



Maternity Leave Policy (Incorporating Adoption, Surrogacy and Shared Parental Leave)

Policy

This document can only be considered current when viewed via the Trust intranet/internet. If this document is printed or saved to another location, you are advised to check that the version you use remains current and valid, with reference to the review due date

CONTENTS

1.0 FLOW DIAGRAM3

2.0 INTRODUCTION4

3.0 DEFINITIONS.....4

4.0 ROLES and RESPONSIBILITIESError! Bookmark not defined.

5.0 PROCESS DESCRIPTION.....6

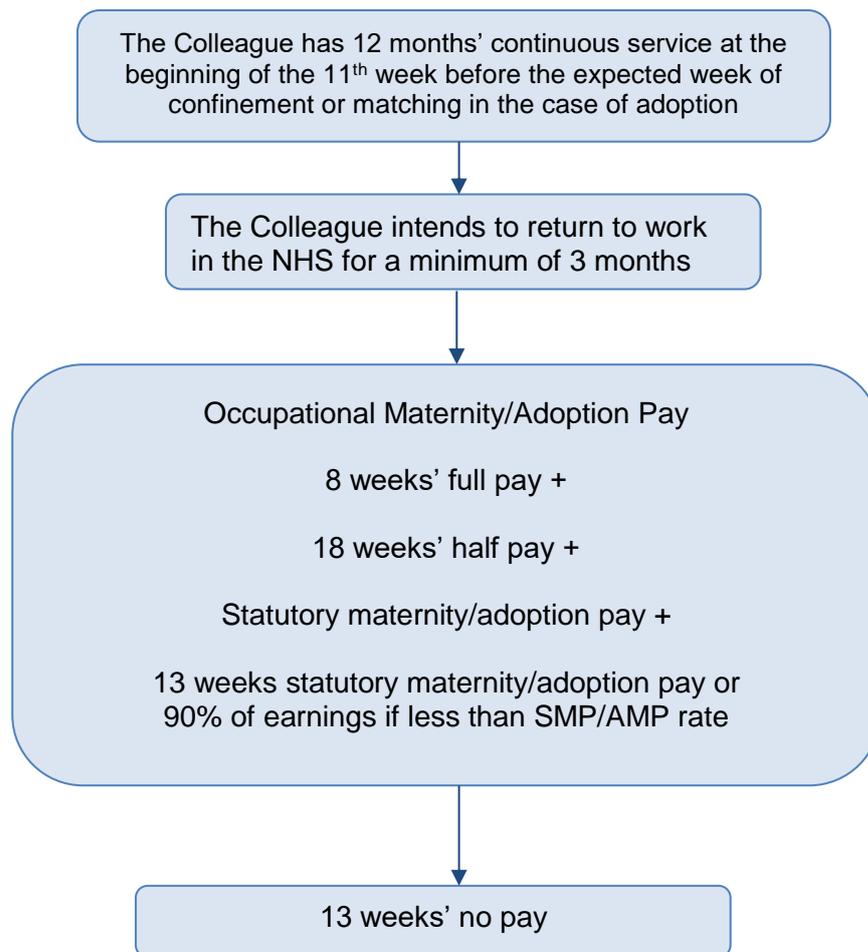
6.0 TRAINING/COMPETENCE REQUIREMENTS.....9

7.0 MONITORING9

8.0 DOCUMENT CONTROL9

1.0 FLOW DIAGRAM

ENTITLEMENT TO FULL OCCUPATIONAL MATERNITY/ADOPTION PAY



If Colleague has less than 12 months' continuous service, they may be entitled to statutory maternity/adoption pay and leave or maternity/adoption allowance

Refer to the relevant Maternity or Adoption Toolkit for further information

Colleague with 12 months' continuous service at the beginning of the 11th week of EWC is entitled to occupational shared parental pay and leave

Colleagues with 26 weeks' continuous service at the beginning of the 15th week of EWC is entitled to statutory shared parental pay and leave

