

Version	EN3
Last Revision Date	March 2019

**Y Berthynas Waith**  
Cyngor Rhondda Cynon Taf, gweithio gyda chi, gweithio gyda'n gilydd

**gweithio'nwell  
workwell**

**Employee Relations**  
Rhondda Cynon Taf Council, working with you, working together

## Adoption/Surrogacy Leave **Policy**

This document is available in Welsh please see Polisi Absenoldeb Mabwysiadu /  
Benthyg Croth



<b>DOCUMENT CONTROL</b>	
<b>POLICY NAME</b>	<b>Adoption/Surrogacy Leave Policy</b>
Department	Human Resources
Telephone Number	01443 444501 01443 444502 01443 444503
Initial Policy Launch Date	
Reviewing Officer	Policy Review Group
Review Date	September 2016
Date of Equality Impact Assessment	September 2016
<b>REVISION HISTORY</b>	
Date	Revised By
January 2011	D Jouvenat/A Cade
September 2016	Policy Review Team
March 2019	HR Welsh Language Standards Group
<b>DOCUMENT APPROVAL</b>	
This document has received approval from:	Date of Approval
HR Senior Management Team	September 2016
Corporate Management Team	
Cabinet	

## CONTENTS

Objective/Purpose	1
Introduction	1
Main Provisions Of The Scheme	1
Adoption/Surrogacy Adoption Leave	2
Notification	2
Time off for Antenatal Care	3
Earliest Date For Commencing Adoption/Surrogacy Leave	3
Keeping In Touch Days	3
Adoption/Surrogacy Pay	4-5
Return To Work After Adoption/Surrogacy Leave	6
Managerial Responsibilities	6
Protection From Detriment And Dismissal	6
Redundancy	6
Pension Contributions	7
Salary Sacrifice	7
Assisted Car Purchase Agreement	7
Maternity Support Leave	7
Paternity Leave	7
Annual Leave and Bank Holidays	7-8

## **1. OBJECTIVE/PURPOSE**

Rhondda Cynon Taf Council is committed to helping working parents. This policy provides guidance on the legislation governing Adoption/Surrogacy Leave and Pay, and the Council's procedure.

The purpose of the Adoption and Surrogacy leave policy is to:

- Assist with the management of leave for those who are seeking to adopt a child or have a surrogate baby
- Provide information about statutory rights
- Provide information about additional benefits the Council provides in addition to its statutory obligations

Shared Parental Leave and Maternity Support and Paternity Leave Policies are also available.

## **2. INTRODUCTION**

The Employment Act 2002 introduced a right for eligible employees to take Adoption Leave and pay when adopting a child.

There are no statutory rights to time off for parents who are seeking to have a surrogate baby; this policy affords surrogate parents the same rights as adoptive parents.

In drawing up the scheme, the Council recognises that:

- The commitments of adoptive/intended parents are the same as those of natural parents
- The scheme will assist in retaining valuable employees who would otherwise not be able to remain in employment, and
- The scheme will contribute to the Council's equal opportunities policy

## **3. MAIN PROVISIONS OF THE SCHEME**

The employee must have worked continuously for the Council for 26 weeks leading into the week in which they are notified by the Adoption Agency of being matched with a child **or** in the case of Surrogacy Leave must have worked continuously for Rhondda Cynon Taf Council for 26 weeks by the end of the 15<sup>th</sup> week before the expected date of childbirth. The policy applies to:

- An adoptive parent of a child newly placed for adoption (from the time the child comes to live with them or arrives in the UK if an overseas adoption) and intended parents who have entered in to a surrogacy agreement/arrangement.

- It will not apply to private adoption, step - family adoption, becoming a special guardian or kinship carer, or adoption by a child's existing foster carer as these do not involve the new placement of a child.

**N.B.** Where a couple adopt jointly, the couple must decide which partner takes adoption/surrogacy adoption leave. The Shared Parental Leave Policy may be applicable for both parties or the other partner may be entitled to Maternity Support Leave and Paternity Leave subject to meeting the eligibility criteria outlined in the relevant Maternity Support and Paternity Leave Policy. The term partner within this policy also refers to same sex partners.

#### **4. ADOPTION/SURROGACY ADOPTION LEAVE**

Provided eligible employees have complied with the notification procedures, (see section 5 below) they will be entitled to 52 weeks Adoption/Surrogacy Adoption Leave.

#### **5. NOTIFICATION**

##### **5.1 Formal Adoption**

Adopters will be required to inform their manager, in Welsh or English, of their intention to take adoption leave within 7 days of being notified by their adoption agency that they have been matched with a child for adoption, unless it is not reasonably practicable. They will need to tell their manager and Human Resources:

- When the child is expected to be placed with them and
- When they want their adoption leave to start

Adopters will be able to change their mind about the date on which they want their leave to start providing they tell their employer at least 28 days in advance (unless this is not reasonably practicable e.g. if the notification by the Adoption Agency to the adopting couple is less than 28 days).

Human Resources will be required to respond within 28 days, setting out the date on which they expect the employee to return to work if the full entitlement to adoption leave is taken.

