



Keele University

# Staff Adoption Leave and Pay Policy (2007)

## Human Resources Department

Lead Director: Director of Human Resources, Organisational Development and Student Support
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Policy issue date: 6 <sup>th</sup> December 2007 <u>Amendments:</u> 1 <sup>st</sup> October 2008 (new legislation regarding contractual benefits) 1 <sup>st</sup> April 2009 (revised statutory annual leave) 1 <sup>st</sup> March 2010 (Pension/ <i>Payflex</i> +) April 2011 (Additional Paternity Leave)

## **ADOPTION LEAVE & PAY POLICY (2007)**

### **1. Introduction**

- 1.1 This Policy is designed to outline the provisions for adoption leave and adoption pay. It is supported by more detailed *Adoption Pay and Leave Procedure and Guidelines*, which may be changed from time to time in the interests of operational efficiency, to meet statutory requirements, or following consultation with Trades Unions.
- 1.2 This Policy applies to all members of University staff irrespective of funding source. Engagement on a casual, self-employed or freelance basis does not confer entitlement to University adoption benefits.
- 1.3 This Policy has been adopted after consultation with the recognised Trade Unions: UCU, UNISON and Amicus.
- 1.4 Adoption rights arise from a number of sources, including UK and EC legislation and case law decisions, as well as the University's own Policy. The result is a complex set of rules, procedures and regulations that govern every aspect of the application of adoption arrangements. Members of staff are therefore advised to contact their Link Human Resources Team and a meeting will be arranged, in confidence, to explain their eligibility for adoption leave and pay and the procedures that should be followed.
- 1.5 There are two schemes in operation:
- 1.5.1 The Statutory Adoption Scheme, which is based on the relevant legislation, and is available to all members of staff, although some statutory entitlements are subject to eligibility criteria.
- 1.5.2 The University Occupational Adoption Scheme, which offers enhanced provisions in relation to pay and is available to members of staff with one year's service, or greater, at the week in which notification of the adoption match is given.
- 1.6 The Working Time Regulations 1998 do not permit statutory annual leave<sup>1</sup> to be carried over from one leave year to the next, or for payment in lieu of any untaken statutory annual leave unless the contract of employment is terminated part way through an annual leave year. If the member of staff is

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<sup>1</sup> Statutory paid leave entitlement: 4 weeks until 30/9/07; 4.8 weeks (capped at 28 days) from 1/10/07 – 31/3/09; 5.6 weeks (capped at 28 days) from 1/4/09. From 1/10/07, the additional statutory paid annual leave entitlement over and above the first four weeks may be carried over to the next leave year, by agreement between the employer and the member of staff. Therefore, the additional statutory 0.8 weeks annual leave (1.6 weeks from 1/4/09) will be treated in the same way as additional contractual annual leave for staff unable to take all accrued annual leave due to adoption leave absence.

unable to take all of his or her annual leave due to adoption leave absence, any accrued additional contractual annual leave over and above the statutory leave entitlement can be carried over to the following leave year, as long as it is taken immediately following adoption leave.

- 1.7 Where staff are required to give any written information and/or notice to the University, this should be sent to the University's Human Resources Department.

## **2. Summary of Statutory Adoption Provisions – Ordinary Adoption Leave, Additional Adoption Leave and Statutory Adoption Pay**

- 2.1 This is a summary of the University's understanding of the statutory provisions. Should there be any discrepancy between this summary and the statutory provisions, the statutory provisions will be applicable. Members of staff may wish to contact the Government Department for Work and Pensions for up to date information.

### **2.2 Qualifying Conditions for Adoption Leave**

- 2.2.1 The right to adoption leave exists in relation to the adoption of a child up to age 18 from an approved adoption agency (UK or overseas). Where a couple adopts jointly, only one of them may take adoption leave and the couple must choose which of them will take adoption leave. Paternity Leave may be available to the other adopter. The University *Paternity Leave and Pay Policy* and accompanying *Paternity Leave and Pay Procedures* give details of the paternity leave and paternity pay provisions that will be applicable where the individual wishing to take paternity leave is employed by the University. Where they are not an employee of the University they should contact their own employer for details of their paternity leave and pay provisions.

