



## Nurture Academies Trust Policy

# Work and Families Policy

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Nurture Academies Trust has adopted the PACT HR recommended model procedure as agreed by Trade Unions.

Approved by the Nurture Academies Trust's Board of Trustees on: 12 December 2018

To be reviewed:: Every three years or sooner

Signed on behalf of Nurture Academies Trust's Board of Trustees: 

NB. This guidance will be retained for a period of 7 years from replacement

Dated: December 2017

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# 1. Policy Summary

This policy applies to all school based staff.

This document is intended to provide a summary of employees' entitlements to maternity, paternity, adoption and parental leave. It is not a comprehensive summary of employees' legal rights and in any case of dispute on interpretation, the wording used in legislation, Conditions of Service Handbooks and in Local Agreements will take precedence. If you require further information or have specific queries, please contact your HR Business Partner.

This policy has been developed in recognition of the statutory requirements covering maternity, paternity and adoption provisions, as well as wider issues affecting working families i.e. parental leave provisions. It also recognises the importance of supporting employees with family friendly approaches to working, to enable them to achieve a greater work-life balance. Further information regarding family friendly policies can also be found in the Leave of Absence Policy.

The rights as described in this document apply to all employees, including those on temporary contracts. They also apply to full time and part time employees, irrespective of the number of hours they work, but may be subject to length of service.

The following definitions are used in this policy:

- 'Expected week of childbirth' (EWC) means the week, starting on a Sunday, during which the employee's doctor or midwife expects her to give birth.
- 'Qualifying week' means the 15<sup>th</sup> week before the expected week of childbirth for the purpose of SMP, and the 11<sup>th</sup> week before the expected week of childbirth for the purpose of OMP.

## 2. Guide to Maternity Provisions

### 2.1 Right to time off for Ante-Natal Care

All pregnant employees are entitled to paid time off in order to keep appointments for antenatal care, made on the advice of a registered medical practitioner, midwife or health visitor. Antenatal care includes:

- Appointments with the GP or registered Midwife
- Hospital appointments for scans or tests



- Other appointments made on the recommendation of the GP or registered Midwife
- Relaxation and Parent Craft classes

Employees are asked to inform the Head Teacher, as far in advance as possible, of the date and time of an appointment and the best estimate of the length of absence from work, including travelling time if significant. It would also be helpful in many cases if they could try to arrange appointments at the beginning or the end of the day, although schools recognise this may not always be possible.

Except for the first appointment, if requested by the Head Teacher, the employee must be prepared to show a certificate from a registered practitioner, midwife or health visitor confirming that she is pregnant and an appointment card, or some other document, showing that an appointment has been made, prior to the appointment taking place.

The time taken to attend such appointments within an employee's working hours for that day (including reasonable travelling time) will be paid at the usual rate provided they have complied with the above requirements.

There is a statutory right for fathers/partners of pregnant women and intended parents of children born through surrogacy to unpaid time off work to attend up to two antenatal appointments.

## **2.2 Time off for IVF Appointments**

Employees should refer to p7 of the school's Leave of Absence policy and procedure to request time off for medical appointments once the employee becomes pregnant, she is entitled to the same time off for ante-natal care as outlined above.

It is good practice (though not a legal requirement) for you to treat sympathetically any request for time off for IVF or other fertility treatment. This could include allowing those staff who work all year round to take annual leave, or alternatively, allowing Term Time Only staff to take leave when receiving treatment.

## **2.3 The Expected Date of Childbirth**

The employee's midwife will provide a certificate stating the expected week of childbirth (MAT B1). This is normally issued after the 21st week of pregnancy. This certificate is required in order to claim Statutory Maternity Leave and Pay, if eligible.

As soon as the expected date of birth is confirmed on the MATB1 form, the earliest date for starting the period of maternity leave can be calculated, which is the beginning of the 11<sup>th</sup> week before the expected week of childbirth (EWC). To calculate this date employees should count back 11 weeks from the Sunday before the date of expected birth. Employees may commence

maternity leave any time between this date and the expected date of birth. However, maternity leave will start automatically if employees are absent from work with a pregnancy-related illness during the 4 weeks before the baby is due, or if an employee gives birth their maternity leave will commence the following day.

## **2.4 Pension and Annual Leave**

The contract of employment continues during maternity leave. The employee will continue to receive all contractual benefits for the full maternity leave period

### **For Teachers:**

Pension: Any period when receiving pay during maternity leave (SMP or OMP) is regarded as pensionable service. When pay stops, the employee may not pay into the pension scheme. However, teachers may choose to protect their pension by buying additional pension to compensate. Employees should contact Teachers' Pensions for more information. (please note, continuity of service will not be affected). Payment for keeping-in-touch days will also be pensionable.

Annual Leave: Under the Working Time Regulations, from April 2009 Teachers have a statutory right to paid annual leave amounting to 28 days (5.6 weeks). However, in most cases, periods of school closure before and after the maternity leave period will more than equal the 28 day annual leave entitlement.