Refer to the Shared Parental Leave Toolkit for further information

2.0 INTRODUCTION

- 2.1 This policy has been produced and agreed in partnership between management and Trade Union representatives of both Taunton and Somerset NHS Foundation Trust and Somerset Partnership NHS Foundation Trust.
- 2.2 The purpose of this policy is to ensure fair, consistent and responsible treatment of colleagues that complies with legislation and NHS Terms and Conditions whereby the health, wellbeing and safety of pregnant colleagues is of primary importance
- 2.3 Taunton and Somerset NHS Foundation Trust and Somerset Partnership NHS Foundation Trust believe that fairness and transparency are promoted by developing clear and transparent policies and procedures and ensuring all colleagues regardless of role understand their content.
- 2.4 The Trusts recognise that some sections of society experience prejudice and discrimination. The Equality Act of 2010 recognises protected characteristics and gives consideration to socio-economic factors including pregnancy/maternity and marriage/civil partnership.
- 2.5 The Trusts are committed to equality of opportunity and inclusive practices in both the provision of services and our role as an employer. All people have the right to be treated with dignity and respect and the Trusts are committed to the elimination of unfair and unlawful discriminatory practices. This requirement is particularly relevant and important to colleagues who are pregnant or who have recently given birth.
- 2.6 This policy aims to provide an overview for the management of the leave and pay provisions associated with Maternity, Adoption and Shared Parental Leave. It should be read in conjunction with the relevant toolkit which gives more information and detail.
- 2.7 This policy may be updated from time to time in consultation with staff side colleagues. It will apply to any successor organisation and remain valid until its renewal.
- 2.8 Where Trust is referred to in the singular it applies to the plural and vice versa.

3.0 DEFINITIONS

- 3.1 **Occupational Maternity/Adoption/ Shared Parental Pay** is a weekly amount paid to qualifying colleagues by the Trusts in accordance with NHS terms and conditions.
- 3.2 **Statutory Maternity/Adoption/Parental Pay** is a weekly amount paid to qualifying colleagues by the employer at a rate laid down by the government.

- 3.3 **Continuous NHS service** is service within the NHS without a break of more than three months.
- 3.4 **Keep in Touch Days (KIT)** are days which, by mutual agreement, a colleague can attend work during their maternity or adoption leave without it affecting their entitlement. A maximum of 10 whole or part days can be taken.
- 3.5 **Shared Parental Leave (SPL)** is a right that enables eligible mothers, fathers, partners and adopters to choose how to share time off work after their child is born or placed for adoption.
- 3.6 **Shared Parental Leave In Touch Days (SPLIT)** are days which, by mutual agreement, a colleague can attend work during the Shared Parental leave without it affecting their entitlement. A maximum of 20 whole or part days can be taken.
- 3.7 **Surrogacy** is an agreement with a third party to have a baby for intended parents. Even if a formal agreement is drawn up, it is not enforceable in law. If one of the intended parents is related to the baby, a parental order can be applied for and if neither of the intended parents is related to the baby, an application for an adoption order is applied for. (See 5.2)

4.0 **RESPONSIBILITIES**

4.1 **Colleagues** are responsible for:

- notifying their manager as early as they are comfortable to disclose their pregnancy and no later than 15 weeks before the week in which the baby is due
- liaising with their manager over appointments and planned leave.
- providing the relevant documentation eg MATB1, Adoption Matching Certificate etc to their manager
- completing the relevant application form, giving the required notice
- alerting their manager to any issues or changes in their medical condition
- taking all reasonable steps to ensure their personal safety and well-being and complying with the requirements of the health and risk assessment specific to their role during pregnancy and breastfeeding
- notifying their manager of the date of birth of their baby
- discuss breast feeding requirements with their manager prior to their return to work
- notifying their manager regarding any medical recommendations in relation to health and wellbeing either during pregnancy or following the birth of the baby
- liaising with their manager regarding KIT/SPLIT days advising their manager of their return date or resignation, giving the required notice