- 2.2.2 Paternity Leave (Ordinary and Additional) is available to:

- (i) the spouse or partner of an individual who adopts, or
- (ii) in the case of a couple who are jointly adopting a child, the other spouse or partner to the one taking adoption leave

providing eligibility and notification criteria are met.

- 2.2.3 A member of staff may be eligible to take adoption leave in respect of an adopted child under 18 (whether adopted in the UK or from overseas) provided he or she is:

- (i) the adopter of the child, or
- (ii) married to, or the partner (including same sex partner) of, someone who is adopting a child

- 2.2.3.1 Adoption leave is not available in circumstances where a child is not newly matched for adoption (e.g. when a step-parent is adopting a spouse's or

partner's children or where a foster parent adopts a child they have previously fostered), or for a private adoption.

2.2.4 The member of staff must have

- (i) been continuously employed for at least 26 weeks by the end of the week in which he or she (or his or her spouse or partner) was formally notified by an approved adoption agency of being matched with a child for adoption – this is known as the “relevant week”
- (ii) notified the agency that he or she agrees with the placement
- (iii) complied with the notification requirements specified in paragraph 2.4
- (iv) (in the case of a member of staff whose partner is adopting a child) expect to have joint responsibility for the child's upbringing

2.3 **Notification**

2.3.1 To exercise the right to adoption leave the member of staff must do the following:

2.3.1.1 Adoption within the UK

- (i) Inform the University, in writing, of his or her intention to take adoption leave within seven days of having been notified that he or she (and/or his or her partner) has been matched with a child for adoption.
- (ii) Provide documentary evidence in the form of a certificate provided by the adoption agency

2.3.1.2 Adoption from Overseas

- (i) Inform the University, in writing, of his or her intention to take adoption leave within 28 days of receiving an official notification from the relevant domestic authority
- (ii) Notify the University of the date on which the official notification was received and give the University a copy of the notification
- (iii) Inform the University of the date on which the child is expected to enter Britain.
- (iv) Once the child enters Britain, the member of staff must provide the University with evidence (e.g. a plane ticket receipt) confirming the child's arrival.

2.3.2 After placement of the child has taken place, the member of staff should inform, as soon as reasonably practicable, the Human Resources Department, in writing, of the date the actual placement of the child took place. Requests for a change in the start date of Adoption Leave should be made, in writing, to the Human Resources Department giving at least 28 days notice, or as soon as reasonably practicable.

- 2.3.3 If a placement is delayed, a member of staff who has already begun Adoption Leave cannot stop the leave and commence it again at a later date.

## 2.4 **Adoption Leave Period**

### 2.4.1 Adoption within the UK

The member of staff can choose to commence adoption leave on the date the child is placed with them for adoption or a pre-determined date no more than 14 days before the date on which the child is expected to be placed for adoption (and no later than the expected date of placement).

### Adoption from Overseas

The member of staff can choose to commence adoption leave from the day the child enters the United Kingdom or within the 28 days following their arrival.

- 2.4.2 Eligible members of staff are entitled to 52 weeks statutory adoption leave, comprising 26 weeks Ordinary Adoption Leave, immediately followed by 26 weeks Additional Adoption Leave.

- 2.4.3 If a member of staff wishes to end his or her adoption leave early, and return to work before the end of his or her full entitlement to adoption leave, he or she must give at least eight weeks (56 days) written notice.

- 2.4.4 Where a member of staff begins a period of adoption leave before the placement of the child, and is then told the placement will not be made, or if during the adoption leave period the child's placement ends, then the member of staff's adoption leave will normally finish 8 weeks after the end of the week in which the disruption to the placement took place.

## 2.5 **Statutory Adoption Pay (SAP)**

- 2.5.1 During adoption leave, subject to qualifying conditions, Statutory Adoption Pay is payable for a 39-week<sup>2</sup> period. The member of staff is required to give at least 28 days written notice of when he or she wishes Statutory Adoption Pay to commence, unless this is not reasonably practicable (although the notice given for commencement of adoption leave will serve for pay also). Statutory Adoption Pay is only payable for the weeks in which the member of staff is on adoption leave and is payable at the Standard Statutory Adoption Pay rate or 90% of the member of staff's average earnings, if this is lower. Statutory Adoption Pay is part of gross pay and is subject to deductions for PAYE Income Tax and National Insurance Contributions in the usual way. In order to qualify for Statutory Adoption Pay, average earnings must be at or higher than the National Insurance Contributions Lower Earnings Limit.