**Please note, this is not an additional entitlement to annual leave on top of the current school closure arrangements.**

### **For Support Staff:**

Pension: Any period when receiving pay during maternity leave (SMP or OMP) is regarded as pensionable service. Employees can either opt to pay pension contributions for any period of unpaid maternity leave so that it then counts as a period of service or not pay any outstanding contributions and the unpaid period will not count for pension purposes (whichever option is chosen, continuity of service will not be broken). If the employee wishes to pay additional contributions, they should notify payroll within 30 days of the date of return to work, or the date of ceasing employment, whichever is the earliest. Payment for keeping-in-touch days will also be pensionable.

Annual Leave: Under the Working Time Regulations, from April 2009, Support Staff who work term time have a statutory right to paid annual leave amounting to 28 days (5.6 weeks). For support staff who work on a term time only basis, in most cases, periods of school closure before and after the maternity leave period will more than equal the 28 day annual leave entitlement.

**Please note, this is not an additional entitlement to annual leave on top of the current school closure arrangements.**

Support staff who work all year round will continue to accrue their normal annual leave entitlement throughout both ordinary and additional maternity leave.

Time off in lieu will accrue in respect of Bank Holidays during the whole of the maternity leave. Any time taken as maternity leave will count towards qualifying service for the purpose of additional annual leave based on length of continuous service. Any leave entitlement so accrued must still be taken in the leave year which it appertains. Common practice is to take any outstanding annual leave at the beginning or the end of the maternity leave period depending where this falls in relation to the annual leave year. Employees should discuss their annual leave entitlement fully with their Head Teacher / Line Manager to ensure that they have the opportunity to take their entitlement either before commencing maternity leave or immediately prior to their return to work.

Where an employee is planning not to return to work, she should be encouraged to plan to take any annual leave entitlement that she may be due, before commencing maternity leave. If the employee has taken more paid annual leave than entitled to at the date of resignation, then the overpaid portion must be repaid to the Authority.

#### **All staff:**

A woman resuming work after maternity leave is entitled to benefit from any general improvements to the rate of pay (or other T&Cs) which may have been introduced while she has been away. For teaching staff, the period of absence on maternity leave counts towards the service required to establish a “year of employment” for the purpose of pay progression on the Main Pay Scale as outlined on p61 paragraph 7a of STPCD (2017). A teacher who has passed through the threshold will not be disadvantaged in making progress within the Upper Pay Spine whilst on maternity leave. Progression on UPS should be based on guidance as set out in the School Teachers’ Pay and Conditions Document. Please consult your HR Business Partner for further guidance.

#### **Maternity Leave**

All women are entitled to 52 weeks’ maternity leave regardless of the number of hours worked or length of service. This is made up of two elements known as Ordinary Maternity Leave (OML) which is the first 26 weeks’ maternity leave and Additional Maternity Leave (AML) which is made up of a further 26 weeks’ maternity leave.

An employee must notify her employer at least 15 weeks, or as soon as reasonably practicable, before she intends to start her leave:

- that she is pregnant;
- when the Expected Week of Childbirth (EWC) will be and provide a MATB1, which will be issued by her midwife after the 21<sup>st</sup> week of pregnancy;
- when she intends to start her maternity leave.

The employee will be required to notify her employer of her intention to take maternity leave by the 15th week before her EWC unless this is not reasonably practicable. A woman will be able to change her mind about when she starts her leave providing she tells her employer at least 28 days in advance (Support staff) or 21 days in advance (Teaching staff) - unless it is not reasonably practicable.

There is a requirement on employers to respond to an employee's notification of her leave plans within 28 days. An employer will need to write to the employee setting out the date on which she is expected to return to work. Unless notified otherwise, Head Teachers/Line Managers should assume that the employee will be taking their full entitlement to maternity leave.

It is also the responsibility of the employer to carry out a written risk assessment with the employee, when the employee has notified that she is pregnant.

### **Commencement/Entitlement**

Maternity leave should not commence any earlier than the 11th week before the Expected Week of Childbirth (EWC). However, it may be earlier in the following circumstances:

- If the baby is born before the maternity leave is due to commence, then maternity leave starts automatically on the day after the birth

Women may work after the 11<sup>th</sup> week before the EWC. A woman may remain at work up to the birth of her child, unless she is certified as medically unfit to do so. Maternity leave may be commenced earlier in the following circumstances:

- When an employee's absence from work for an illness which is partly or wholly due to her pregnancy after the beginning of the 4<sup>th</sup> week before the EWC, her maternity leave will automatically commence.

In accordance with statutory requirements, an employee entitled to maternity leave shall not work, nor be permitted by her employer to work, during the period of two weeks which commence with the day on which child birth occurs.

## **2.5 Working for another Employer Whilst on Maternity Leave**



If the employee works for another employer during the statutory maternity pay period but before the baby is born, the employer should carry on paying statutory maternity pay. If the employee works for another employer during the statutory maternity pay period but after the baby is born, the employer will need to check whether she worked for the other employer during the 15th week before the baby was due. If she did, statutory maternity pay should be paid as usual. If, however, the employee is working for another employer for which she did not work during the 15th week before the baby was due, the employer must stop paying statutory maternity pay from the start of the week that the employee works for the other employer. It is up to the employee to inform her employer that she is working for someone else during her statutory maternity pay period.

