate for the hours worked, less appropriate adoption leave payment for KIT days worked.

Working for part of any day will count as one KIT day.

Any pay received from hours worked during a KIT day, plus adoption pay, cannot exceed pre-adoption full pay. Therefore, it is generally more beneficial for KIT days to be used when the employee is either in receipt of statutory adoption pay only and during the unpaid period of adoption leave.

9 Returning to work following adoption leave

An employee who intends to return to work at the end of their full adoption leave will not be required to give any further notification to their manager, although if they wish to return early, they must give at least 28 days' notice.

An employee has the right to return to their job under their original contract and on no less favourable terms and conditions.

If the employee wishes to return to work on different hours, the manager should request an application for flexible working in line with the Trust's Flexible Working Policy.

In the event of an illness following the date the employee was due to return to work, normal sickness absence will apply in line with the Trust's Managing Attendance Policy.

10 Failure to return to work

If an employee who has notified the Trust of their intention to return to work with the same or a different NHS employer fails to do so within 15 months of the beginning of their adoption leave, they will be liable to refund the whole of their adoption pay, less any statutory adoption pay received.

11 Fixed-term contracts and rotational training contracts

Employees on fixed-term contracts which expire after the matching week shall have their contracts extended to allow them to take 52 weeks adoption leave.

If there is no right of return to be exercised because the contract would have ended if the adoption had not occurred, the repayment provisions set out in section 11 will not apply.

Where an employee is on a planned rotation of appointments with one or more NHS employers, as part of an agreed programme of training, they shall have the right to return to work in the same post or in the next planned post, irrespective of whether the contract would otherwise have ended if the adoption had not occurred. In such circumstances the employee's contract will be extended to enable the practitioner to complete the agreed programme of training.

12 Shared parental leave

Shared parental leave allows mothers, fathers and partners to choose how to share time off work after their child is born. In order to qualify for shared parental leave, the parent taking adoption leave must end their adoption leave. See the Trust's Parental Leave Guidance for full details.

13 Annual Leave and Bank Holidays

Employees accrue annual leave and bank holidays during the paid and unpaid period of adoption leave.

Employees should, wherever possible, take any outstanding annual leave either directly before or after the period of adoption leave in order to take the leave in the leave year in which it is accrued in line with the Trust's Annual Leave Policy.

13.1 Staff on term-time only contracts

If you are employed on a term-time only contract your entitlement to annual leave and bank holiday leave is incorporated into your pay. Throughout the period of your adoption leave, your entitlement to annual leave and bank holidays is as follows:

- For the first 8 weeks of your adoption leave, if you are entitled to contractual adoption pay, you will not accrue paid leave as this is already included in your pay as part of your term-time only contract.
- For the next 18 week period of your adoption leave you will accrue half of your annual leave and bank holiday entitlement. This is because you will receive half pay as part of your contractual adoption pay, which includes payment for your annual leave and bank holiday entitlement.
- For the remaining 26 week period, you will accrue paid annual leave and bank holidays. This leave should be taken at the end of your adoption leave and can be taken during term time.

If you are entitled to statutory adoption pay only, you will accrue the following annual leave and bank holiday entitlement:

- For the first 6 weeks of your adoption leave you will accrue 10% of your annual leave and bank holiday entitlement. This is because you will receive 90% of your pay, which includes payment for your annual leave and bank holiday entitlement.
- For the remaining 46 week period, you will accrue paid annual leave and bank holidays. This leave should be taken at the end of your adoption leave and can be taken during term time.

14 Deductions from salary

14.1 Pensions

Pension rights and contributions shall be dealt with in accordance with the provisions of the NHS Superannuation Regulations.

A factsheet can be found at:

<https://www.nhsbsa.nhs.uk/sites/default/files/2018-09/Maternity%2C%20paternity%2C%20parental%20and%20adoption%20leave%20%2809.2018%29%20%28V5.0%29.pdf>

14.2 Trade union / hospital fund subscriptions

For any subscriptions you pay direct from your salary, you will need to make arrangements to pay them directly during any unpaid adoption leave.

14.3 Lease cars

You have the option to return the vehicle during adoption leave or retain the car for your own private mileage at the contracted price. Contact Lease Cars on 0113 3055927 for advice.

14.4 Salary Sacrifice Schemes

If you have taken a benefit such as a salary sacrifice car, cycle through the cycle to work scheme or childcare vouchers, this will affect the amount of adoption pay you will receive. You should consider carefully the implications of signing up to such a scheme if you are considering adopting a child during the lifetime of the scheme.

14.4.1 Salary sacrifice car scheme

If you have a salary sacrifice car this will have implications on the amount of adoption pay you receive.

The scheme allows for one claim during the duration of the lease to cover adoption leave. On receipt of your adoption leave application, HR will forward a copy of your matching certificate to the Salary Sacrifice Car Scheme providers in order to make the claim.

14.4.2 Cycle to work scheme

If you have a cycle through the scheme this may have implications on the amount of adoption pay you receive.