## 2.6 **Terms and Conditions of Employment**

- 2.6.1 During Ordinary Adoption Leave, a member of staff is entitled to all normal terms and conditions of employment, with the exception of remuneration. Annual leave will continue to accrue as normal.
- 2.6.2 Following Ordinary Adoption Leave an employee is entitled to return to the same job on terms and conditions that are no less favourable than those that

would have applied if the absence had not taken place.

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<sup>2</sup> The Government has announced an intention to extend the adoption pay period to cover the whole 52 week adoption leave period. The University's Policy will be altered to incorporate the statutory changes from the effective date.

- 2.6.3 During Additional Adoption Leave, annual leave does not accrue, although all staff have a statutory annual entitlement to paid holidays under the 1998 Working Time Regulations. The annual leave entitlement for a member of staff returning from Additional Adoption Leave may need to be adjusted to ensure that he or she receives at least the statutory minimum for the leave year in which he or she returns to work, taking in to account contractual annual leave accrued as normal during Ordinary Adoption Leave and after he or she has returned to work.
- 2.6.4 Following a period of Additional Adoption Leave, a member of staff is entitled to return either to the post in which he or she was employed prior to the adoption, or if not reasonably practicable for the University to permit a return to that job, to another post which is both suitable and appropriate for the member of staff, on terms and conditions which are no less favourable.
- 2.6.5 Once a member of staff has returned to work following adoption leave, all periods of adoption leave are counted as continuous service for the purposes of the member of staff's statutory rights.
- 2.6.6 Pension rights and contributions shall be managed in accordance with the provisions of the relevant superannuation scheme in which the University participates, providing that these provisions do not conflict with any statutory requirements that may apply at the time. The University will continue to deduct employee contributions based on the Statutory Adoption Pay received by the member of staff and will also make appropriate employer contributions.

For staff participating in *Payflex+*, no employee contributions will be deducted from pay and the University will maintain the same level of contributions and pension benefits for the adoption leave period. Further information on *Payflex+* can be found on the University website, or by contacting the link HR Administrator.

### **3. Occupational Adoption Scheme**

#### **3.1 Adoption Leave**

Adoption leave entitlement under the University Occupational Adoption Scheme is the same as the statutory provisions.

#### **3.2 Adoption Pay**

The Scheme incorporates the statutory provisions and enhances them in relation to adoption pay: for the first 12 weeks of adoption leave a member of staff will be entitled to receive his or her normal pay - i.e. the pay he or she would have received under his or her contract of employment had he or she not been on adoption leave. The member of staff's Occupational Adoption Pay incorporates any entitlement he or she may have to Statutory Adoption Pay. If his or her Statutory Adoption Pay entitlement is greater than his or her normal pay for any week, the member of staff will receive the greater amount. A member of staff eligible for Statutory Adoption Pay will receive the Standard rate of Statutory Adoption Pay only for weeks 13-39.

- 3.2.1 A member of staff who is not eligible for Statutory Adoption Pay will be given an SAP1 Form by the University, to explain why the University is unable to

pay Statutory Adoption Pay. The member of staff should contact his or her adoption agency for advice regarding eligibility for other benefits. If the member of staff is eligible for other benefits, he or she should send the University a copy of the notification so that the University can calculate the amount of Occupational Adoption Pay payable. This will be the difference between the amount of the benefit received and the member of staff's normal pay for his or her 12-week entitlement to pay under the University Occupational Adoption scheme. If the member of staff is ineligible for other benefits, once notification of this is received, the University will ensure that the member of staff receives 12 weeks normal pay from the University.

### 3.3 Other Enhancements

In addition, the University Occupational Adoption Scheme offers other enhancements in relation to the following: pension contributions for staff who are members of one of the superannuation schemes in which the University participates; annual leave; and enhancements for staff on fixed-term contracts.

- 3.3.1 **Pension:** Staff will make normal pension contributions, (i.e. the same percentage) based on the pay he or she receives during his or her adoption leave. The University will undertake to pay both employer and employee contributions (excluding Additional Voluntary Contributions) in respect of the difference between any adoption pay received and the member of staff's normal pay for the entire adoption leave period (including any periods of unpaid adoption leave).