## **2.6 Contact During Maternity Leave**

It is good practice for employees and Head Teachers/Line Managers to maintain reasonable contact during an employee's absence so that she will remain informed of developments and changes within the school, which will support her return to work. The mechanisms by which she wishes to do this, and the extent to which she wants to be informed, should be discussed with her Head Teacher/Line Manager prior to the commencement of maternity leave. This contact will normally be minimal and should neither be excessive or intrusive. This does not constitute "work" and would not count towards the KIT 10 day period (see below).

## **2.7 Keeping in Touch Days (KIT)**

Keeping-in-touch days can also enable an employee and the Head Teacher/Line Manager to keep in touch during the maternity leave period to ease the return to work. Following agreement with her Head Teacher/Line Manager, the employee can undertake 10 days' work during her maternity leave without bringing her maternity period to an end.

For these purposes, 'work' is defined as any work done under the contract of employment and may include training or any activity undertaken for the purposes of keeping in touch such as conferences, team meetings, training etc.

The provisions apply to the entire period of her maternity leave, except during the first 2 weeks after childbirth which is a period of compulsory maternity leave.

Working for any part of a day will count as one day towards the 10 KIT days; however employees will only be paid for the hours worked, at their contractual rate of pay (offset against SMP where payable).

Any work done during maternity leave must be by agreement. The employer cannot insist that an employee carries out any work and the employee is protected from suffering a detriment or being dismissed for refusing to do so.

An employee cannot insist on being given any work to do.

Employees still qualify for SMP on up to 10 KIT days. If the employee exceeds the 10 days by only one day, the full week of SMP will be forfeited (where applicable).

## **2.8 Returning to Work**

### **Right to Return**

- a) Subject to (b), the employee is entitled to return to the job in which she was employed under her original contract of employment and on terms and conditions not less favourable than those which would have been applicable to her had she not been absent. "Job" for this purpose, means the nature of the work which she is employed to do and the capacity and place in which she is so employed. If the employee takes more than 26 weeks' leave (Additional Maternity Leave) they are also entitled to return to the same job on the same terms and conditions unless this is not reasonably practicable by reason of redundancy. If however there is some reason other than redundancy why it is not reasonably practicable for the employee to return to her original job, she is entitled to be offered suitable alternative work on terms and conditions no less favourable than the original job.
- b) Where it is not practicable by reason of redundancy for the school to permit her to return to work in her job as defined in (a), the employee shall be entitled to be offered a suitable alternative vacancy where one exists, provided that the work to be done in that post is suitable and appropriate to the circumstances, and that the capacity and place in which she is to be employed and her terms and conditions of employment are not substantially less favourable to her than if she had been able to return to the job in which she was originally employed.
- c) Suitable alternative employment may also be offered if exceptional circumstances other than redundancy (general reorganisation) which would have occurred if the employee had not been absent, necessitate a change in the job in which she was employed prior to her absence. The work to be done should be suitable and appropriate to the circumstances and the capacity and place in which she is to be employed and her terms and conditions of employment should not be less favourable to her than if she had been able to return to the job in which she was originally employed.

### **Exercise of the Right to Return**

- a) **At the end of Maternity Period**



Employees taking the full year's maternity leave entitlement are not required to give any further notification of returning to work, providing they intend to return on the date notified to the school prior to the commencement of their maternity leave.

#### **b) Before the end of the Maternity Period**

Employees wishing to return before the end of their maternity leave period should notify the Head Teacher, in writing, at least 21 days before the day on which she proposes to return, if this is before the end of the Additional Maternity Leave period. Where the notice given is less than 21 days, the Head Teacher can delay the return until 21 days' notice has been received, or until the end of the 52 week maternity leave period (as notified) if this is earlier than 21 days.

Teachers: Where a teacher has not completed one year's continuous service by the beginning of the 11<sup>th</sup> week before the EWC with one or more local authorities), she must give the Head Teacher at least 21 days notice in writing, of her proposed return date. Where the notice given is less than eight weeks, the Head Teacher can delay the return until 21 days notice has been received, or until the end of the 52 week maternity leave period (as notified) if that is earlier than eight weeks.

#### **c) Prevented from Returning to Work**

Where an employee is unable to return on the expected day due to sickness, the absence will be covered by the occupational and statutory sick pay schemes in the normal way.

For an employee where, because of an interruption of work (whether due to industrial action or some other reason), it is unreasonable to expect her to return on the due date, she may instead return when work resumes, or as soon as reasonably practicable thereafter.

#### **d) Resignation**

Where an employee, during her period of maternity leave decides not to return to work, contractual notice must be given to school. Contractual notice must also be given where an employee wishes to resign before her maternity leave commences, however it may be possible to determine a mutually agreeable termination date.

### **2.9 End of Fixed Term Contract during Maternity Leave**

Should an employee's contract expiry date occur during her period of maternity leave, the school must comply with the normal fixed term contract



termination process. The reason for non-renewal must not be maternity related and employers are advised to seek HR advice.

## **2.10 Maternity Pay**

Maternity pay comprises Statutory Maternity Pay (SMP) and Occupational Maternity Pay (OMP). Employees with 26 weeks' continuous service at the end of the 15th week before the EWC may be entitled to 39 weeks' SMP and employees with one year's continuous service at the 11th week before the EWC may be entitled to 39 weeks of SMP in addition to OMP (full entitlement outlined in section 5 paragraph 8 Conditions of Service for School Teachers (2000)).