Employees will have to provide the Council with documentary evidence in the form of a 'matching certificate' from their adoption agency (or the relevant UK authority's 'official notification' confirming you are allowed to adopt) as evidence of their entitlement to Statutory Adoption Leave (SAP). Employees should ask their Adoption Agency for a matching certificate, which will include information on matching and placement dates.

## **5.2 Surrogacy Arrangement**

Employees who have entered into a surrogacy agreement/arrangement must inform their manager of their intention to take surrogacy leave at least 28 days before the date they wish to take the leave.

Human Resources will be required to respond within 28 days, setting out the date on which they expect the employee to return to work if the full entitlement to surrogacy leave is taken.

Employees will have to provide their employer with documentary evidence to show that a surrogacy arrangement is in place, this could be confirmation from a medical practitioner, or a copy of a legal agreement.

## **6. TIME OFF FOR ANTENAL CARE**

If you are entitled to Adoption Leave, you can also get paid time off work to attend 5 adoption appointments after you have been matched with a child.

Employees who intend to apply for a parental order have the right to unpaid leave to accompany the birth mother to 2 antenatal appointments. If special circumstances exist then additional leave may be considered on a case by case basis.

## **7. EARLIEST DATE FOR COMMENCING ADOPTION/SURROGACY LEAVE**

An adoptive/intended parent can choose to start their ordinary adoption/surrogacy leave from the date of placement/birth of the child (whether this is earlier or later than expected) or from a date up to two weeks before the expected date of placement/birth.

## **8. KEEPING IN TOUCH DAYS**

- 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 employer and the employee should discuss and agree any voluntary arrangements, for keeping in touch during the employee's adoption leave. An employee may work for up to 10 KIT days during the adoption leave without bringing the leave to an end.

- 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 employer nor the employee can insist upon it.
- The employer should agree with the employee payment for time worked during KIT days. Payment will be in accordance with the employee's contract of employment on a like for like basis e.g. if the employee attends for a full day they will be paid a full days pay.
- KIT days are paid using the following calculation:
  - **annual salary divided by 365 (1/7<sup>th</sup>).**
  - for example, if annual salary is £19,939, divide by 365 = £54.63 (amount paid per full KIT day). In this example, KIT day is paid at £54.63 per day.
- If an employee is in receipt of SMP this will be taken into consideration when calculating payment for KIT days. SMP will be broken down into a daily rate and the employer will pay the difference to ensure the employee receives full pay for the KIT day (at 1/7<sup>th</sup>). Employees should note that they will not receive SMP plus a full days pay for KIT days they are attending.

## 9. ADOPTION/SURROGACY PAY

Adoption/surrogacy pay can be made up of different components:

- Statutory Adoption Pay (SAP)
- Adoption Allowance (AA)
- Occupational Adoption Pay (OAP)

There is no legal entitlement to Statutory Adoption Pay for intended parents who have entered in to a surrogacy agreement/arrangement; however, under this policy the Council will pay the statutory element as per adoption legal entitlements.

	<b>Adoption/Surrogacy Pay</b>
<p><b>Employees with less than 26 weeks service leading into the week in which they are notified of being matched with a child for adoption. Or in the case of surrogacy with less than 26 weeks service by the end of the 15<sup>th</sup> week before the expected date of childbirth.</b></p>	<ul style="list-style-type: none"> <li>• No entitlement to SAP but may be eligible for Adoption Allowance from the Department of Work and Pensions.</li> </ul>
<p><b>Employees with more than 26 weeks but less than one year service as per the criteria above</b></p>	<ul style="list-style-type: none"> <li>• Where an individual has 26 weeks continuous employment at the time of matching/by the end of the 15<sup>th</sup> week before the expected date of childbirth, and his/her earnings are higher than the lower earnings limit for N.I. contributions s/he will be entitled to receive: <ul style="list-style-type: none"> <li>➤ 6 weeks at 90% average weekly pay;</li> <li>➤ 33 weeks flat rate Statutory Adoption Pay (SAP)</li> </ul> </li> <li>• Where earnings are less than the lower earnings limit for NI contributions, s/he will be entitled to receive the above payments but benefits from the Department of Work and Pensions will be deducted.</li> </ul>
<p><b>Employees with more than one year service</b></p>	<ul style="list-style-type: none"> <li>• Where an individual has more than 1 year continuous service at the time of matching/by the end of 15<sup>th</sup> week before the expected date of childbirth, and his/her earnings are higher than the lower earnings limit for NI contributions, she/he will be entitled to receive: <ul style="list-style-type: none"> <li>➤ 6 weeks at 90% earnings.</li> <li>➤ 12 weeks half pay and flat rate Statutory Adoption Pay (SAP)</li> </ul> </li> <li>• Pay (SAP) for weeks 7-18 of the Adoption Leave period, providing it does not exceed normal full pay. <ul style="list-style-type: none"> <li>➤ 21 weeks at flat rate SAP</li> <li>➤ If not returning to work for a minimum of 3 months, then any monies received in excess of SAP during weeks 7-18 will be recoverable.</li> </ul> </li> <li>• Where earnings are less than the lower earnings limit for NI Contributions, he/she will be entitled to receive the above payments but benefits from the Department of Work and Pensions will be deducted.</li> </ul>



## **10. RETURN TO WORK AFTER ADOPTION / SURROGACY LEAVE**

It will be assumed that an employee will be returning at the end of adoption/surrogacy leave as previously indicated. If an employee wishes to return earlier than either of these dates they must give 8 weeks notice.