4.2 **Managers** are responsible for:

- protecting pregnant and breastfeeding colleagues against any identified health and safety risk
- carrying out a risk assessment for pregnant and breastfeeding colleagues and ensuring that a record is made

- treating information given to them by a colleague sensitively and with appropriate confidentiality
- ensuring the colleague has access to the policy and relevant toolkits
- completing the leave request application form, forwarding it to payroll
- agreeing a plan to support colleagues to breastfeed whilst at work
- ensuring relevant documentation eg MATB1, Adoption Matching Certificate is sent to payroll

4.3 **HR Advisors** are responsible for:

- providing support and advice on the process to colleagues and management
- signposting to the relevant factsheet for the colleague

4.4 **Payroll** is responsible for:

- writing to colleagues to confirm relevant leave and pay options in line with continuous service
- ensuring that they are in receipt of necessary documentation
- ensuring that payments are processed in a timely manner
- ensuring membership of the pension scheme is protected

4.4 **Trade Union Representatives** are responsible for:

- supporting their member in any aspect of the application of this policy
- advising them as appropriate and attending any meeting as required

5.0 **PROCESS DESCRIPTION**

5.1 **Eligibility**

5.2 All colleagues are eligible to 52 weeks' maternity/adoption leave.

Colleagues are able to take the "unused" leave of their partner's maternity/adoption leave up to a maximum of 50 weeks' as shared parental leave.

In respect of adoption and shared parental leave, there are other eligibility criteria. Please refer to the relevant factsheet for more information. In order to be eligible for **occupational** maternity, adoption or shared parental pay, a colleague must have 12 months' continuous service or more at the beginning of the 11th week before the week in which the baby is expected to be born (expected week of confinement) or matched in cases of adoption. The colleague must also return to work for a minimum period of three months. See flow chart.

In order to be eligible for **statutory** maternity, adoption or shared parental pay, a colleague must have 26 weeks' continuous service at the start of the 15th week before the week in which the baby is expected to be born (expected week of confinement) or matched in cases of adoption.

NHS Terms and Conditions allow for colleagues eligible for SPL to be paid at the same occupational rate as maternity and adoption pay in line with continuous service.

Whilst there are no legal rights for surrogacy leave before the formal process of adoption or parental order has been carried out, the Trust will consider granting leave at the point the child is placed with the intended parents provided that there is evidence of a legal process underway to formally recognise the arrangement. If granted, leave and pay will be as per adoption leave subject to qualifying criteria. Only one period of leave can be taken in respect of the arrangement.

5.3 Application process

5.4 A colleague should complete the relevant application form if they wish to request either maternity, adoption or shared parental leave, giving the appropriate notice. These can be found in the associated toolkits on the intranet.

5.5 Please refer to the Maternity and Shared Parental Fact Sheets for information on other situations like, pregnancy related illness, when a baby remains in hospital, premature birth, still birth and ante natal care.

For information on special guardianship arrangements, please refer to the fact sheet on Adoption, Surrogacy and Special Guardianship.

For information on support during fertility treatment, please refer to the Special Leave Policy.

5.6 Right to Return to Work

5.7 Colleagues on maternity leave must take a minimum of two weeks' leave. All colleagues returning from maternity leave, adoption or shared parental leave on permanent contracts have the right to return to work to the same job which must be within 52 weeks after the start of the leave for maternity and adoption leave. For shared parental leave return to work must be within 52 weeks less the period of maternity, adoption or shared parental leave taken by the other partner.

If a colleague wishes to return before the conclusion of 52 weeks, they must give a minimum of eight weeks' notice.

If a colleague is on a fixed term contract and has the requisite 12 months' continuous service which expires after the 11th week before the expected week of birth, the colleague can have the contract extended in order to receive full occupational and statutory maternity leave and pay. As there is no right to return, there is no requirement to pay back any occupational pay.

If you are participating in a planned rotation of posts 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 in the rotation of this Trust or in another Trust. The contract will be extended to allow the agreed programme of training to be completed.

