

Livewell Southwest

## **Adoption Leave and Pay Policy**

Version No: 2.2

Review: June 2022

### **Notice to staff using a paper copy of this guidance**

**The policies and procedures page of Intranet holds the most recent version of this guidance. Staff must ensure they are using the most recent guidance.**

**Author: HR Department**

**Asset Number: 869**

## Reader Information

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<b>Is the Equality Act 2010 referenced</b>	NA
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### Document review history

Version no.	Type of change	Date	Originator of change	Description of change
0.1	New Policy	May 2014	HR Department	New policy.
1	Ratified	September 2014	JTUF.	
1.1	Extended	November 2017	Head of HR & Staff Wellbeing	Extended no changes.
2	Updated	March 2018	HR Policy Group	New policy version to reflect legislation changes and policy formatting.
2.1	Extended	April 2021	HR Admin	Extended
2.2	Extended	November 2021	Associate Director of HR & Engagement	Extended

Contents		Page
1	Introduction	4
2	Purpose	4
3	Definitions	4
4	Duties & Responsibilities	5
5	Employee's Guide to Adoption Leave	5
6	Training implications	13
7	Monitoring compliance	13

Appendix A	Employee Guidance – adoption leave	14
Appendix B	Application for Adoption Leave and Pay	15
Appendix C	Model Letter	17

# Adoption Leave and Pay Policy

## 1 Introduction

- 1.1 Livewell Southwest is committed to fairness and equity and values diversity in all aspects of its work as a provider of health and social care services and as an employer of people. Livewell strives to build a workforce that is representative of the community it serves.
- 1.2 Livewell recognises that employees may have questions or concerns relating to adoption rights. Therefore this policy aims to provide details of potential provisions for adoption leave and pay, however as the provisions are complex, employees should clarify the relevant procedures with their line manager and/HR department.
- 1.3 Livewell Southwest is committed to eliminating all forms of discrimination on the grounds of age, disability, gender reassignment, marriage / civil partnership, pregnancy maternity, race, religion or belief, sex and sexual orientation in the provision of our services and in recruitment and employment. This enables an environment that is characterised by dignity and respect which is free from harassment, bullying and victimisation.

## 2 Purpose

- 2.1 This policy sets out the arrangements for adoption leave and pay in relation to being matched with a child for adoption or surrogacy of a child. This policy shall operate alongside additional policy arrangements for Shared Parental Leave, Paternity, and Parental Leave.
- 2.2 This policy applies to employees of Livewell Southwest within Agenda for Change terms and conditions. It is important to ensure the application of the most appropriate policy given the historical employment record of the employee requesting adoption, particularly as specific contractual policy arrangements may apply following transfer processes (known as TUPE).

## 3 Definitions

- 3.1 The following abbreviations are used within this policy:

<b>LEL</b>	Lower Earnings Limit
<b>OAP</b>	Occupational Adoption Pay
<b>SAP</b>	Statutory Adoption Pay
<b>OAL</b>	Ordinary Adoption Leave
<b>AAL</b>	Additional Adoption Leave
<b>Agency</b>	Registered adoption body

3.2 The 'date of placement' is detailed on the writing confirmation of being matched for adoption and is the date the child is placed with the adopter.

## **4 Duties & responsibilities**

4.1 The **Chief Executive** is ultimately responsible for the content of all policies, implementation and review.

4.2 Managers are responsible for:

- Ensuring that this policy is adhered to within their specified area, and should take consideration of it when undertaking relevant processes.
- Ensuring that employees are made aware of this policy and understand the potential implications of processes in relation to it.

4.3 Employees must:

- Ensure that they participate and engage in any processes and in line with this policy.
- Make their Manager aware if they require any additional support to participate in processes within this policy.

## **5 Employee's Guide to Adoption Leave**

### **5.1 How soon should I tell my manager that I am going to be adopting a child(ren)?**

5.1.1 It is important that you speak to your line manager as soon as possible; keeping them informed of progress at each stage of the adoption process, i.e. once you have been approved as an adopter, when you have been matched with a child(ren), and the expected date of placement.