Should an employee wish to change the date of return from adoption/surrogacy leave, then notification must be provided at least 8 weeks in advance of the change.

**N.B.** If an employee is unable to return to the same job which s/he held prior to the Adoption/Surrogacy Leave, s/he should be offered an alternative job which is the same grade and broadly similar in duties to his/her previous post. As with any other employee s/he should be consulted on any changes to his/her job, whether they are due to an internal restructuring of the Division or reorganisation prior to the change actually taking place. Similarly any potential redundancy situation should be discussed with the employee with a view to possible redeployment, again prior to the actual situation arising.

## **11. MANAGERIAL RESPONSIBILITIES**

As soon as a line manager is aware that an employee intends to adopt/undertake a surrogacy arrangement they should:

- refer the employee to the relevant section to receive the appropriate advice and information on the benefits available and their responsibilities under the Council's Adoption/Surrogacy provisions
- consider what arrangements will need to be made in the employee's absence to maintain service standards
- maintain contact with the employee during their adoption/surrogacy leave and ensure that they receive all necessary circulars regarding the division/Council
- on their return to duty arrange for any training/discussions that may be needed to familiarise them with any new procedures or policies

## **12. PROTECTION FROM DETRIMENT AND DISMISSAL**

Employees will be protected from suffering detriment or unfair dismissal for reasons related to taking, or seeking to take Adoption/Surrogacy Leave. Employees who believe they have been treated unfairly for reasons related to the adoption leave process will be able to complain to an Employment Tribunal.

## **13. REDUNDANCY**

If an employee's post becomes redundant during his/her Adoption/Surrogacy Leave Period, s/he must be offered suitable alternative employment before his/her original contract ends. The new contract must not be less favourable than the original in terms of conditions of service, capacity and location.

If the employee turns down any suitable alternative employment, then s/he may be fairly dismissed as long as the service area can show that it acted fairly and took adequate steps to find alternative work.

**14. PENSION CONTRIBUTIONS**

Under the Local Government Pension Scheme, pension contributions are payable for the first 39 weeks on the remuneration and Statutory Adoption/Surrogacy Pay actually received during the period of the paid adoption absence.

Should the adoption/surrogacy leave extend beyond 39 weeks into unpaid leave, it is up to individual employees to determine whether they pay pension contributions on the unpaid Adoption/Surrogacy Leave period.

Further information is available from Human Resources or the Pension Section.

**15. SALARY SACRIFICE**

Arrangements will be made with the employee to ensure that any salary sacrifice schemes continue during the period of Shared Parental Leave as part of their continuing contractual benefits and in line with similar arrangements for Maternity and Shared Parental Leave.

**16. ASSISTED CAR PURCHASE AGREEMENT**

Arrangements should be made with the employee to recover payments during his/her period of Adoption/Surrogacy Leave.

**17. MATERNITY SUPPORT LEAVE**

Maternity Support Leave of 5 days shall be granted to the child's adoptive mother or father, intended mother or father or the partner or nominated carer of an adoptive parent or intended parent at or around the time of adoption/or placement of the surrogate child. The five days will be at full pay. Applications should be made following the correct process. Please see the Maternity Support and Paternity Leave Policy.

**18. PATERNITY LEAVE**

Paternity Leave is available for adopters/intended fathers in accordance with the Maternity Support and Paternity Leave Policy.

**19. ANNUAL LEAVE AND BANK HOLIDAYS**

An employee will continue to accrue annual leave entitlement during periods of Adoption/Surrogacy Leave.

### **19.1 Carrying Over Annual Leave**

Staff are encouraged to take some or all of their annual leave entitlement immediately before the commencement of adoption/surrogacy leave. In instances where this is not reasonable (e.g. leave is due to begin early in the new leave year; or the needs of the service do not permit all annual leave entitlement to be taken during the leave year), the untaken portion of annual leave may be carried over into the new leave year.

Should you require further guidance on this matter please do not hesitate to contact Human Resources

### **19.2 Bank Holidays**

The Council will ensure that any member of staff on adoption/surrogacy leave will receive normal pay for any bank holidays that fall within the adoption/surrogacy leave period (N.B. they will not receive an extra days leave entitlement following their return to duty).

Payment will vary depending on what scheme the individual has chosen and what payments they are receiving. For example, where a bank holiday occurs and an employee:

- is receiving 90% of pay in accordance with the Adoption/Surrogacy Scheme, they will be reimbursed the difference between what they are receiving under that Scheme and their normal pay i.e. 10% of the normal pay
- has determined to take a period of extended unpaid additional adoption/surrogacy leave, the individual would be reimbursed a days normal pay.

## **20. OTHER RELATED POLICIES**

Maternity Support and Paternity Leave  
Shared Parental Leave