5.8 Flexible Working Request

Colleagues wishing to change their working pattern upon return to work, they should discuss the request with their manager as soon as possible in line with the Flexible Working Policy.

5.9 Annual Leave

- 5.10 Contractual annual leave and public holiday entitlement during paid and unpaid periods of maternity, adoption and shared parental leave will continue to accrue. Colleagues should be encouraged to take a proportion of their leave prior to commencing maternity leave, adoption, surrogacy or shared parental leave.

Any annual leave accrued during the leave year in which the colleague returns to their post will need to be taken as a consolidated period immediately following the end of the maternity, adoption or shared parental leave prior to their physical return. Should a colleague intend to reduce their hours, the leave must be taken in line with the contracted hours and working pattern in place prior to commencement of their maternity, adoption or shared parental leave.

5.11 Post Natal Care and Breastfeeding

- 5.12 Colleagues will be allowed time off to attend postnatal care with a registered medical practitioner, registered midwife or registered health visitor. Where possible appointments should be arranged outside working hours.

The Trust is committed to providing support and facilities to colleagues in order to assist their transition back to work. . These facilities may be particularly useful for colleagues whose babies are at a nursery nearby or where the colleague's home is close to the workplace. Colleagues should be able to use this room to:

- rest when they feel tired
- breastfeed or bottle-feed their babies
- express milk
- change their babies - suitable facilities including a supply of fresh hot and cold running water, soap and paper towels are provided.

The Trust will ensure (while also taking the needs of the service into account) that pregnant colleagues and new parents are allowed reasonable flexibility in their working hours and rest breaks to allow them to make use of facilities as appropriate. A colleague who wishes to request flexibility to, for example, go home to feed their baby (if they live close to the workplace), should speak to their manager in the first instance. While the Trust cannot guarantee that it will be able to agree to every request for flexibility, it will give favourable consideration to requests and endeavour, within reason, to accommodate colleagues' wishes.

The Trust is committed to providing all reasonable support to colleagues who are pregnant or new parents. Managers and colleagues should be sensitive to this issue and should also adopt a supportive attitude towards these colleagues.

6.0 TRAINING/COMPETENCE REQUIREMENTS

6.1 HR Advisors will provide guidance to colleagues on a case by case basis.

7.0 MONITORING

Element of policy for monitoring	Section	Monitoring method - Information source (eg audit)/ Measure / performance standard	Item Lead	Monitoring frequency / reporting frequency and route	Arrangements for responding to shortcomings and tracking delivery of planned actions
Eligibility for Occupational/statutory pay	5.2	ESR and Application Form. Check that application form has been correctly completed	Payroll	Annually through ESR	Reject and send back to applicant.
New occupational pay for Shared Parental Leave	5.2	Monitor numbers of take up for SPL to check effectiveness of pay rate change	HR Advisory	6 monthly through ESR	Inclusion in annual Equality Report
New opportunity for Surrogacy	5.2	Monitor numbers of take up for Surrogacy as new initiative with paid leave	HR Advisory	6 monthly through ESR	Inclusion in annual Equality Report

8.0 DOCUMENT CONTROL

Document Author	Elaine Edwards, HR Specialist		
Lead Owner	Director of People and OD		
This Version	1	Status	Final
Replaces	All previous Sompar and TST Maternity, Adoption and Shared Parental Leave policies		
Approval Date	15 January 2020 16 March 2020	Where	Policy Lockdown Group Somerset Operational Partnership
Ratification Date	14 February 2020	Where	Joint Policy Review Group
Date of issue	19 March 2020	Review due	19 March 2023
Applies to	All colleagues	Exclusions	None

9. REFERENCES

The Equality Act 2010

ACAS: www.acas.org.uk

A copy of the Agenda for Change Terms and Conditions Handbook can be found on the NHS Employers website: www.nhsemployers.org

Sood Enterprises Limited v Healey 2013 re statutory carry over.

Special Leave Policy