

Maternity, Adoption and Paternity Leave

About this policy

Purpose

This chapter describes the leave and pay policy and guidance for maternity, adoption and paternity.

Refer to the table of contents, below, for a full list of topics covered.

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Version control

The table below shows the history of the document and the changes that were made at each version:

Version	Date	Summary of changes
1.0	August 2008	First published version.
2.0	July 2010	Revised to reflect changes in legislation relating to children due on or after 3 April 2011.
3.0	July 2010	Correction to Additional maternity Leave section (3.1.2).
4.0	May 2011	Additional information added to the <i>Definitions</i> section to define 'Continuous Service' (section 0, on page 6).

Version	Date	Summary of changes
5.0	July 2011	Clarification of establishing entitlement (sections 2.2.1 and 7.13). The Intention to Take Maternity Leave Form has also been amended.
6.0	November 2012	Updates to Redundancy during maternity/adoption/paternity leave section (7.9). 'The Learning Trust' changed to 'Hackney Learning Trust' and logo changed.
7.0	January 2013	Minor amendments to the Maternity Form, Adoption Form and Paternity Form in the appendices.
8.0	September 2015	Removal of reference to Additional Paternity Leave, SMP/SAP/SPP figures, reference to Shared Parental Leave and removal of links to Trustnet.
9.0	June 2018	Inclusion of Premature Baby Leave. Clarification of entitlement to SMP/OMP for second pregnancies during maternity leave.
10.0	February 2019	8.3 working during maternity/adoption/paternity leave Clarification on the time off.

Distribution

This policy is available on the Hackney Learning Trust – Human resources for schools website.

1. Introduction

It is the School's policy to provide pregnant women and new parents with support by providing enhanced maternity, adoption and paternity leave and pay (subject to length of service).

The School will provide support and advice to employees regarding entitlements and procedures. In addition, Hackney Learning Trust will provide the school with regular updates on changes in relevant legislation.

This policy also ensures full compliance with the Employment Rights Act 1996, the Employment Relations Act 1999, the Employment Act 2002 and other associated regulations governing maternity, adoption and paternity leave and pay.

Employees have the right not to be subjected to detrimental treatment on the grounds of pregnancy, childbirth, maternity, paternity or adoption. Any employee who believes they have been treated unfairly can complain using the Grievance Procedures.

Maternity, paternity and adoption leave do not break continuity of service for contractual purposes.

Sections 3, 4 and 6 of this policy set out general entitlements for Maternity, Adoption and Paternity Leave, while Sections 5 and 7 explain common rights and conditions.

This policy reflects maternity and adoption leave and pay entitlements where the birth of the baby or the child's placement was expected on or after 5 April 2015.

2. Definitions

2.1 Employer

Where this document refers to 'the employer', the following should be taken into consideration.

- **LA maintained community and voluntary controlled schools** – the employer is the LA (i.e. Hackney Council). Each School decides its own arrangements for employee notification and ensure that these are communicated to all employees.
- **LA maintained foundation and voluntary aided schools** - the employer is the School Governing Body. Each Governing Body decides its own arrangements for employee notification and ensures that these are communicated to all employees.

2.2 Continuous service

An employee's entitlement to statutory and occupational maternity pay is dependent on both their length of continuous service from other local authorities and their length of service with the London Borough of Hackney. This is a complex area so it is advisable to seek HR support when calculating an employee's entitlement.

2.2.1 Statutory Maternity/Adoption Pay

Support staff and teaching staff

For staff working in community schools, previous continuous service with the current employer, i.e. the London Borough of Hackney, will count when calculating entitlement to Statutory Maternity/Adoption Pay for both support and teaching staff.

This is different if the employee works in a **voluntary aided school** as the governing body is legally the employer. The employee's continuous service for Statutory Maternity/Adoption Pay will start on the date the individual started at their current school even if they changed schools (to or from a voluntary aided school), within the same authority.

Service with other Local Authorities does not count for the purposes of calculating entitlement to Statutory Maternity/Adoption pay.

2.2.2 Occupational Maternity/Adoption Pay

Support staff

For support staff, continuous service for Occupational Maternity/Adoption Pay is defined as working for any organisation covered by the Local Government Redundancy Payments (Continuity of Employment in Local Government etc) (Modification) Order 1999 (S1 1999 No.2277) where there has not been a break in employment. Your HR provider will have more information on what may constitute a break in service and which employers are covered by the above modification order.

Teachers

For teachers, continuous service for Occupational Maternity/Adoption Pay is defined as including employment with one or more local authorities (but not with any other public sector organisation), where there has not been a break in employment. Therefore, previous service with a local authority school at a different authority will count for the purposes of Occupational Maternity/Adoption Pay (this includes teaching staff in VA schools). This is in line with the provisions of the Burgundy Book.

However, please note the following:

Teachers who work in **sixth form colleges** can count previous continuous employment with most public sector organisations for the purposes of calculating entitlement to maternity, adoption and paternity leave and pay.