5.1.2 Employees who are entitled to Adoption Leave (also known as the main adopter) are also entitled to paid time off work to attend up to 5 adoption appointments after they have been matched with a child. Employees who are the secondary adopter will be entitled to take unpaid time off for up to 2 appointments. Employees should liaise with their line manager regarding the arrangements for these and submit a Special Leave Form for the personnel records (available in the appendix of the Leave Policy).

### **5.2 Am I entitled to adoption leave?**

5.2.1 Statutory Adoption Leave is up to 52 weeks and made up of:

- 26 weeks of Ordinary Adoption Leave

- 26 weeks of Additional Adoption Leave

Only 1 person in a couple can take adoption leave and the other partner could consider Paternity Leave instead. An alternative is for the partners to consider Shared Paternity Leave (Adoption). In addition only one period of leave is available irrespective of whether more than one child is placed for adoption (as part of the same adoption arrangement).

5.2.2 Regardless of length of service, all employees are entitled to Adoption Leave (including both the Ordinary and Additional leave) providing that they give the correct notice as per the policy and statutory requirements, and provide proof of the adoption or surrogacy. Alongside this employees should consider their eligibility for adoption pay – statutory / occupational in accordance with this policy (Section 2.4).

5.2.3 In accordance with the statutory provisions, employees are not entitled to Statutory Adoption Leave or Pay if they are:

- arranging a private adoption e.g. without the permission from a UK authority or adoption agency.
- become a special guardian or kinship carer
- adopting a stepchild
- adopting a family member or stepchild

### **5.3 When can I start my Adoption Leave?**

5.3.1 For children adopted from Great Britain:

- You can set the start date for your adoption leave and this can be on any day of the week.
- You can choose to start your adoption leave from the date of the child's placement (whether this is earlier or later than expected) or;
- From a fixed date which can be up to 14 days before the expected date of placement.
- This will need to be specified on your adoption application paperwork.

5.3.2 For children adopted from Overseas:

- You can set the start date for your adoption leave and this can be on any day of the week.
- You can start your adoption leave on the date that the child(ren) enter(s) Great Britain (if you are at work on this day, adoption leave can begin the next day).
- A pre-determined date, specified in writing that is no later than 28 days after the date on which the child(ren) enter(s) Great Britain.
- This will need to be specified on your adoption application paperwork.

### 5.3.3 For children adopted through a surrogacy arrangement:

- You can set the start date for your adoption leave and this can be on any day of the week.
- You can commence adoption leave from the day the child's born or the day after.
- The expected date of birth will need to be identified on your application paperwork.

### 5.3.4 There are occasions where the placement does not go ahead or ends during the period of adoption leave, events such as:

- The adoption agency notifies you that the child will not be placed.
- The child dies.
- The child's placement ends.

If any of the above occurs, your adoption leave will normally end eight weeks after this. Additional support can be arranged by your line manager, for example occupational health. Your line manager will need to be notified of your expected date of return to work.

If the placement is delayed and you have already begun your adoption leave, you cannot stop adoption leave and start again later.

## 5.4 What paperwork do I need to complete before going on adoption leave?

### 5.4.1 Employees are required to give notice of their adoption leave request within seven days of being notified of the match with a child(ren) for adoption. The notice must specify how much leave the employee intends to take, the intended start date, and the date of placement. The notice should be in writing by completing the adoption leave application form (Appendix 1).

Along with the notice paperwork, employees must give proof of adoption to qualify for leave and pay. For adoption, the proof must show the:

- name and address of the agency
- name and address of the employee
- date the child was matched, eg the matching certificate
- the expected or actual date of placement, eg a letter from the agency
- the relevant UK authority's 'official notification' confirming the parent is allowed to adopt (overseas adoptions only)
- the date the child arrived in the UK, eg plane ticket (overseas adoptions only)

The line manager will be responsible for taking a photocopy of the relevant proof documentation for the personnel file.

