

Livewell Southwest

## **Adoption Leave and Pay Policy**

Version No: 2.4

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

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

**Author: HR People Team**

**Asset Number: 869**

## Reader Information

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<b>References/sources of information</b>	<ul style="list-style-type: none"> <li>• Agenda for Change: NHS terms and conditions of service handbook</li> <li>• ACAS Adoption Leave &amp; Pay Guidance</li> <li>• Adoption Leave &amp; Pay – Gov.UK</li> </ul>
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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
2.3	Updated	March 2023	HR Department	Policy reviewed
2.4	Reviewed	February 2024	HR People Team	Policy reviewed

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# 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 the HR People Team.
- 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.
- 1.4 This policy does not form part of any contract of employment, and we may amend it at any time following consultation with JTUF and JCCN.

## 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 (both within the UK and from overseas), fostering a child with a view to possible 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 only applies to employees of Livewell Southwest and is in accordance with Agenda for Change terms and conditions.

## 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

**Agency** Registered adoption body

**Qualifying Week** The week the Agency notifies you that you have been matched with your child.

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 or surrogacy 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 (or expected week of childbirth in cases of surrogacy).

5.1.2 In cases of adoption within the UK, you must notify your line manager within seven days of the Agency or Local Authority notifying you in writing that you have been matched with a child or children or as soon as possible and the expected placement date for adoption leave (Intended Start Date). Once you receive the matching certificate issued by the Agency or Local Authority, you must provide us with a copy.

5.1.3 In cases of adoption from overseas, you must notify your line manager in writing as soon as possible but in any case, within 28 days of receiving notification that

the adoption has been approved by the relevant UK authority confirming the date the child is expected to arrive in Great Britain.

- 5.1.4 In cases of surrogacy, you must tell us in writing your intention to take adoption leave and give the expected week of childbirth. You must give us this information by the end of the 15<sup>th</sup> week before the expected week of childbirth, or if that is not reasonably practicable, as soon as is reasonably practicable. When the child is born you must also notify us of their date of birth.
- 5.1.5 Employees who are the main adopter are 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 adoption appointments. Employees should liaise with their line manager regarding the arrangements for these.
- 5.1.6 Employees who are applying for a parental order in relation to a child born through a surrogacy arrangement will be entitled to take unpaid time off to attend 2 antenatal appointments with the surrogate mother. Employees should liaise with their line manager regarding the arrangements for these.

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

5.2.1 Regardless of length of service, all employees are entitled to Adoption Leave (including both the Ordinary and Additional leave) providing that you give the correct notice as per this policy, and in cases of adoption

- You are adopting a child through a UK Agency, or you are a local authority foster parent who has been approved as a prospective adopter.
- The Agency or local authority has given you written notice that it has matched you with a child for adoption, or that it will be placing a child with you under a fostering for adoption arrangement, and tells you the date the child is expected to be placed into your care (Expected Placement Date)
- You have notified the Agency that you agree to the child being placed with you on the Expected Placement Date.

In cases of adoption from overseas, you are entitled adoption leave if you have received written notification that the adoption has been approved by the relevant UK authority and you have notified the relevant authority that you agree to the child being placed with you.

In a surrogacy case, you are entitled to adoption leave if all the following conditions met:

- A surrogate mother gives birth to a child who is biologically your child, the child of your spouse or partner, or the child of both of you.
- You expect to be given parental responsibility for the child under a parental order from the court. The child must live with you, and you must apply for the parental order within six months of the child's birth.

5.2.2. Statutory Adoption Leave is up to a maximum of 52 weeks and made up of:

- 26 weeks of Ordinary Adoption Leave
- 26 weeks of Additional Adoption Leave

Only one parent can take adoption leave and the other partner could consider Paternity Leave instead. An alternative is for the partners to consider Shared Parental Leave). 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).