City Technology Colleges and Academies can establish their own continuous service provisions, provided that they observe the basic statutory rights. Continuous employment may, if the CTC or Academy chooses, only be counted from the date of appointment at the CTC or Academy (i.e. a teacher's previous continuous service in the LA sector may not count towards the qualifying period for maternity, adoption and paternity leave and pay). However, any teacher who was employed at the predecessor school and transferred to the employment of the CTC or Academy when it assumed that status, retains their previous contractual rights.

With the above in mind, it is important that each school provides clear details of how continuous service is to be defined for the purposes of calculating entitlement to maternity, adoption and paternity leave and pay.

2.3 Other

An **employee** means anyone working under a contract of employment. See the policy on Contracts of Employment for further details.

The **expected week of childbirth** (EWC) means the week beginning with midnight between Saturday and Sunday, in which it is expected that the baby will be born.

Childbirth means:

- the birth of a living child; or
- the birth of a child whether living or dead after 24 weeks of pregnancy.

3. Maternity Leave

3.1 Statutory Maternity Leave entitlements

All employees, regardless of length of service, are entitled to 52 weeks maternity leave.

This is made up of two types of leave:

- “Ordinary Maternity Leave” (OML) (the first 26 weeks).
- “Additional Maternity Leave” (AML) (the next 26 weeks).

AML directly follows OML, and there must be no gap between the two.

Maternity leave cannot start until 11 weeks before the baby is due, or as soon as a living child is born, and the law requires that an employee must take a minimum of two weeks leave immediately following the birth.

The employee can choose any day of the week to begin her maternity leave. If the employee is absent from work due to a pregnancy-related illness from the fourth week before the expected week of childbirth, the maternity leave period automatically begins the day after her first day of absence.

During the OML and AML periods, an employee continues to be employed, and this period counts towards her period of continuous employment.

3.1.1 Ordinary Maternity Leave (OML)

The OML is the period of the first 26 weeks of Maternity Leave.

During this time, the contract of employment continues, unless the employer or the employee expressly ends it or it expires.

The employee has a statutory right to continue to benefit from the terms and conditions of employment which would have applied to her had she been at work, except her contractual wages or salary, (the employee may receive SMP and/or OMP instead of ordinary pay), including pensions.

However, if the employee works Keeping in Touch (KIT) days (see [8.3 Working during maternity/adoption/paternity leave](#), on page 24, for more information on KIT), the employee may, at the discretion of their Headteacher/line manager, receive contractual pay for that day.

When returning to work from OML, the employee has the right to return to the same job on the same terms and conditions as before her leave began. Please see [8.5 Return to the 'same job'](#), on page 25 for more information.

An employee is also entitled to benefit from any general improvements to the rate of pay, or other terms and conditions as if she had not been on leave.

3.1.2 Additional Maternity Leave (AML)

The AML is the period of the last 26 weeks of Maternity Leave, and must immediately follow OML (there must not be a gap between the two).

The same terms and conditions apply to AML as OML (except in relation to pension payments for unpaid leave).

3.2 Notification of intention to take maternity leave

Employees are entitled to maternity rights, providing they have given their line manager/Headteacher written notice of the following:

- That she is pregnant.
- The week her baby is expected to be born.
- When she wants her maternity leave to start.

Notice of this has to be given as early as possible, but no later than by the end of the 15th week before the expected week of childbirth (unless it is not reasonably practicable to do so because, for example, the baby is born before the 15th week).

The employee should also supply her line manager/Headteacher with:

- A MAT B1 form (this is a certificate provided by a registered medical practitioner or certified midwife stating the EWC).
- Intention to take Maternity Leave form, which can be found on the Intranet. See [Appendix 1 – Intention to Take Maternity Leave](#), on page 30.

Within 28 days of receiving that notice, the employer must inform the employee and the Payroll provider in writing of her leave and pay entitlements.

The employee can change the date she starts her maternity as long as she gives 28 days' notice to her employer. The employee can give notice for her statutory maternity pay at the same time.

If the employee returns at the end of her full 52 weeks of maternity leave and has not told her employer that she wishes to come back at any other time, she does not need to provide any further notice. The employee can change the dates of her return to work as long as she gives eight weeks' notice to her employer.

If childbirth occurs before the notified start date then the maternity leave will begin automatically the day after the birth.

If the employee decides not to return to work after maternity leave, she will have to terminate the employment, giving the contractual notice period (see [8.8 Decision not to return to work](#), on page 26).

3.3 Compulsory maternity leave

Immediately following the date of childbirth, there is a statutory compulsory period of two weeks maternity leave during which employees are prohibited from working, or being permitted by the employer to work.

3.4 Commencement of maternity leave

Maternity leave can start up to 11 weeks before the expected date of childbirth. If the baby is born early, or the employee has to take time off due to pregnancy-related sickness during the last 4 weeks before the baby is due, maternity leave will be automatically triggered (see [3.5 Automatic commencement of maternity leave](#), on page 10). The employee should notify her line manager/Headteacher as soon as is reasonably practicable, as to the date she wishes to commence maternity leave.

Salary ceases and maternity pay begins (if applicable) from the day following the first day of the absence, irrespective of whether it is a school holiday. Once the maternity leave period has commenced, any school holiday periods will be included in the period of maternity leave.