### 5.4.2 The adoption leave application form should be shared with the line manager for authorisation and then submitted to the HR department for processing. The line



manager will write to the employee within 28 days to confirm the details of the adoption leave and pay arrangements, included the expected return to work date and arrangements for contact during the period. The line manager will also be required to complete a change form for the payroll processing.

5.4.3 If the employee wishes to alter the commencement date for adoption leave they will need to give 28 days' written notice (or if this is not reasonably practicable, as soon as is reasonably practicable).

## **5.5 What adoption pay will I be entitled to?**

5.5.1 There are two aspects of pay to consider – Occupational Adoption Pay (OAP) and the Statutory Adoption Pay (SAP).

5.5.2 To meet the criteria for Occupational Adoption Pay (OAP), you must:

- Have met the criteria for Statutory Adoption Pay – as detailed below.
- Have 12 months continuous service with LSW (continuous service with one or more NHS organisations) ending with the week in which you are notified of being matched with the child for adoption.
- The OAP period commences from the date that you start your adoption leave and is paid for 39 weeks in total.
- The amount payable is calculated on your average earnings during the two pay dates falling in or before your 15<sup>th</sup> week prior to your matching date and is not based on basic pay, but the pay that you would pay national insurance contributions on. Therefore any salary deductions that you receive for example a salary sacrifice will lower your rate of average earnings.
- Currently OAP is paid at full pay for the first 8 weeks, for the next 18 weeks you will receive half of your full pay plus any Statutory Adoption Pay (SAP) due (providing that the total does not exceed full pay), for the following 13 weeks you will receive SAP only, and any adoption leave taken after this will be at nil pay. Livewell will assume these arrangements unless your application paperwork specifies an alternative flexible arrangement.
- OAP may be paid in alternative flexible arrangements as requested by the employee and agreed by the organisation. For example you may wish to have a fixed amount spread equally over your adoption leave period.

5.5.3 To meet the criteria for Statutory Adoption Pay (SAP), you must:

- have worked for Livewell Southwest continuously for at least 26 weeks by the week you were matched with a child (this includes continuous service recognised upon commencement, such as service with NHS or Local Government);
- meet the lower earnings limit test as set by the government, which is currently earnings on average of at least £113 a week (before tax);
- give the correct notice of your adoption leave arrangements;
- give proof of the adoption or surrogacy arrangements.

- Statutory Adoption Pay is at the rate set by the government, please contact HR for confirmation or visit the Gov.UK website.
- This is currently 90% of average earnings for the first 6 weeks followed by £140.98 or 90% of your average weekly earnings (whichever is lower) for the next 33 weeks.
- Statutory adoption pay for those adopting from overseas (outside of the UK) have additional considerations along with those adopting through surrogacy, please refer to the relevant sections for additional information.

5.5.4 Where the adoption is from overseas, to be entitled to statutory adoption pay you must have worked continuously for Livewell for at least 26 weeks by the time you get your 'official notification' and provide a signed form SC6 if you're adopting a child with your partner.

5.5.5 Where the adoption is through surrogacy, to be entitled to statutory adoption pay you must have worked continuously for Livewell for at least 26 weeks by the 15th week before the baby's due, and intend to apply for a parental order, and expect the order to be granted (for example because you don't have any convictions involving children, and the birth mother or father agree to the arrangement).

5.5.6 Your adoption pay will be paid directly into your bank account and you will receive your payslip via the post directly to your home address.

5.5.7 If you do not meet the above criteria for statutory adoption pay, you may be entitled to additional support through your local council and SBS payroll will be responsible for providing an SAP1 form directly to you.

5.5.8 You will continue to receive annual increments during your adoption leave as all adoption leave (both paid and unpaid) shall count as continuous service.

## **5.6 I am on a fixed term contract / rotational training contract what am I entitled to?**

5.6.1 If your contract is due to expire before the qualifying week, your contract will end naturally at the fixed date.

5.6.2 If your contract is due to expire after the qualifying week but before the end of the 39 week period, then your contract will be extended to allow the 39 weeks adoption leave period, (with or without pay).

In effect the remaining period of the Fixed Term Contract would 'pause' while the adoption leave takes place and then the employee would return to work for the remainder of the Fixed Term Contract period.