5.2.3 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 choose to start your adoption leave from the date of the child's placement (whether this is earlier or later than expected) but no later than the date of the placement itself 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 commence adoption leave from the day the child's born, unless you are at work, in which case it will start the day after.
  - The expected date of birth will need to be identified in 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;
  - Or in cases of surrogacy, where you do not apply for a parental order within the relevant time, or the court does not grant a parental order and the time limit for appeal or further application has expired, or where the child dies.

If any of the above occurs, your adoption leave will normally end eight weeks after this unless your entitlement to leave or pay would have ended earlier in the normal course of events. 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.

## **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 B). Proof of adoption should be put on the employee's personnel file.

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 People Team for processing. The line manager will write to the employee within 28 days to confirm the details of the adoption leave and pay arrangements, the expected return to work date (assuming that you will take your full entitlement to adoption leave (52 weeks)) 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 start date of their adoption leave, they will need to give at least 28 days' written notice before the original intended start date or the new intended start date if they are bringing the date forward (or if this is not reasonably practicable, as soon as is reasonably practicable). The line manager will then write to the employee within 28 days to confirm the amended start date.

## **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).

If eligible, you will be entitled to

- OAP which currently is paid at full pay for the first 8 weeks (and includes SAP), for the following 18 weeks you will receive half of your full pay plus any SAP (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. The amount payable is calculated on your average earnings during the eight weeks 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.
- SAP which is payable for up to 39 weeks. The first six weeks are paid at 90% of your average earnings over the eight weeks ending with the qualifying week (provided they are not less than the lower earning limit set by the government). The remaining 33 weeks are paid at the prescribed rate which set by the government for the relevant tax period or less depending on your earnings.

Statutory Adoption Pay is at the rate set by the government please refer to: <https://www.gov.uk/adoption-pay-leave/how-to-claim>

Both SAP and OAP stop being payable if you return to work sooner or the

adoption is disrupted. Employees on adoption leave are not able to work for another employer during that leave period.

#### 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 Livewell Southwest or one or more NHS organisations ending with the week in which you are notified of being matched with the child for adoption.
- Intend to return to work for Livewell Southwest CIC or another NHS employer after the end of your adoption leave for a minimum of three months after your adoption leave has ended. If you do not return to work you will be required to repay you OAP (but not your SAP).
- 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. This calculation is based on a daily OAP rate and on the number of days within each calendar month for a maximum of 12 months that you are on adoption leave.

#### 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 ending with the week in which the Agency notified you had been 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 please refer to: <https://www.gov.uk/adoption-pay-leave/how-to-claim>
- give the correct notice of your adoption leave arrangements;
- provide written confirmation from the Agency of the matching decision or a parental statutory declaration that you intend to apply for a parental order in the case of a surrogacy arrangement.
  
- For those adopting from overseas, you have to have been sent official notification that the relevant UK authority has issued a certificate of eligibility to the overseas authority involved in the adoption confirming that the employee is eligible and approved for adoption.
  
- In cases of surrogacy, you may be asked to provide a parental statutory declaration and must do so within 14 days of such a request being made.

If you are unsure whether you will be returning to work at the end of your adoption leave, you can opt to only receive SAP during your adoption leave. If you do then decide to return to work at the end of your adoption leave, and do so for at least three months, you will be entitled to the balance of your OAP (subject to you meeting the eligibility criteria for OAP).

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.

- 5.5.4 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 expected week of childbirth and intend to apply for a parental order, and expect the order to be granted (.
- 5.5.5 If you leave employment for any reason (for example you resign or are made redundant, you will still be eligible for SAP if you have already been notified by an agency that you have been matched with a child. In such cases, SAP starts 14 days before the expected placement date or the day after your employment ends, whichever is the later.

SAP and OAP accrue with each complete week of absence and payment made on the next normal payroll date. Income tax, national insurance and pension contributions are deducted as appropriate. 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.