3.5 Automatic commencement of maternity leave

Where the employee is absent from work due to a pregnancy-related illness or due to a health and safety related suspension at any time from the fourth week before the expected week of childbirth, maternity leave and pay (if applicable) will be triggered automatically from the day following the first day of the absence. In this event the employee should notify her line manager/Headteacher that her absence from work is wholly or partly because of a pregnancy-related illness as soon as is reasonably practicable under the circumstances.

Any absence due to illness prior to the fourth week before the EWC will be regarded as sickness and reckoned against the employee's sick leave entitlement.

If childbirth occurs before the date the employee has notified, the maternity leave starts automatically on the day after the date of the birth. In this circumstance the employee should give her line manager/Headteacher notice in writing of the date of the birth, and provide evidence of this date as soon as reasonably possible.

3.6 Premature births

In the case of a premature birth, maternity leave and pay (if applicable) will start automatically from the date following the first day of the absence. Special paid leave arrangements will be granted to cover the period up to the 11th week before the expected week of childbirth. The normal maternity leave scheme will apply thereafter.

If the premature birth occurs before the employee has notified her line manager/Headteacher that she is pregnant, she should inform her line manager/Headteacher of the birth and produce a MAT B2 form (supplied by a registered medical practitioner or certified midwife stating the actual date of childbirth) as soon as is reasonably practicable.

3.7 Antenatal care

All pregnant women are entitled to paid time off to attend antenatal care arranged on the advice of a registered medical practitioner, midwife or health visitor. This is subject to the production of an appointment card or other appropriate documentation confirming that an appointment has been made.

Employees should give their line manager/Headteacher as much notice as possible of appointments, and wherever possible, be arranged near the start or end of a day. Time off must take account of any necessary travelling arrangements, and should be paid at the normal hourly rate.

Antenatal care can also include for example relaxation or parent craft classes, as long as the employee can show evidence that attendance is on the recommendation of a registered medical practitioner, midwife or health visitor.

If attendance is not part of a recommended antenatal program, there is no obligation on the employer to provide paid leave. It would however be reasonable for the line manager/Headteacher to agree annual/flexible leave in these circumstances, subject to operational requirements.

An expectant father or the partner (including same sex) of a pregnant woman is entitled to take unpaid time off work to accompany the woman to up to 2 of her antenatal appointments.

3.8 Health and safety

Employees are prohibited from working during the two week period following the date of childbirth.

Employees who are pregnant, have given birth or miscarried within the previous six months or who are breastfeeding, must be provided with safe alternative work if the usual work presents unacceptable risks to their health and safety.

3.8.1 Risk assessment

Upon notification of a woman's pregnancy, the line manager/Headteacher should make arrangements for a risk assessment to be conducted. It is recommended that the risk assessment be conducted within 10 days of notification.

The Health and Safety Manager at Hackney Learning Trust will be able to advise on the risk assessment and the question of whether any particular duties or working conditions are likely to pose a health or safety risk to the pregnant employee.

Where an unacceptable risk has been identified, protective or preventative measures must be taken to eliminate it. Should this not be possible, the employee should be offered suitable alternative work, where this is available. If there is no suitable alternative work available, the line manager/Headteacher may suspend the employee on full pay for as long as the risk exists or until maternity leave starts, whichever happens first.

If an offer of suitable alternative employment has been made and unreasonably refused, the employee may be suspended on no pay.

An employee's health and ability during pregnancy and their work requirements can change and it is therefore important to regularly monitor the risks associated with her work and adjust this accordingly.

3.8.2 Infectious diseases

In the event of a risk of infectious disease in the school, it may be necessary to give a pregnant employee leave on full pay until the risk has been removed or until the maternity leave starts, whichever happens first.

In addition, where a medical practitioner advises a pregnant employee not to attend school for precautionary reasons due to infectious disease in the school, the employee is entitled to full pay during this period which is not reckoned against her other sick leave entitlement.

4. Adoption Leave

Adoption Leave and Pay (if applicable) may allow an individual or one member of an adoptive couple to take paid time off work. Where a couple are adopting jointly, they can choose which of them will take adoption leave, and the other may take paternity leave (see [Paternity Leave](#), on page 20).

If a child is adopted from overseas, different eligibility criteria, notice and evidential requirements apply. In this case, please refer to Hackney Learning Trust for further information.

Please note that adoption leave and pay are only available in circumstances where a child is newly matched for adoption (for example, adoption leave and pay are not available when a step-parent is adopting a partner's child).

4.1 Statutory Adoption Leave entitlement

Eligible employees can take up to 52 weeks of adoption leave, made up of 26 weeks Ordinary Adoption Leave (OAL), and Additional Adoption Leave (AAL). Please refer to the two sections below for further information on OAL and AAL.

To qualify for Adoption Leave, the employee must have been newly matched with a child for adoption by an approved UK adoption agency.

4.1.1 Ordinary Adoption Leave (OAL)

The OAL is the period of the first 26 weeks of Adoption Leave.

During this time, the contract of employment continues, unless the employer or the employee expressly ends it or it expires.