5.6.3 If you have at least one year's continuous service with LSW at the qualifying week and your contract runs beyond the 39 weeks period of adoption leave, you

will receive 39 weeks paid adoption leave (including relevant pay) however you must return to work and complete your remaining contract period or you will have to repay any occupational adoption pay received.

- 5.6.4 If you are on a planned rotation of appointment with one or more NHS employers as part of an agreed programme of training, you 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 adoption had not occurred. In such circumstances your contract will be extended to enable you to complete the agreed programme of training.

## **5.7 Keeping in touch**

- 5.7.1 Before commencing adoption leave you should have discussed and agreed voluntary arrangements for keeping in contact with your line manager such as the frequency of contact and preferred method of contact – such as phone, email, or letter. This will ensure both the line manager and employee are clear on the expectations of keeping updated during the period of leave on any personal and service developments.

In addition the line manager and employee should discuss and agree any arrangements for keeping in touch (KIT) days if it is the intention of the individual to utilise these.

- 5.7.2 You may, by agreement of your manager, do up to ten days work during your period of adoption leave. The days can be used for anything classed as work under your contract of employment for which you would normally be paid, and could be particularly useful in enabling you to attend mandatory training or attend a team meeting for example.
- 5.7.3 Each occasion that you attend work will count as a whole keeping in touch day and you will receive payment based on your daily basic rate for the hours that you have worked less the appropriate adoption pay.
- 5.7.4 You should be aware that if you elected to receive your adoption pay in equal instalments, it is this equivalent daily rate that will be used to calculate your payment.

## **5.8 What happens to my lease car whilst I am on adoption leave?**

If you have a lease car we would advise you to contact NHS Fleet Solutions to discuss the financial implications of your period of adoption leave on the leasing arrangements. Contact details:

Telephone: 0844 811 8228

E-mail: [enquiry@nhsfleetsolutions.co.uk](mailto:enquiry@nhsfleetsolutions.co.uk)

## **5.9 I am returning to work following my adoption leave what do I need to do?**

- 5.9.1 The assumption is that employees will take the full entitlement of 52 weeks adoption leave; however should the employee wish to return to work before this they are required to give their line manager 8 weeks written notice to change the planned return to work date. If you do not give enough notice then the organisation can postpone your return to work date until the expiry of the 8 weeks' notice or the end of your adoption leave, whichever comes earlier.
- 5.9.2 If you are unfortunately sick following the date that you are due to return to work then your normal sickness entitlements will be applied.

## **5.10 I want to change my hours on my return to work what should I do?**

- 5.10.1 You have the right to return to work following adoption leave on the basis of your existing contract with the same grade and status, and you must return for a minimum of three months in order to retain your OAP.
- 5.10.2 It is always advisable to discuss this with your manager at the earliest opportunity any potential changes to your working pattern and hours. To apply for a change to your work pattern you must complete a Flexible Working Application which is available on the Intranet and send it to your manager. Details of the process can be found in the Flexible Working Policy.

## **5.11 What happens to my annual leave entitlement?**

- 5.11.1 Prior to adoption leave you should discuss and agree arrangements with your manager for taking your outstanding accrued annual leave prior to commencing your adoption leave.
- 5.11.2 For the whole duration of your adoption leave you will continue to accrue your annual leave and public holiday entitlement. (NB. If you are employed on a term-time only contract the accrual of your annual leave and public holiday entitlement will be based on your notional hours).
- 5.11.3 Before your return to work you must make arrangements with your manager to take your accrued leave, the expectation is that you will take your leave after your adoption leave but before returning to work.
- 5.11.4 If you are employed on a term-time only contract, you will not accrue annual leave whilst you are on adoption leave. This is because your usual salary payment consists of your salary over the declared weeks that you work plus payment for your holiday and public holidays; this is then equalled out over 12 months. You are already benefiting from your annual leave as it is being paid to

you and this higher average is used to calculate your adoption pay, therefore with this in mind you would not accrue leave during your adoption leave period.