### **Statutory Maternity Pay (SMP)**

Women are entitled to SMP if they have been continuously employed by their current employer for 26 weeks up to and including the 15<sup>th</sup> week before the baby is due. If they are not eligible for SMP, they may be eligible to claim Maternity Allowance from Job Centre Plus depending on their NI contribution record and earnings rule.

Any employee who is entitled to receive Statutory Maternity Pay (SMP), will receive it for a maximum of 39 continuous weeks with the remaining 13 weeks' leave being unpaid.

SMP is paid whether or not the employee intends to return to work for her employer, providing she is still working for the employer at the 15th week before the EWC. Where staff are entitled to Occupational Maternity Pay, SMP is offset against OMP for the first 6 weeks of payment.

For employees who inform the employer that they do not intend to return to work, payments during the subsequent 33 weeks shall be the employee's entitlement to SMP.

SMP cannot start earlier than the start of the maternity leave period (i.e. the 11th week before the EWC, apart from in the exceptional circumstances listed in paragraph 2.4.6 above). SMP is not paid where the employee does any paid work after the birth in the paid maternity period (excluding 'Keeping In Touch' days) or if she is in legal custody at any time during the maternity pay period.

### **Maternity Allowance**

Women with at least one year's continuous service, with one or more Local Authorities at the beginning of the 11<sup>th</sup> week before the EWC but less than 26



weeks with Bradford Council by the end of the qualifying week will be entitled to OMP but not SMP. However, dependent on their National Insurance contributions they may be entitled to state Maternity Allowance (MA).

### **Occupational Maternity Pay (OMP)**

OMP payments made to the employee during Maternity Leave are made on the understanding that the employee will return to work either at the school or within the Local Authority for a period of at least 3 months after the maternity leave period. The provisions for teaching staff and support staff differ and are paid in accordance with statutory and locally agreed terms and conditions, as outlined in the Burgundy Book (for teaching staff) and Green Book (for support staff).

Teachers: Payment of OMP to the teacher shall be made on the condition that she will return to her job for a period of at least 13 weeks from the date of return (this includes periods of school holidays). This period would extend, on a pro rata basis, if the employee was returning to work on fewer hours than they worked prior to maternity leave. Should the teacher not be available for work or decide not to return to her job for the required period, she shall refund the OMP payments made during her maternity other than those made during the first six weeks of leave. Payments made by the way of SMP are not refundable.

Support Staff: payment of OMP to support staff shall be made on the understanding that she will return to local authority employment for a period of at least 3 calendar months, whether this be on a full time, part time or job share basis. Should the employee not be available for work or decide not to return to local authority employment, she shall refund the whole amount of half pay. Payments made to the employee by way of SMP are not refundable.

## Teaching Staff:

	First 4 weeks	Next 2 weeks	Next 12 weeks	Next 21 weeks	Next 13 weeks
At least 1 year's continuous service at the 11 <sup>th</sup> week before EWC (with one or more Local Authorities) and <i>at least</i> 26 weeks' continuous service with Bradford Council by the end of the 15 <sup>th</sup> week before EWC	Full pay (inclusive of SMP)	90% of a week's pay (inclusive of SMP)	Half pay plus SMP (capped at normal salary)	SMP	No pay
At least 1 year's continuous service at the beginning of the 11 <sup>th</sup> week before EWC (with one or more Local Authorities) but <i>less than</i> 26 weeks' continuous service with Bradford Council by the end of the 15 <sup>th</sup> week before EWC	Full pay (inclusive of SMP)	90% of a week's pay (inclusive of SMP)	Half pay plus MA if eligible (capped at normal salary)	MA if eligible	No Pay
Less than 1 year's continuous service at the beginning of the 11 <sup>th</sup> week before the EWC (with one or more Local Authorities) and <i>at least</i> 26 weeks' continuous employment with Bradford Council	Higher Rate SMP (6 weeks)	Lower Rate SMP (33 weeks)		No Pay	
Less than 1 year's continuous service at the beginning of the 11 <sup>th</sup> week before the EWC (with one or more Local Authorities) <i>and less than</i> 26 weeks' continuous employment with Bradford Council by the end of the 15 <sup>th</sup> week before EWC	Statutory Maternity Allowance (MA) may be payable, dependent on National insurance contributions.  Maximum 52 weeks leave				

## Support Staff:

	First 6 weeks	Next 12 weeks	Next 21 weeks	Next 13 weeks
At least 1 years continuous service at the beginning of the 11 <sup>th</sup> week before the EWC (and intends to return)	90% of a week's pay (offset against SMP or MA)	Standard rate of SMP (if eligible) plus half pay (capped at normal salary)	Standard rate of SMP (if eligible)	No Pay
At least 26 weeks continuous service at the end of the 15 <sup>th</sup> week before the EWC	90% of a week's pay (offset against SMP or MA)	Standard rate of SMP (if eligible)		No Pay
Less than 26 weeks' continuous service at the beginning if the 11 <sup>th</sup> week before EWC	Statutory Maternity Allowance (MA) may be payable, dependent on National insurance contributions.  (Maximum 52 weeks' leave)			

## 2.11 Protection Against Unfair Treatment Or Dismissal

Pregnant employees must not be treated any less favourably than any other staff and must not be dismissed from employment or selected for redundancy in preference to other comparable staff, for reasons of pregnancy.