The employee has a statutory right to continue to benefit from the terms and conditions of employment which would have applied to them had they been at work, except wages or salary, including pensions (unless agreed otherwise).

However, if the employee works a KIT day (see [8.3 Working during maternity/adoption/paternity leave](#), on page 24 for more information on KIT), the employee should receive contractual pay for these days.

When returning to work from OAL, the employee has a right to return to the same job on the same terms and conditions as before their leave began.

Please see [8.5 Return to the 'same job'](#), on page 25 for more information. An employee is also entitled to benefit from any general improvements to the rate of pay, or other terms and conditions as if they had not been on leave.

4.1.2 Additional Adoption Leave (AAL)

The AAL is the period of the last 26 weeks of Adoption Leave, and must immediately follow OAL (there must be not be a gap between the two).

The same terms and conditions apply to AML as OML (except in relation to pension payments for unpaid leave).

4.2 Commencement of adoption leave

Employees can choose to start their leave:

- From the date of the child's placement.
- From a fixed date which can be up to 14 days before the expected date of placement.

Salary ceases and adoption pay (if applicable) begins on the day on which absence begins, irrespective of whether it is a school holiday. Once the adoption leave period has commenced, any school holiday periods will be included in the period of adoption leave.

If the date of placement changes, the employee should give the appropriate notice to change the start date of the adoption leave, if this is reasonably practicable.

4.3 Unforeseen ending of placement

If the placement ends during the period of adoption leave, adoption leave can continue for up to a further 8 weeks, unless the employee's entitlement to leave and/or pay would have ended earlier in the normal course of events.

Circumstances in which the placement may end are if the employee has commenced adoption leave and is subsequently notified by the adoption agency that the placement will not be made, the child is returned to the adoption agency, or if the child dies.

In the case of unforeseen ending of placement, the employee should give immediate notice of their return to work, to comply with the notice periods.

4.4 Notification of intention to take adoption leave

Employees are entitled to adoption leave, providing they have given their line manager/Headteacher written notice of the following:

- That they have been matched with a child for adoption.
- The date on which the child is expected to be placed with them.
- When they want their adoption leave and pay (if applicable) to start.

Notice of this should be given as early as possible, but no more than seven days after the day the employee has been notified of having been matched with a child, unless this is not reasonably practicable.

Headteachers/line managers are entitled to ask the employee for the following documentary evidence to show that the employee is eligible for adoption leave:

- The name and address of the adoption agency.
- The date the employee was notified of having been matched with the child.
- The date on which the child is expected to be placed for adoption, or, if it has already happened, the actual date of placement.

This may be provided in the form of a matching certificate, which includes basic information on matching and expected placement dates.

Employees will need to give their Headteachers/line managers at least 28 days' notice of the date they want their Statutory Adoption Pay (SAP) to start, unless this is not reasonably practicable.

Within 28 days of receiving the notice, the employer must inform the employee and the Payroll provider in writing of the employee's adoption leave and pay entitlements (if applicable). It is the school's responsibility to inform the employee.

Headteachers/line managers should also refer the employee to the Maternity, Adoption, and Paternity Policy, available from the Human Resources department at Hackney Learning Trust.

Any subsequent change to the intended start date by the employee should also be notified in writing at least 28 days before the proposed new start date or the original start date, whichever is sooner.

If the employee decides not to return to work after adoption leave, they will have to terminate the employment, giving the contractual notice period (see [8.8 Decision not to return to work](#), on page 26).

5. Premature Baby Leave

With effect from 1 April 2018, parents of babies born before 37 weeks will be entitled to receive 1 extra day of Premature Baby Leave on full pay for every day their premature baby spends in hospital before 37 weeks. This leave entitlement will be added to the end of the employee's Maternity/Adoption Leave period. The employee's normal entitlement to Maternity/Adoption Leave will continue to apply and will not be affected by this scheme.

For **Adoption and 'Fostering to Adopt'** eligibility will depend on the circumstances. However, normally where a premature baby is placed with the adopting parents before 37 weeks, premature baby leave will apply.

For **Surrogacy** these provisions will normally apply from the birth of the premature baby i.e. the date the new parents receive the baby.

6. Common Rights for Pregnant Employees and Adoptive Parents

6.1 Entitlement to maternity and adoption pay

Maternity and adoption pay entitlements depend on length of service, but apply to all employees regardless of hours worked per week or whether the contract is permanent, temporary, casual or fixed term.

There are currently two different maternity/adoption pay schemes which may apply to employees – a statutory scheme and a contractual scheme (known as Occupational Maternity Pay (OMP)). These schemes have different qualifying conditions, which are set out below.

6.2 Statutory maternity and adoption pay scheme

6.2.1 Eligibility to statutory maternity/adoption pay

An employee is entitled to Statutory Maternity Pay (SMP) or Statutory Adoption Pay (SAP), if they satisfy the following qualifying conditions:

- Have 26 weeks continuous service with the London Borough of Hackney by the end of the 15th week before the EWC i.e. 41 weeks at the EWC (in the case of SMP) or by the end of the matching week (in the case of SAP). Please see [Section 2.2 Continuous service](#), on page 6 for details on calculating continuous service.
- Have average weekly earnings at or above the lower earnings limit for NI contributions.
- Still be pregnant, or the birth having occurred by the 11th week before the expected week of childbirth (for SMP).
- Have stopped working wholly or partly because of pregnancy or childbirth (for SMP) or adoption (for SAP).
- Have complied with all the relevant notification requirements for claiming SMP or SAP.