5.11.5 In order to accrue annual leave during your adoption leave we would have to make an adjustment for leave that you would have taken prior to your adoption leave which in some circumstances may mean that you would have been overpaid, your average hours would need to be altered and therefore your adoption pay would also be calculated on a lesser amount.

## **5.12 What happens to my pension whilst I am on adoption leave?**

During the period that you are receiving OAP you will continue to make pension contributions, however we are unable to make deductions from statutory payments, therefore for any period of adoption leave that is either covered by SAP only or you are receiving nil pay, the pension contributions for that period will be collected on your return to work.

## **5.13 What childcare support can I receive when I return to work?**

5.13.1 All parents with childcare responsibilities can access help with the cost of childcare with the use of childcare vouchers in accordance with the current legislation arrangements for the provision of vouchers and potential tax and NI benefits for individuals. Please refer to Gov.UK for specific details.

5.13.2 Livewell has arranged for provision of these services and details of the opportunities available for childcare vouchers is available from the intranet.

## **5.14 I am already in receipt of childcare vouchers what do I need to do?**

5.14.1 You may wish to contact the childcare voucher administrator in HR at the earliest opportunity as vouchers may have a negative effect on your adoption pay. Salary sacrifice schemes such as childcare vouchers would reduce your average earnings.

## **5.15 What happens if I decide not to return to work?**

If you have decided not to return to work you need to let your manager know, you should put this in writing making sure that you give your contractual notice. Depending on which adoption pay option you have taken, you may be liable to repay some of your adoption pay.

## **5.16 What is parental leave (unpaid) and can I take some following my adoption leave?**

You may wish to explore opportunities for unpaid parental leave following your period of maternity leave – please refer to the Parental Leave (Unpaid Policy) for

further details.

## **6 Training implications**

Training will be provided to Managers, as required, on their duties in relation to this Policy.

## **7 Monitoring compliance**

Failure to comply with the contents of this policy may result in disciplinary action. Please refer to the Disciplinary Policy for further details. The effectiveness of this policy will be monitored through the HR Policy Group.

**All policies are required to be electronically signed by the Lead Director. Proof of the electronic signature is stored in the policies database.**