Employees are protected from dismissal regardless of hours/service:

- If the principal reason for the dismissal is pregnancy or any reason connected with pregnancy.
- If dismissed during maternity leave and the principal reason is the birth or any reason connected with having given birth.
- If dismissed and the reason is because the employee took maternity leave.
- If there are pregnancy related health and safety issues, and the employee is unable to do her job.

It will be automatically unfair to select an employee for redundancy for pregnancy, child-birth or maternity related reasons. Where there is a genuine and necessary reason, the employer must carry out a fair procedure as outlined below and as per the locally agreed Redundancy Policy and Procedure:

- a. Selection criteria should be objective, non-discriminatory and applied fairly.
- b. When carrying out consultation, this should include any employee who is on maternity leave. They should be given information about proposed redundancies in the same way and at the same time as other employees where reasonably practicable to do so. Where there are practical difficulties, other arrangements should be made i.e. rearrange meetings or conduct them at the employee's home.
- c. Reasonable steps must be taken to find alternative employment for employees who may otherwise have been dismissed by reason of redundancy. An employee on maternity leave should be offered a suitable alternative vacancy (where one exists) before another employee. This is applicable to employees during periods of ordinary and additional maternity leave in addition to adoption and additional paternity leave. If a suitable alternative vacancy is offered and the employee unreasonably turns it down, the dismissal will be fair and the employee would lose the right to a statutory redundancy payment.
- d. Where there is no suitable vacancy, the employee's employment would be terminated by reason of redundancy and will be entitled to a redundancy payment (where qualifying conditions are met), relevant notice period and written reasons for dismissal.

## 3 Health and Safety

All employers have a legal obligation to protect the health and safety at work of all staff and others, including new, breast feeding and expectant mothers.

### 3.1 Risk Assessment

An employee should inform her manager that she is pregnant. A risk assessment of her working area and practices should then be carried out. Each individual expectant mother would require a specific assessment that will need to be reviewed as the pregnancy progresses. Further guidance can be found in the HSE booklet, *New and Expectant Mothers at Work: A guide for employers*. Further information can also be found on Bradnet or by contacting your HR Business Partner.

Managers are responsible for ensuring that when carrying out risk assessments for workplaces and workstations etc. particular attention is paid to those risks that could affect the health or safety of new, breast feeding or expectant mothers or their babies. All reasonable practicable measures

should be taken to prevent exposure to risks, through removal of hazards or implementation of controls.

If a woman believes there is a risk to her health or safety, or to that of her baby, which has not been considered in the risk assessment, she must bring the risk to the attention of her Head teacher/Line Manager.

### **3.2 Communicable Diseases**

If in the early months of pregnancy employees are advised by an approved medical practitioner to be absent from school because of the risk of a communicable disease they will be granted full pay

### **3.3 Miscarriage**

Absence due to miscarriage prior to 24 weeks of pregnancy shall be treated as sickness absence provided it is covered by a doctor's certificate.

### **3.4 Still Birth**

In the tragic circumstances of a still birth, which is defined as occurring after 24 weeks of pregnancy or of neo natal death, employees will be entitled to the same maternity leave and pay as if the pregnancy had reached full term. The return to work notification remains unchanged i.e. 21 days of proposed return to work.

### **3.5 Removal of Staff from Risk**

If despite taking all reasonably practical measures, there is still a risk that could jeopardise the health or safety of a new, breast feeding or expectant mother or her baby then steps must be taken to remove the individual from that risk. This must be done as soon as the Head Teacher/Line Manager has been informed that an individual is pregnant. The steps to remove an individual from a risk are as follows:-

- To temporarily adjust the individual's working conditions and/or hours of work; or if it is not reasonable to do so, or would not avoid the risk:
- Offer her suitable alternative work if any is available; or if that is not feasible:
- Medical Leave of Absence from work for as long as necessary to protect her safety or health or that of the child.

### **3.6 Offers of Suitable Alternative Work**

Where an employee is offered suitable alternative work, the work must be:

- Both suitable and appropriate for her to do in the circumstances; and
- On terms and conditions no less favourable than her normal terms and conditions.

### **3.7 Entitlements During Medical Leave of Absence**

A woman on medical leave of absence is entitled to be paid remuneration at her full normal rate for as long as the absence continues. The only exception to this is where she unreasonably refuses an offer of suitable (risk assessed) alternative work, in which case no remuneration is payable for the period during which the offer applies. During the period of medical leave of absence continuity of employment, pension rights and length of service payments are protected.

### **3.8 New and Nursing Mothers**

#### **Facilities for Breastfeeding and expressing/storing milk at school**

The Workplace Regulations (1992) require employers to provide suitable 'rest' facilities for workers who are pregnant or breastfeeding. Although it is not a legal requirement, the Health and Safety Executive (HSE) encourages employers to provide a healthy and safe environment for nursing mothers to express and store milk. This could be provided in the suitable rest facilities and should be away from communal fridges.