6.2.2 SMP/SAP

The employee should claim SMP/SAP at the same time that they give notice of their intention to take maternity/adoption leave (see [3.2 Notification of intention to take maternity leave](#), on page 9 and [4.4 Notification of intention to take adoption leave](#), on page 14).

To claim SMP/SAP, an employee needs to provide their Headteacher/line manager with a maternity certificate (form MATB1) (in the case of maternity), or a matching certificate (in the case of adoption).

The employer can then claim back 92% of the SMP/SAP from Her Majesty's Revenue and Customs.

SMP/SAP is paid for 39 weeks at two different rates:

- The higher rate is paid for the first six weeks of the maternity/adoption leave, and is equal to 90% of 'average weekly earnings'.
- The lower rate is a set weekly amount or 90% of your average weekly earnings, whichever is lower. It is paid for the remaining 33 weeks.

The 'average weekly earnings' is the employee's average earnings between the 23rd and 15th week prior to the EWC.

The set weekly amount is reviewed each April.

SMP/SAP/MA is only payable when the employee is away from work. If the employee works at any time during their maternity/adoption leave they will not be entitled to SMP/SAP/MA for that week. The only exception is if the employee works on one of the 10 KIT days an employee on maternity/adoption leave is entitled to (see [8.3 Working during maternity/adoption/paternity leave](#), on page 24).

It is the employee's responsibility to notify their Headteacher/line manager if they commence work for a different employer during the maternity period, or if they are taken into legal custody at any time during this period.

6.2.3 Maternity allowance

Employees who do not qualify for SMP may be entitled to a Maternity Allowance (MA), paid by the Department for Work and Pensions.

MA is paid for a maximum of 39 weeks at a standard weekly rate (the current set rate can be obtained from the Payroll provider) or 90% of the average weekly earnings, whichever is lower.

The employee should contact their local Jobcentre Plus or Social Security Office for an MA claim form. The Payroll provider completes form SMP1, which the employee should send in with the MA claim form.

Employees who do not qualify for SAP should contact their adoption agency as they may be able to receive financial support in relation to their adoption placement.

6.3 Occupational maternity and adoption pay scheme

6.3.1 Eligibility to occupational maternity/adoption pay

To qualify for the Occupational Maternity Pay (OMP)/Occupational Adoption Pay (OAP), an employee has to fulfil the same requirements as for SMP/SAP, but must also have completed a minimum of one year's continuous service with one or more local authorities by the beginning of the 11th week before the EWC i.e. 63 weeks of continuous service before the EWC (in the case of maternity) or by the beginning of the matching week (in the case of adoption). Please see [Section 2.2 Continuous service](#), on page 6 for more information on continuous service – this is calculated differently for Statutory and Occupational Maternity/Adoption Pay Scheme.

6.3.2 OMP/OAP

OMP/OAP is paid for a maximum of 26 weeks, with the payment broken up as follows:

Weeks	Breakdown
12 weeks	Full average weekly pay (offset against any statutory payments (SMP/SAP) made during this time).
2 weeks	90% average weekly pay + SMP/SAP*
12 weeks	50% average weekly pay + SMP/SAP*
13 weeks	SMP only
13 weeks	Unpaid

* Payments in these weeks will not exceed full average weekly pay.

The 'average weekly earnings' is the employee's average earnings between the 23rd and 15th week prior to the EWC.

If the employee decides not to return to work, or does not return for a minimum of 13 weeks after maternity/adoption leave, the last four weeks of half pay will not be paid, or, if the payments have already been made, the employee will have to reimburse the money.

The period of 13 weeks commences from the date of return, and school holidays and half terms will be included together with any subsequent periods of sick leave.

If a full time employee returns to work on a part time basis they will have to return to work for longer than 13 weeks to keep all of their OMP or OAP. This will be calculated on a pro rata basis dependent upon the employee's new part time working hours. For example, if the employee returns to work on a job share basis (half time/0.5 full time equivalent) they will be required to return to work for a minimum of 26 weeks.

6.4 Varying the timing of payments (front/back loading)

Employees also have the option of receiving the whole Maternity/Adoption Payments (including statutory and occupational pay) as full pay at the beginning or end of their Maternity Leave. This is also known as 'front loading' or 'back loading'.

If an employee chooses to front load their maternity/adoption payments, but returns to work earlier than originally planned, the overpayment will have to be reimbursed.

If an employee opts for either front or back loading, they should inform their Headteacher/line manager, who should notify the Payroll provider.

6.5 Pay awards during maternity/adoption leave

An employee is also entitled to benefit from any general improvements to the rate of pay whilst she is on maternity/adoption leave, when she returns to work from this leave.