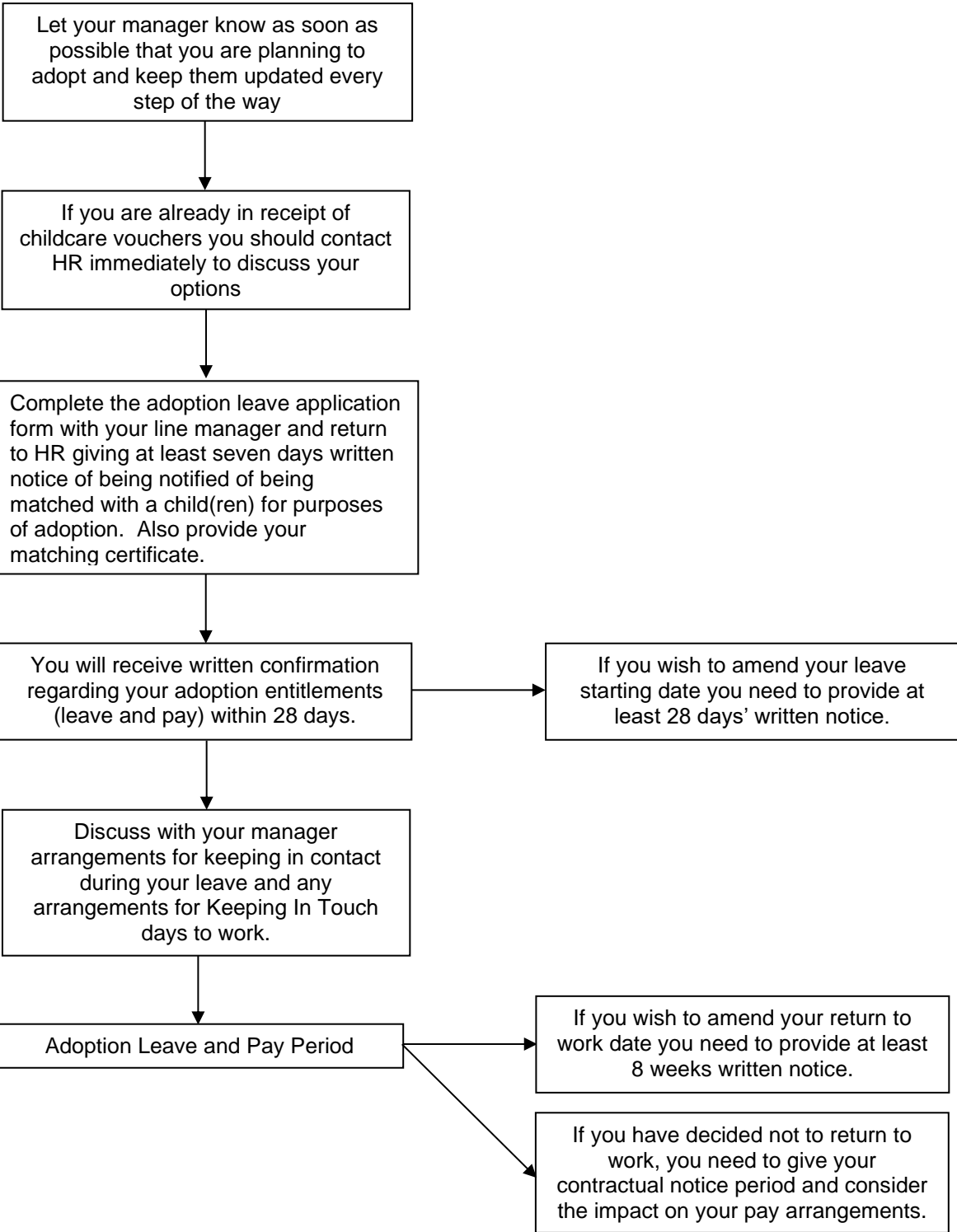
**The Lead Director approves this document and any attached appendices. For operational policies this will be the Locality Manager.**

**The Executive signature is subject to the understanding that the policy owner has followed the organisation process for policy Ratification.**

Signed:

Date:

Employee Guidance – adoption leave



## Appendix B

<b>Application for Adoption Leave and Pay</b>			
<p>Please complete this form with the support of your line manager and then return to the HR department for processing. Please note this form needs to be returned to the HR Department 28 days before you commence adoption leave, along with your matching certificate. <i>(If your certificate is not available at this time please forward as soon as you receive it).</i></p>			
<b>Name</b>		<b>Pay Number</b>	
<b>Home Address</b>		<b>Job Title &amp; Grade</b>	
		<b>Line Manager</b>	
		<b>Locality</b>	
		<b>Work Base</b>	
<b>Home Tel No</b>		<b>Work Tel No</b>	
<b>Home Email Address</b>		<b>Work Email Address</b>	
<b>I hereby apply for adoption leave under Livewell Southwest provisions, and the statutory provision of current legislation.</b>			
<b>I confirm that the child is expected to be placed on</b> <i>(please attach Matching Certificate)</i>			
<b>Employees who qualify for Occupational Adoption Pay</b>			
<b>Option 1 – Definitely returning to Livewell</b>			
<ul style="list-style-type: none"> <li>• I wish to absent myself from duty from _____ for a period of 52 weeks, to return no later than _____</li> <li>• I agree to return to work for Livewell Southwest CIC for a minimum period of three months after expiry of this leave</li> <li>• I accept that LSW will assume I am taking my full entitlement to 52 weeks leave (39 weeks paid and 13 weeks unpaid)</li> <li>• I understand that if I wish to return before the date above I must write to my manager and give 8 weeks' notice.</li> </ul>			
<b>Option 2 – In Doubt About Return to Work</b>			
<p>I wish to absent myself from duty from _____ but I am in doubt about my precise intentions and would therefore like to hold open the opportunity to return to work following my adoption leave. I therefore agree to receive statutory adoption payments only. However, if I should return to work for the required three month period, I will be entitled to the balance of adoption pay due. I accept that LSW will assume I am taking my full entitlement of</p>			



52 weeks (39 weeks paid and 13 weeks unpaid). I understand that if I wish to return before this time I must write to my manager and give 8 weeks' notice. If I do not intend on returning to work I will tender my resignation in line with my contract of employment.