## **4. Paternity/Nominated Carer's Leave**

### **4.1 Introduction**

Statutory Paternity Leave and Paternity Pay is available to fathers and the partners of mothers of children. The provisions apply whether the employee's service is full time or part time (irrespective of the number of hours), or is permanent or temporary, subject to the conditions of the scheme being met.

Employees (male or female) who are acting as the "prime or nominated carer" for the mother/child may request nominated carers' leave. They are subject to the same provisions as applied to employees requesting Paternity Leave.

There are potentially two schemes available including the provisions of Bradford Council's Contractual Paternity Leave Scheme and employee's rights under the Statutory Paternity Scheme.

The entitlement is an allowance of up to two weeks' absence (subject to eligibility as outlined below).

In order to apply for nominated carers leave they will need to provide a copy of the MAT B1 or birth certificate along with a letter from the mother confirming they are the nominated person.

### **4.2 Statutory Paternity Leave**

To qualify, employees must:



- Be the child's father (or adopter) or the spouse or partner, same or opposite sex, of the child's mother;
- Have or expect to have responsibility for the child's upbringing;
- Have been continuously employed for at least 26 weeks ending with the 15<sup>th</sup> week before the EWC; or the end of the week they are notified of being matched with a child (if adopting from the UK); or from the date the child enters Great Britain (if adopting from overseas); and
- Give proper notice and evidence to school of their intention to take Statutory Paternity Leave (see below).

Employees eligible for the statutory scheme have the right to choose to take one or two consecutive weeks' leave (not odd days). It cannot be taken before the birth (or placement) of the child and must be taken within 8 weeks of the birth (or placement). If the baby is born prematurely, the leave can be taken between the birth and eight weeks after the birth.

The employee must provide the Head Teacher/Line Manager with written evidence from either the GP, hospital or adoption agency that:

- His/her partner's pregnancy exists (or confirmation of being matched with a child).
- Shows the expected date of confinement (or child placement).

The employee must also live at the same address as his/her partner (except for below).

In order to apply for Nominated Carer's Leave, the employee must provide the Head Teacher/Line Manager with a copy of the MAT B1 along with a letter from the mother confirming they are the nominated person of choice. Employees must comply with notification requirements as set out below.

An employee must notify his/her employer by the end of the 15<sup>th</sup> week before EWC, or as soon as reasonably practicable, that he/she intends to take paternity leave. The Inland Revenue Form 'SC3 – Becoming a Parent' (for births) or 'SC4 – Becoming an Adoptive Parent' (for adoptions) can be used to give notice of leave and to apply for Statutory Paternity Pay (SPP). The notice must specify the length of leave to be taken and the date the employee wishes the leave to commence.

If the employee wishes to change the start date, they must give 28 days' notice, in writing if requested.

#### **4.3 Contractual Scheme**

To qualify, employees must:

- Be the child's father (or adopter) or the spouse or partner, same or opposite sex, of the child's mother.
- Have or expect to have responsibility for the child's upbringing.



- Have been continuously employed for at least 1 year, with one or more local authorities, by the beginning of the 11<sup>th</sup> week before the EWC or the end of the week they are notified of being matched with a child (if adopting from the UK); or from the date the child enters Great Britain (if adopting from overseas); and
- Give proper notice and evidence to school of their intention to take contractual Paternity Leave.

Employees eligible for the contractual scheme have the right to take up to two working weeks' leave of absence with pay. It can be taken as circumstances dictate, either as a block or in days. The leave may be taken at any time during the pregnancy and up to three months after child birth (or placement). If the employee chooses to take leave on the date of birth (or placement) and they are at work on that day, leave will begin the following day.

The employee must notify his/her Head Teacher/Line Manager of intention to take leave as set out above.

In the tragic circumstances of a still birth, which is defined as occurring after 24 weeks of pregnancy or of neo natal death, employees will be entitled to the same paternity leave and pay as if the pregnancy had reached full term.

#### **4.4 Paternity Pay**

If an employee is entitled to Statutory Paternity Pay and Leave, it will be paid at the weekly rate of Statutory Paternity Pay, or 90% of the employee's weekly earnings, whichever is the lowest.

If an employee is entitled to the contractual paternity scheme, it will be paid at the employee's contractual rate of pay.

If an employee who has met the above criterion has taken some paternity leave but then leaves the school's employment before the beginning of the 11<sup>th</sup> week, and at the date of leaving, has less than one year's continuous local government service then they will be required to repay the council the cost of the paternity pay received.

#### **4.5 Extended Paternity Leave**

Employees may take an extended period of paternity leave in the unfortunate event that the child's mother (or adopter) who has taken leave for the child has died, before the child is one year old (or in the first year of placement). Extended paternity leave can last up to the child's first birthday (or one year after the child's placement). Employees may be entitled to Additional Statutory Paternity Pay which is paid during the 39 weeks that their partner would have received the relevant statutory pay.

## 5. Parental Leave

### 5.1 Introduction

The right to parental leave is contained in the Maternity and Parental leave etc Regulations 1999, made under the Employment Rights Act, as amended by the Employment Relations Act 1999. It offers qualifying parents the right to take a period of unpaid time off work to look after a child or to make arrangements for the child's welfare. Parents can also use it to spend more time with their children.