6.6 Pensions

6.6.1 Paid maternity leave

If the employee is a member of the local government or teachers' pension scheme, pension contributions will continue to be paid by the employer during any periods of paid maternity/adoption leave.

The pension contributions will be based on the amount of pay the employee receives during maternity/adoption leave (i.e. SMP/OMP amounts).

6.6.2 Unpaid maternity leave

Pension contributions will not be paid by the employer during any periods of unpaid maternity/adoption leave.

(a) Local Government Scheme

If, and when, a member of the local government or teachers' pension scheme returns to work, they will have the option to make up their pension contributions for the unpaid period of maternity/adoption leave. This option must be exercised within 30 days from the date of returning to work, or within 30 days of leaving if they do not return to work.

If the employee makes up their pension contributions, they will have continuous service for pension purposes throughout the entire maternity/adoption leave period.

If the employee decides not to make up their pension contributions, their period of unpaid maternity/adoption leave will not count towards the length of service for pension purposes. This means that the unpaid period of maternity leave will be carved out of their continuous service for pension purposes so that the first period of service (which ends when the employee stops receiving paid leave) will be added to the second period service (which commences when the employee starts receiving pay again).

If the employee is already paying monthly instalments to purchase additional pension, contributions owed for additional pension only can be paid as a one off lump sum payment on the employee's return to work.

(b) Teachers' Pension Scheme

If a member of the Teacher's Pension Scheme begins a period of unpaid maternity leave, this period will not count towards their length of service for pension purposes (as the employee ceases to be a member of the service for that period). If the break in service is for more than five years, the member would be treated as a new entrant upon returning.

Members of the Teacher's Pension Scheme do not have the option of paying contributions during unpaid periods of maternity/adoption leave. They can however purchase additional pension in multiples of £250 per annum up to a maximum of £5,000 per annum.

6.7 Shared Parental Leave

Shared Parental Leave enables eligible parents to choose how to share the care of their child during the first year of birth or adoption. Please see the Shared Parental Leave Policy for more detailed information.

7. Paternity Leave

The employee may take leave under the paternity leave provisions.

Paternity leave entitlements apply to all employees regardless of hours worked per week or whether the contract is permanent, casual, temporary or fixed term.

The employee must make their request for paternity leave on the Intention to take Paternity Leave form (see [Appendix 3 – Intention to Take Paternity Leave](#), on page 32), and submit this to their line manager/Headteacher.

7.1 Right to paternity leave and pay

Paternity leave and pay are part of a package of rights and benefits designed to give support to working fathers, mothers and their partners. It allows an employee to take paid leave to care for their baby, support the mother following birth, or their partner after having been matched with a child for adoption.

To qualify for paternity leave, employees need to satisfy the following conditions:

- Have or expect to have responsibility for the child's upbringing.
- Be the biological father of the child or the spouse, partner or civil partner of the child's mother or adopter, male or female.
- Have continuous service for at least 26 weeks with the London Borough of Hackney by the end of the 15th week before the baby is due, or by the end of the week the adopter is notified of having been matched with the child. Please see [Section 2.2 Continuous service](#), on page 6 for details on calculating continuous service
- Take time off work to support the mother or care for the baby/adoptive child.

If requested, employees should be able to provide a self-certificate as evidence that they meet these eligibility conditions. This can be provided by completing the Intention to take Paternity Leave form (see [Appendix 3 – Intention to Take Paternity Leave](#), on page 32).

7.2 Ordinary Paternity Leave (OPL) entitlement

Eligible employees can choose to take either one week or two consecutive weeks' OPL (no odd days or two separate weeks).

Employees are also entitled to one day's special leave to attend the childbirth, or the day of the placement of the adoptive child. OPL cannot start before the birth of the baby/day of the placement.

Employees can choose to start their leave:

- From the date of the childbirth/placement (whether this is earlier or later than expected).
- From a chosen number of days or weeks after the date of the childbirth/placement.
- From a chosen date later than the first day of the week in which the child is expected to be born/placed with the adopter.

Leave can start on any day of the week on or following the child's birth/placement, but must be completed:

- Within 56 days of the child's actual date of birth/placement.
- If the child is born/placed early, within the actual date of birth/placement and 56 days from the first day of the expected week of birth/date of placement.

Only one period of leave can be taken, even if more than one child is born as the result of the same pregnancy.

If a bank holiday falls within the OPL period, the employee may be given one day's special leave at the end of the OPL, subject to the Headteacher's/Line manager's discretion.

7.3 Paternity pay

Paternity pay is split into two parts – statutory and contractual. These are laid out below.

7.3.1 Statutory Paternity Pay (SPP) for Ordinary Paternity Leave

To qualify for Statutory Paternity Pay (SPP), the employee must be entitled to Ordinary Paternity Leave, and the average weekly earnings cannot be less than the lower earnings limit for National Insurance contributions.

Employees who qualify for SPP will be entitled to ten days paid leave. SPP is paid at a standard weekly rate or 90% of the average weekly earnings, whichever is less.

The employee can claim SPP at the same time that they give notice to take paternity leave by completing the Intention to take Paternity Leave form (see [Appendix 3 – Intention to Take Paternity Leave](#), on page 32) or form SC3/SC4 available from HM Revenue and Customs.