During adoption leave, your gross salary will be at the reduced level according to the salary sacrifice arrangements. If your monthly salary drops to below the amount of the salary sacrifice, your payments will be suspended until your earnings increase and the length of the loan will extend accordingly.

14.4.3 Childcare vouchers / nursery salary sacrifice scheme

If you wish to continue using your childcare vouchers during your adoption leave you can continue to take childcare vouchers, or to use a childcare place in one of the Trust nurseries, via the salary sacrifice scheme, throughout your paid and unpaid adoption leave.

If you choose to take this option, then both your occupational adoption pay and statutory adoption pay will be calculated on the reduced pay that you currently receive under the salary sacrifice arrangement.

Alternative, if you do not wish your adoption pay to be reduced, or do not expect to be using childcare during your adoption leave, then you may decide to withdraw from the scheme.

Please note from April 2018, childcare voucher schemes (Fideliti for LCH staff) will be closing to new applicants. Employees who have already signed up will be eligible to keep receiving vouchers. The childcare vouchers schemes are being replaced by the tax free childcare scheme run by HRMC (TFC). For more information about the TFC scheme please visit <https://www.childcarechoices.gov.uk> or contact the TFC team on 0300 123 4907.

It is recommended that employees discuss their options with the Employee Care Services Team on 0113 2066327 as early as possible and ideally as soon as you decide to adopt.

15 Employee Care Service (Leeds Teaching Hospitals Staff Health & Wellbeing Team)

Employee care services are part of Leeds Teaching Hospitals' staff health & wellbeing team offer sessions such as baby massage and baby yoga. They can be contacted on 0113 3928384 or via collette.brown@nhs.net

Frequently asked questions

1. How much adoption leave can I take?

Up to 52 weeks in total.

2. When can I start my adoption leave?

Up to 14 days before the date the child starts living with you (for UK adoptions); or when the child arrives in the UK or within 28 days of this date (for overseas adoption); or the day the child is born or the day after (if you have used a surrogate to have a child).

3. Can I change the start date of my adoption leave?

Yes. You must give your manager 28 days' notice wherever possible.

4. Do I have to tell my manager when I intend to return to work?

Not if you are taking the full 52 weeks, however, we would encourage you to agree how you will keep in touch with your manager during adoption leave. If you intend to return to work early, you must give your manager at least 28 days' notice.

5. Can I have paid time off for adoption meetings?

Yes, for up to 5 meetings.

6. Will I return to work in my original role?

You have the right to return to your job under your original contract and on no less favourable terms and conditions. If any changes are proposed due to restructure whilst you are on adoption leave, you will be consulted fully.

7. What if I'm too unwell to return to work immediately following my adoption leave?

You must report as unfit for work in line with your local procedures. Your sickness will be managed in line with the Managing Attendance Policy.

8. Can I carry over my annual leave?

Yes, you will accrue annual leave and bank holidays whilst on adoption leave. If you do not have the opportunity to take the leave within the current leave year, (for example if you will not return to work until the following leave year), you will be entitled to carry it over to the leave year you are due to return to work following your adoption leave.

You cannot however, accrue and carry over leave that is not accrued during your adoption leave. For example:

Your adoption leave commences on 1 September 2016 and ends 31 August 2017. You can accrue and carry over annual leave from 01 September 2016 to 31 March 2017. Any annual leave accrued from 01 April 2016 to 31 August 2016 must be taken prior to commencement of your adoption leave. It cannot be carried over to the next leave year.

APPLICATION FOR ADOPTION LEAVE AND PAY

APPENDIX 2

2a	Statutory Adoption Pay I do not intend to return to work for the NHS immediately following my adoption leave and I have worked for the Trust continuously for at least 26 weeks up to the week I am matched with a child or receive official notification if adopting from overseas.	<input type="checkbox"/>
----	--	--------------------------

I would like my adoption pay entitlement to be spread equally over 12 payments	<input type="checkbox"/>
I have not decided whether I will return to work for the NHS at the end of my adoption leave and therefore wish to defer my occupational adoption pay.	<input type="checkbox"/>

NHS Pensions

Please note, NHS Pension contributions for periods of unpaid adoption leave will be deducted from members pay upon their return to work. Members with no entitlement to occupational or statutory adoption leave payments will be required to pay pension contributions for the full period of the adoption leave upon their return. In cases of no entitlement contributions will be based on their rate of pay immediately prior to the start of the adoption leave.

Employee’s Declaration:

I confirm that I have read the Trust’s Adoption Leave Guidance and agree to the conditions outlined. I am aware that I will be liable to repay the occupational adoption pay (less any statutory adoption pay) if I fail to return to NHS employment within 15 months of the start date of my adoption leave.