Employees are entitled to a total of 18 weeks' unpaid leave for each qualifying child. Parental leave is for each child therefore if an employee has twins the leave is doubled. The leave can be taken at any time up until the child's 18<sup>th</sup> birthday.

Parental leave should be taken in blocks of a week or multiples of a week, and should not be taken as "odd" days off, unless the employer agrees otherwise or the child is disabled. Employees cannot take off more than four weeks during a year per child. A week is based on an employees working pattern.

### 5.2 Qualifying Conditions

Parents (or adopters) of children under the age of 18 may have the right to parental leave. To qualify, employees must:

- Have one year's continuous service; and
- Be named on the child's birth or adoption certificate

If employees are separated from the spouse or partner and don't live with their child (or children) they maintain the right to parental leave if they keep formal parental responsibility for the child (or children). Foster parents do not have the right to parental leave but may be able to request a flexible working pattern (see separate guidance).

### 5.3 Requests for Parental Leave

Employees wishing to request a period of Parental Leave must give their Head Teacher/Line Manager at least 21 days' notice. This request should be put in writing stating the dates on which the leave is to begin and end. If an employee wishes to take parental leave straight after the birth or adoption of a child they should give notice 21 days before the beginning of the expected week of child birth or placement. In cases where this may not be possible, for example, if a child is born prematurely or where less than 21 days notice is given that a child is to be placed for adoption notice should be given as soon as possible.

An employer can ask to see evidence to confirm that the employee is the parent or the person legally responsible for the child; evidence might take the

form of information contained in the child's birth certificate or adoption papers etc.

An employer can postpone the leave for up to six months where the business (school) would be particularly disrupted if the leave was taken at the time requested but it cannot be postponed so that the leave ends after the child's 18<sup>th</sup> birthday

However, the employer will notify the employee of the decision, including the reason for postponement and alternative dates during which the parental leave can be taken.

An employee may elect to take a period of Parental Leave from the date of child birth or from the date of adoption, in which case the Employer cannot delay the date of the leave. The employee must give 21 days' notice before the EWC, or 21 days before the week in which adoption placement is to occur, (following the guidance as per 6.1.9).

If a woman wishes to take a period of Parental Leave immediately following her maternity leave, she should also ensure that she makes the request to the Head Teacher/Line Manager giving at least 21 days' notice.

## **5.4 Returning to Work**

At the end of Parental Leave period, the employee is entitled to return to the same job as before, if the leave was for a period of 4 weeks or less. The employee is also entitled to benefit from any improvements to the rate of pay (or other employment terms and conditions) which may have been introduced while he/she has been away.

If the Parental Leave period was more than 4 weeks, the employee is entitled to return to the same job, or if it is not reasonably practicable, a similar job which has the same or better status, terms and conditions as the previous job.

# **6. Shared Parental Leave**

## **6.1 Introduction**

Shared Parental leave enables eligible mothers, fathers, partners and adopters to choose how to share time off work after their child is born or placed and applies to eligible parents of children born or adopted on or after 5 April 2015. This enables parents to share the leave with their partner, perhaps returning to work for part of the time and then resuming leave at a later date. The aim of Shared Parental Leave is to give parents greater flexibility in how they care for their child during the first year. Eligible parents will have the right to share up to 52 weeks leave to care for their child (minus the

period that the mother has spent on maternity leave) and up to 37 weeks shared parental pay. Employees generate an entitlement to shared parental leave (SPL) if the mother brings her maternity leave to an end early. The balance of any leave and pay remaining becomes available to the parents as SPL, to be split between them as they choose.

6.2 Employees will be eligible to take leave if they have a sufficient period of service and their partner satisfies the minimum employment and earnings criteria.

6.3 Employees have to give 8 weeks notice of their intention to opt-in to SPL and of any subsequent request for leave.

6.4 When a couple initially opt in, they are required to give a non-binding indication of how they are intending to take their SPL.

6.5 Employees are entitled to give up to 3 notifications of SPL (or changes to SPL), unless the organisation is willing to allow more requests.

6.6 SPL must be taken within 52 weeks of the child's birth.

6.7 20 "keeping in touch" days will be available to each parent during shared parental leave, in addition to maternity leave "keeping in touch days". The right to return to the same job will apply to employees returning from any period of leave that includes maternity, paternity, adoption and SPL that totals 26 weeks or less, even if the leave is taken in discontinuous blocks.

For further information please see the Shared Parental Leave Policy.

## 7. Adoption Leave and Pay

### 7.1 Introduction

Statutory Adoption Leave is available to parents to prepare for adoption or to care for a newly placed adoptive child. The adoptive leave facilities will normally apply to women employees. Male employees who are married/living with non-council employees will instead have applied the paternity leave entitlements and conditions.

In recognition of the fact that single men may adopt children, the provisions for adoption leave will apply also to single male employees.

The employee will be subject to all other entitlements and conditions of the appropriate maternity scheme (as in paragraph in 2.4), including the obligation to return to work for a minimum of three months in order to retain the adoptive leave pay.