If they have not already done this they must give at least 28 days' notice before they wish payment to begin.

7.3.2 Occupational Paternity Pay (OPP) for Ordinary Paternity Leave

To qualify for Occupational Paternity Pay (OPP), an employee must be entitled to Ordinary Paternity Leave.

OPP means that the employee will receive their regular wage during the whole Ordinary Paternity Leave Period, as if they were not on leave.

The OPP will then be offset against any Statutory Paternity Payments made. The employer can reclaim 92% of the SPP from Her Majesty's Revenue and Customs.

7.4 Procedure for requesting paternity leave and pay

In the case of a pregnancy

The employee must inform their manager in writing of their intention to take OPL by the end of the 15th week before the expected week of childbirth (unless this is not reasonably practicable).

This must include:

- The expected week of childbirth,
- Whether they wish to take one or two weeks leave.
- When they want the leave to start.

The employee can use the Intention to take Paternity Leave form (see [Appendix 3 – Intention to Take Paternity Leave](#), on page 32) or the Inland Revenue form SC3 to give notice of leave and to apply for statutory paternity pay (available from HM Revenue and Customs).

Any subsequent change to the intended start date by the employee should be notified in writing at least 28 days before the proposed new start date or the original start date, whichever is sooner.

In the case of adoption

The employee must give notice within seven days of the date the adopter is notified of having been matched with a child. This notice must include:

- The date on which the adopter was notified of having been matched with the child.
- The date on which the child is expected to be placed for adoption.
- Whether they wish to take one or two weeks leave.
- When they want the leave to start.

The employee can use the Intention to take Paternity Leave form (see [Appendix 3 – Intention to Take Paternity Leave](#), on page 32) or the Inland Revenue form SC4 to give notice of leave and to apply for statutory paternity pay (available from HM Revenue and Customs).

Any subsequent change to the intended start date by the employee should be notified in writing at least 28 days before the proposed new start date or the original start date, whichever is sooner.

Within 28 days of receiving the notice, the employer should inform the employee and the Payroll provider in writing of their paternity leave and pay entitlements. It is the school's responsibility to inform the employee.

7.5 Rights during and after paternity leave

An employee who takes paternity leave is entitled to:

- Return to the same job.
- Return to the same terms and conditions of employment.
- Not be subjected to any disadvantage, unfair treatment or dismissal.

8. Common Rights for Maternity, Adoption and Paternity Leave

8.1 Entitlement to annual leave

8.1.1 Teachers and term-time staff

An employee will accrue annual leave throughout the whole period of their maternity, adoption or paternity leave (be it OML/AML, OAL/AAL or OPL).

The annual leave can be offset against any period of school closure that has taken place in the leave year in question, that is, both before and after the maternity leave period.

If there are insufficient school closures to accommodate the employee's leave in that leave year, the employee will be allowed to take any outstanding leave during the term time of that leave year.

If the return from maternity/adoption/paternity leave is so close to the end of the leave year that there is not enough school closures and term time for the employee to take all her annual leave entitlement, an employee will be allowed to carry over any balance of her leave to the following leave year. A teacher will then be required to take this leave during the remaining periods of school closure after the annual leave for that leave year has been accommodated.

If the employee does not return to work following maternity/adoption/paternity leave, payment for any outstanding annual leave will be made.

A leave year commences on 1 April.

8.1.2 Other

An employee will accrue annual leave throughout the whole period of their maternity, adoption or paternity leave (be it OML/AML, OAL/AAL or OPL).

Where possible, it is advised that employees take any outstanding annual leave before they go on maternity/adoption/paternity leave.

Employees on maternity/adoption/paternity leave may carry forward the full leave entitlement they have accrued into the next leave year.

However, it is recommended that the annual leave that has been accrued during the maternity/adoption/paternity leave period should be taken in one block at the end of the maternity/adoption/paternity leave, before the employee returns to work.

If the employee does not return to work following maternity/adoption/paternity leave, payment for any outstanding annual leave will be made.

8.2 Communication during maternity/adoption/paternity leave

Headteachers/line managers should ensure that they keep in contact with staff on maternity/adoption/paternity leave. Where possible, staff should be sent copies of all staff newsletters and any relevant information relating to the school.

Headteachers/line managers should ensure staff on maternity/adoption/paternity leave are briefed on any service developments and changes and kept up to date with issues raised at staff meetings.

Headteachers/line managers must keep the employee on maternity/adoption/paternity leave informed of promotion opportunities and information relating to the job the employee would normally be made aware of when working.

Please note, however, employees on maternity/adoption/paternity leave should not be contacted regarding work queries (unless this cannot reasonably be avoided).

8.3 Working during maternity/adoption/paternity leave

In order to facilitate occasional training and to allow employees to keep in touch during maternity/adoption/paternity leave, employees may, by agreement with their employer, work for up to 10 Keeping in Touch (KIT) days. KIT days/hours may only be arranged by mutual agreement between the Headteacher/line manager and the employee. For example: If you work only 2 hours on a KIT day you will be paid accordingly.

Employees who work KIT days, will not lose their rights to continued maternity/adoption leave.