For staff participating in *Payflex+*, no employee contributions will be deducted from pay. The salary exchange under *Payflex+* will continue for staff who are in receipt of sufficient occupational adoption pay but will cease for staff on Statutory Adoption Pay only. The University will maintain the same level of contributions and pension benefits for the adoption leave period. Further information on *Payflex+* can be found on the University website, or by contacting the link HR Administrator.

- 3.3.2 **Annual Leave:** Continues to accrue as normal during the whole adoption leave period.

- 3.3.3 **Fixed-Term Staff:** Where a member of staff's contract expires during adoption leave, if no further contracts are offered, the University will ensure that the that the member of staff receives the benefits of the Occupational Adoption Scheme (including adoption pay) up to the date of termination of employment. Please refer to the *Adoption Leave and Pay Procedure and Guidelines* document for further details.

### 3.4 Eligibility

- 3.4.1 Staff with one year's continuous service at the week in which notification of the match is given are eligible for the University Occupational Adoption Scheme, provided they give a written undertaking to return to work (which is defined as actual attendance at work, i.e. discounts other forms of absence such as annual leave, parental leave and sick leave) following Adoption Leave, for at least three months; this period is extended pro rata where staff return to work on a reduced hours basis.

- 3.4.2 If a member of staff does not return to work for this period, he or she will be required to repay any pay received in excess of his or her statutory entitlements (e.g. the difference between his or her Statutory Adoption Pay award and the amount of University Occupational Adoption Pay she or she received). In addition, he or she will be required to repay the University in respect of any annual leave taken in excess and any pension contributions the University made on his or her behalf over and above its statutory obligations.
- 3.4.3 The requirement for a member of staff to return for this period does not apply to a member of staff on a fixed-term contract where the contract expires during adoption leave and the University does not offer the member of staff a further contract.
- 3.4.4 In order to qualify for the Occupational Adoption Scheme, members of staff are required to follow the procedure detailed in the University's *Adoption Leave and Pay Procedure and Guidelines* document.

## **4. Keeping In Touch**

- 4.1 At its discretion, the University may offer a member of staff on adoption leave the opportunity to work up to ten Keeping In Touch days during the period of adoption leave,. These may either be taken as separate days or as a single block. A member of staff is not under any obligation to accept any work offered and will not lose entitlement to either Statutory Adoption Pay or Occupational Adoption Pay if the member of staff decides to work, nor will working a Keeping In Touch day end the member of staff's adoption leave.
- 4.2 At the time a member of staff agrees to work a Keeping In Touch day, the University and the member of staff will agree whether the individual will be paid or whether he or she can bank equivalent time off in lieu to be taken following return from adoption leave. If payment is made (and if the member of staff is in receipt of Statutory Adoption Pay or University Adoption Pay), the University can offset the adoption pay against pay due for the time worked. If the member of staff is in receipt of another state or adoption benefit, he or she must send a copy of the benefit award so that his or her entitlement to pay for the Keeping In Touch day can be calculated. Working for part of a day during adoption leave will count towards a whole day's Keeping in Touch allowance, although payment will only be made, or time off in lieu credited, for the actual number of hours worked.
- 4.3 Members of staff who may wish to be offered the opportunity to work Keeping In Touch days should the University decide to offer them, are asked to indicate this on the adoption leave application form
- 4.4 The University reserves the right to maintain reasonable contact with members of staff during adoption leave. This may be to discuss individuals' plans for return to work, to discuss any special arrangements to be made, or training to be given to ease their return to work, or to update them on developments at work during their absence. Individuals who have any concerns regarding contact are advised to contact the Human Resources Department at the earliest opportunity.

## **5. Termination of Employment Whilst in Receipt of Statutory or Occupational Adoption Pay**

- 5.1 Where a member of staff, who is in receipt of Statutory Adoption Pay, terminates his or her employment, or has his or her employment terminated, the University will continue to make payment of Statutory Adoption Pay as appropriate. It is the responsibility of the member of staff to ensure that the University is notified, in writing, if he or she obtains employment elsewhere.
- 5.2 Occupational Adoption Pay ceases to be payable once the contract of employment is terminated by either party.