- 5.5.6 If you do not meet the above criteria for SAP, 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.
- 5.5.7 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 employment will end in accordance with your contract, and you will not be entitled to OAP or SAP.
- 5.6.2 If your fixed term contract is due to expire after the Qualifying Week but before the end of the 52-week adoption leave period, then your fixed term contract will be extended to allow you to take adoption leave, up to 52 weeks.

In effect, at the point that you commence your adoption leave, the remaining period of your fixed term contract would 'pause' whilst you take your adoption leave and then you would return to work for the remainder of the fixed term contract period. For example, if you have three months left of your fixed term contract remaining at the point that you commence your adoption leave, your employment under your fixed term contract would continue for three months (the

remainder of the contract) on your return to work from your adoption leave.

- 5.6.3 If you are on a rotational training programme with one or more NHS employers 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 discuss and agree arrangements for keeping in contact with your line manager such as the frequency of contact and preferred method of contact – such as by telephone, email, or letter. This will ensure both you and your line manager are clear on the expectations of keeping updated during the period of leave on any personal and service developments.
- 5.7.2 You may, by agreement of your line manager, do up to ten keeping in touch days during your period of adoption leave without bringing your adoption leave to an end. This is not compulsory but must be agreed in advance by your line manager. 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 during your adoption leave will count as a whole keeping in touch day and you will be paid at your normal basic hourly rate of pay for time spent working on a keeping in touch day inclusive of any adoption pay entitlement (the adoption pay element is not in addition to the pay for the KIT day).
- 5.7.4 You should be aware that if you elected to receive your adoption leave pay in equal instalments, it is this equivalent daily rate that will be used to calculate your payment for your KIT day.

## **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)

Website: [www.nhsfleetsolutions.co.uk](http://www.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 you will take the full entitlement of 52 weeks adoption leave; however, should you wish to return to work before this date, you are

required to give your 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 normally have the right to return to work following adoption leave in the same position as you held before commencing adoption leave. Your terms of employment shall be the same as would have been if you have not taken adoption leave. However, if you have taken a period of AAL or have combined your adoption leave with more than four weeks' parental leave, and it is not reasonably practicable for us to allow you to return to the same position, we may give you another suitable and appropriate job on terms and conditions that are no less favourable.

You must return for a minimum of three months, otherwise you may be required to repay 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 the commencement of your 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 in the normal way under the terms of your contract of employment.

5.11.3 Before your return to work you must make arrangements with your line manager to take your accrued annual leave from the previous annual leave year, the expectation is that you will take your accrued annual leave after your adoption leave but before returning to work.

## **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. This is automatically calculated and deducted from your pay by SBS upon your return to work.

During the period that you are receiving OAP and SAP, Livewell Southwest CIC shall make any employer contributions that we usually make into your pension based on what your earnings would have been if you had not been on adoption leave [provided that you continue to make contributions based on the adoption pay you are receiving].

The period of OAL [and any further period of paid adoption leave] counts as pensionable service [provided you make the necessary minimum contributions based on the adoption pay you are receiving].

During unpaid AAP we shall [not] make any payments into a money purchase scheme [and the time shall not count as pensionable service]. You do not have to make any contributions, but you may do so if you wish, or you may make up for missed contributions at a later date.

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

5.13.1 You may be eligible for tax-free childcare for approved childcare and you may also be eligible for a certain number of hours of free childcare through the current government schemes. Please refer to Gov.UK for specific details.

### **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 the HR People Team 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 line 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. The amount of adoption leave left when you give notice must be at least equal to your contractual notice period, otherwise we may require you to return to work for the remainder of your notice period.

This will not affect your right to SAP but will impact on your entitlement to OAP. You must return for a minimum of three months, otherwise you may be required to repay your OAP.

### **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 adoption leave – please refer to the Parental Leave Policy (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 Policy Ratification 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 Head of service.**

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

Signed: Dawn Slater, Director of People and Professionalism

Date: 18<sup>th</sup> July 2024