Signed: _____ Date: _____

Manager’s declaration:

I have discussed adoption leave with the above and am aware of their intention to take adoption leave.	<input type="checkbox"/>
I have seen a copy of the original matching certificate.	<input type="checkbox"/>
We have discussed annual leave entitlement and have agreed contact to keep in touch during adoption leave.	<input type="checkbox"/>
I have completed the online SW2 on Elsie to inform payroll of the employee’s intention to take adoption leave.	<input type="checkbox"/>
I have completed the online SW3 to end the employee’s employment if they do not intend to return to work at the end of their adoption leave <small>(copy of resignation letter attached).</small>	<input type="checkbox"/>
I have informed IT of the length of absence to ensure NHS mail and system log-in is not disabled.	<input type="checkbox"/>

Signed: _____ Date: _____

Once completed, please forward this form with the original matching certificate to:

Human Resources Department, 2nd Floor, Stockdale House, Headingley Office Park, 8 Victoria Road, Leeds, LS6 1PF

Or, the application form and matching certificate can be emailed to lch.hr@nhs.net This must be from the manager's email account and should state in writing that the manager has seen the original matching certificate

Calculation of accrual of annual leave and bank holidays for term time staff

For staff entitled to receive occupational adoption pay:

Step 1

$$\frac{\text{Total no. of annual leave hours and bank holiday entitlement per year}}{52} = \text{A (weekly accrual of annual leave)}$$

Weeks 1 – 8 = no entitlement to accrue annual leave as employee receives full pay (which includes amount for annual leave)

Weeks 9 – 26 = entitled to accrue half of the annual leave allowance as employee receiving half pay (therefore is paid for half of the annual leave accrued over these weeks)

Calculation to work out entitlement for weeks 9 – 16:

Step 2

$$\frac{\text{A} \times 18}{2} = \text{B (accrued annual leave entitlement whilst on half pay)}$$

Step 3

$$\text{A} \times \text{remaining weeks' adoption leave (on SMP or nil pay)} = \text{C}$$

Step 4

$$\text{B} + \text{C} = \text{total number of annual leave and bank holiday hours accrued whilst on adoption leave}$$

Example:

An employee is entitled to receive occupational adoption pay. Their total annual leave and bank holiday entitlement for the year is 197 hours. Their entitlement to accrue annual leave and bank holidays whilst on adoption leave of 52 weeks would be:

Step 1

$$\frac{197}{52} = \text{(A) 3.78 (weekly accrual of annual leave)}$$

Step 2

$$\frac{\text{(A)} 3.78 \times 18}{2} = \text{(B) 34 (accrued annual leave entitlement whilst on half pay)}$$

Step 3

$$\text{(A) 3.78} \times 26 \text{ (remaining weeks' adoption leave (on statutory adoption pay or nil pay))} = \text{(C) 98.28}$$

Step 4

$$\text{(B) 34} + \text{(C) 98.28} = \text{132.28 hours (total number of annual leave and bank holiday hours accrued)}$$

whilst on adoption leave)

For staff entitled to receive statutory adoption pay only:

Step 1

$$\frac{\text{Total no. of annual leave hours and bank holiday entitlement per year}}{52} = \text{A (weekly accrual of annual leave)}$$

Weeks 1 – 6 = entitled to accrue 10% of the annual leave allowance as employee receiving 90% of pay (therefore is paid for 90% of the annual leave accrued over these weeks)

Calculation to work out entitlement for weeks 1 – 6:

Step 2

$$\frac{\text{A} \times 6}{10} = \text{B (accrued annual leave entitlement whilst on 90% of pay)}$$

Step 3

$$\text{A} \times \text{remaining weeks' adoption leave (on flat rate of statutory adoption pay or nil pay)} = \text{C}$$

Step 4

$$\text{B} + \text{C} = \text{total number of annual leave and bank holiday hours accrued whilst on adoption leave}$$

Example:

An employee is entitled to receive statutory adoption pay only. Their total annual leave and bank holiday entitlement for the year is 197 hours. Their entitlement to accrue annual leave and bank holidays whilst on adoption leave of 52 weeks would be:

Step 1

$$\frac{197}{52} = \text{(A) 3.78 (weekly accrual of annual leave)}$$

Step 2

$$\frac{\text{(A) } 3.78 \times 6}{10} = \text{(B) 2.26 (accrued annual leave entitlement whilst on half pay)}$$

Step 3

$$\text{(A) } 3.78 \times 46 \text{ (remaining weeks' adoption leave (on flat rate statutory adoption pay or nil pay))} = \text{(C) 173.88}$$

Step 4

$$\text{(B) } 2.26 + \text{(C) } 173.88 = \text{176.14 hours (total number of annual leave and bank holiday hours accrued whilst on adoption leave)}$$

Useful contacts / information

LCH Pensions Department:	0113 2064874
Payroll:	Details of your payroll clerk can be found by searching for 'payroll' on Elsie
HR queries:	Lch.hr@nhs.net
Lease cars / salary sacrifice car queries:	0113 3055927
General information on entitlement to adoption leave and statutory adoption pay:	https://www.gov.uk/adoption-pay-leave
Nurseries and post-natal classes:	http://www.leedsth.nhs.uk/a-z-of-services/nurseries/
NHS terms and conditions of service :	
http://www.nhsemployers.org/tchandbook	