**Employees who do not qualify for Occupational Adoption Pay**

**Option 3 – Employees who qualify for statutory adoption pay but not occupational adoption pay**

I wish to absent myself from duty from \_\_\_\_\_ for a period of 52 weeks, to return no later than \_\_\_\_\_. I accept that LSW will assume I am taking my full entitlement of 52 weeks leave. I understand that if I wish to return before this time I must write to my manager and give 8 weeks' notice. If I do not intend on returning to work I will tender my resignation in line with my contract of employment.

**Option 4 – Employees with less than 26 weeks service**

I wish to absent myself from duty from \_\_\_\_\_ for a period of 52 weeks, to return no later than \_\_\_\_\_. I accept that LSW will assume I am taking my full entitlement of 52 weeks leave. I understand that if I wish to return before this time I must write to my manager and give 8 weeks' notice. I accept that I am not entitled to either SAP or OAP and may receive support from my local council. SBS Payroll will send me a SAP1 Form which I will be required to send to my local council. They will inform me if I am entitled to receive any additional benefits. If I do not intend on returning to work I will tender my resignation in line with my contract of employment.

I would like to receive my adoption pay in 12 equal instalments ( <i>please tick</i> )	<b>Yes</b>		<b>No</b>	
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Authorisation		
	<b>Employee</b>	<b>Line Manager</b>
<b>Signed</b>		
<b>Name (<i>please print</i>)</b>		
<b>Date</b>		

Model letter



Windsor House  
Tavistock Road  
Plymouth. PL6 5UF  
Tel: 01752 <PHONE>  
Email: <EMAIL>@NHS.net

**PRIVATE AND CONFIDENTIAL**

<NAME>  
<ADDRESS>  
<ADDRESS>  
<CITY>  
<POSTCODE>

<DATE>

Dear <NAME of EMPLOYER>,

Congratulations and thank you for telling me about your adoption and the date that you are planning to start your leave.

I am writing to confirm the arrangements for your adoption leave and pay. You are entitled to 52 weeks adoption leave (39 weeks ordinary adoption leave and 13 weeks additional adoption leave) and you have told me that you wish for your adoption leave to commence on **[insert date]**.

May I remind you that if you want to make any changes to your dates you must notify me 28 days before the new intended start date, or if that is not reasonably practicable, as soon as is reasonably practicable.

You have told me that you intend to return to work the expectation is that you will return at the end of your full leave entitlement which given your chosen start date, will be **[insert date]**.

In relation to planning your return to work, if you decide to come back to work before the date above you must notify your manager 8 weeks' before your new intended return date. If you do not give this notice, we may have the right to postpone your return until 8 weeks from the date you informed us that you would like to return early.

In regards to your adoption pay I am pleased to confirm that: **[delete as appropriate]**

- you are eligible for 39 weeks Occupational Adoption Pay (a combination of full pay, half pay and SMP)
- you are eligible for 39 weeks Statutory Adoption Pay
- you are not eligible for Occupational Adoption Pay

- you are not eligible for Statutory Adoption Pay but may be able to claim support from your local council.

If you do not qualify for SAP payroll will send you form SAP1 which explains why. You should take these documents to your local council who will advise on your eligibility to claim any additional support.

Before commencing your adoption leave it is a good idea to discuss and agree with your manager voluntary arrangements for keeping in touch during your adoption leave and any keeping in touch days that you wish to work.

Finally it is important that prior to commencing your adoption leave you agree with your manager any arrangements for taking accrued annual leave at the end of your adoption leave period.

I hope that all goes well and if you have any queries that have not been covered in the adoption guidelines please feel free to contact me.

Yours sincerely

<Name>  
<Role>

*CC. Personnel File*