In cases where both parents are employed by the council, and assuming that both parents are eligible, the total leave entitlement (i.e. the post confinement leave aggregated with the two working weeks' adoptive paternity leave) can be combined and shared between the two employees at their discretion.

### 7.2 Pre-Adoption Leave

There is no statutory right to paid time off for pre-adoption leave. Employees who are adopters or partners of adopters would, in the first instance, be expected to arrange meetings and interviews outside of the working day or during school closure periods/annual leave. However, it is recognised that this is not always practical and as such, employees may apply for time off using school's Leave of Absence Policy.

Employees are asked to inform the Head Teacher as far in advance as possible, of the date and time of an appointment/meeting and the best estimate of the length of absence from work, including travelling time if significant. It would also be helpful in many cases if they could try to arrange appointments at the beginning or the end of the day, although schools recognise this may not always be possible.

Employees must be prepared to show proof of appointment/meeting/interview.

The time taken to attend such appointments within an employee's working hours for that day (including reasonable travelling time) will be paid at the usual rate provided they have complied with the above requirements.

If the employee is adopting a child from overseas, any visits to see the child pre-adoption should be taken during school closure periods or by using normal annual leave arrangements. Time off will only be granted in the above circumstances.

### 7.3 Adoption Leave

An employee adopting a child is to be allowed comparable leave and pay arrangements as applies to natural mothers. Accordingly, an employee who satisfies the full criteria and conditions of the maternity scheme specific to his/her conditions of service will be entitled to:

- a) All employees are entitled to ordinary adoption leave of 26 weeks duration.
- b) Employees who have 26 weeks' continuous service ending with the week in which they are notified of being matched with a child for adoption are entitled to a further 26 weeks of additional adoption leave, a total of 52 weeks' adoption leave.
- c) Both ordinary and additional adoption leave is to be taken in one block within a twelve month period from the date of placement unless otherwise agreed with the school.
- d) Be subject to all other entitlements and conditions of their maternity scheme.

Adoption leave will begin on the placement date or up to 14 days before the placement date. Where employees choose to begin leave on the placement date and they are at work on that date, leave begins the following day.

The employee will be required to notify school of his/her intention to take adoption leave. Correspondence must be sent from the adoption agency confirming the adoption/placement and the employee should inform their employer no more than seven days after the date of being told by the adoption agency that they have been matched with a child in writing, or as soon as is reasonably practicable, that they will be absent from work due to adoption and whether they intend to return to work.

There is a requirement for employers to respond to an employee's notification of his/her leave plans within 28 days. An employer will need to write to the employee, setting out the date on which they are expected to return to work if the full entitlement to adoption leave is taken. Adopters who intend to return to work at the end of their full adoption leave will not have to give any further notification to their employer and unless otherwise notified, Head Teachers/Line Managers should assume that the employee will be taking his/her full entitlement to adoption leave.

## 7.4 Adoption Pay

Payments for employees who have less than one year's continuous service at the beginning of the 11<sup>th</sup> week before the week of the baby/child's placement shall be the employees' entitlement to Statutory Adoption Pay (SAP).

Statutory Adoption Pay will be paid for 39 weeks, or if earlier, until the date the employee returns to work, or for eight weeks after the end of the week the placement is disrupted.

The contract of employment continues during Adoption Leave. The employee receives all contractual benefits during the full period of Adoption Leave.

Employees are subject to all other entitlements and conditions of their appropriate Maternity Scheme, (as outlined in section 2.0) including the obligation to return to either his/her 'job' or local authority employment for a period of at least three months in order to retain the occupational pay element.

An employee shall not be entitled to Statutory Adoption Pay (SAP) in the case of:

- Private adoption (Private adoption refers to any adoption not arranged by an agency or organisation i.e. when the adoptive parents find a birth mother or baby or child privately).
- The adoption of a step-child by a step-parent.
- The adoption of a foster child by a foster parent.
- Those who become parents through arrangements with a surrogate mother (except in accordance with the provisions set out in paragraph 5.6).

## 7.5 Adoptive Paternity Leave and Pay

Statutory Paternity Leave for Adoption is absence from work for the purpose of caring for a newly placed adoptive child or to support the main adopter. The Paternity Leave provisions set out in paragraph 4 will apply to employees who:

- are adoptive fathers;
- the spouse or partner of the main adopter;
- will have responsibility for the child's upbringing;
- has been continuously employed for at least 26 weeks ending with the week the child's adopter is notified of the match;
- have given notice and evidence to their Head Teacher/Line Manager (as set out in paragraph 4.2).

## 7.6 Surrogacy

An employee who becomes a parent through surrogacy arrangements is not entitled to Statutory Adoption Leave and Pay.

Employees will instead be entitled to unpaid parental leave upon becoming a parent (as detailed in paragraph 6), providing that:

- they intend to apply for a parental order when the child is living with them (where one parent is genetically related) or adopt the child (where there is no genetic relationship);
- they meet the qualifying conditions

The father of a child born through surrogacy arrangements (provided he is registered as the father) and fulfils eligibility criteria and provisions outlined in Paragraph 4, will be eligible to take paternity leave

Female employees acting as surrogates are entitled to full maternity leave, pay and provisions as any other pregnant employee and outlined in paragraph 2.4

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