Employees are entitled to be paid for the work they do during the KIT days, and the rate of pay is a matter for agreement with the employer (SMP/SAP v contractual pay). It is recommended that the employee is paid their normal contractual pay, which may be offset against any statutory payments made during this time. Payment for KIT days cannot be lower than the national minimum wage.

8.4 Return to work after maternity/adoption/paternity leave

If the employee returns to work on the date notified on the form submitted prior to them taking maternity/adoption/paternity leave, no further notice needs to be provided.

However, it is recommended that the employer sends the employee a reminder letter a few weeks before the return to work date.

If an employee decides to return earlier than originally stated, they need to give eight weeks' notice in writing prior to the earlier return date.

If the employee does not give the required eight weeks' notice, and cannot give a reasonable explanation for this, the employer is entitled to delay the return to work until eight weeks' notice has been given, or until the end of the additional maternity/adoption leave.

If the decision is made to delay the return (if the full 52 weeks have not yet been taken), eight weeks' notice need to be given in writing prior to the originally stated end date.

8.5 Return to the 'same job'

Any employee returning to work from maternity/adoption/paternity leave (be this Ordinary or additional), is entitled to return to the same job on the same terms and conditions as held before the leave began, as if he/she had not been absent.

Case law states that to determine the 'same job', it is necessary to consider three factors – nature, capacity and place.

If there is any change to the 'old' job, the employee should be consulted before the return to work.

The Human Resources department at Hackney Learning Trust should be contacted well in advance of the employee's return to work, should there be any changes to the employee's job on return from maternity/adoption/paternity leave.

8.6 Sickness at the time of the expected return

If the employee is ill at the time they are due to return to work, this is still classed as a return to work and the period of sickness should be notified and certified in the same way as for any other period of sickness. The employee will receive his/her entitlement to sick pay for the time he/she is off sick.

8.7 Request to work in a flexible pattern

Employees returning from maternity/adoption/paternity leave are entitled to make a request for flexible working arrangements and to have this duly considered. Flexible working could include changing from full-time to part-time work or an employee request to reduce the level of responsibility (where the employee had previously been receiving a TLR or any payment on the leadership spine).

An employee must have a minimum of 26 weeks continuous service to be eligible to request flexible working arrangements. Headteachers/line managers are required to give such a request serious consideration, in line with the procedure set out in the Flexible Working Policy. A request to work flexibly must be considered in line with the business requirements of the employer.

If it is agreed to reduce the working hours at the end of the maternity/adoption leave, the employee will have to return to work for longer than 13 weeks to keep the last four weeks of half pay under their OMP/OAP entitlement. The exact length of service will be calculated on a pro rata basis dependent upon the employees new working hours (see [6.3 Occupational maternity and adoption pay scheme](#), on page 17).

8.8 Decision not to return to work

If the employee decides prior to commencing or during maternity/adoption/paternity leave not to return to work, they must inform the Headteacher/line manager in writing that they wish to terminate the employment, giving the contractual notice period.

Where an employee is on maternity or adoption leave, the contract will end upon expiry of the notice period, however, the employee will still receive any SMP/SAP and OMP/OAP if applicable (apart from the last four weeks of half pay) to which they are entitled (as set out in sections [6.2 Statutory maternity and adoption pay scheme](#), on page 16 and [6.3 Occupational maternity and adoption pay scheme](#), on page 17).

If the employee should subsequently change their mind, there is no requirement for the employer to give the job back.

If the employee is unsure of whether they will return from maternity/adoption/paternity leave, it is advisable that they do not terminate their contract of employment before going on leave, as they will lose their entitlement to have their job back.

8.9 Redundancy during maternity/adoption/paternity leave

It is important to consult the Human Resources department at Hackney Learning Trust on any reorganisation or redundancy situation which arises during the employee's maternity/adoption/paternity leave. Also refer to guidance in the Organisational Change Policy.

If any reorganisation is likely, the Headteacher/line manager must inform the employee on maternity/adoption/paternity leave and involve them in the process. Failure to consult a woman on maternity/adoption leave about possible redundancy is likely to be unlawful discrimination.

If the employee is at risk of dismissal on the grounds of redundancy during their maternity/adoption/paternity leave, they are entitled to be offered a suitable alternative vacancy, provided one is available.

Women on maternity or adoption leave who are under notice of redundancy should be prioritised when offering suitable alternative employment. They do not need to apply for vacancies.

Any alternative work offered must be suitable for the employee and appropriate in their new circumstances, and on terms not substantially less favourable than their old employment.

If this is not possible, Hackney Learning Trust will assist the school to search for a suitable vacancy during the remainder of the maternity leave period and, if no suitable vacancy has been found by the time that the employee exercises a right to return to work, for a further appropriate period in accordance with the redundancy and redeployment procedures.

If the employee is made redundant, they are entitled to receive a written statement of the reasons for their dismissal from her employer. The employee should also receive her normal notice entitlement, or payment in lieu of notice, and may be entitled to a redundancy payment.

It is unlawful to select an employee for redundancy or terminate the contract solely on the grounds of pregnancy/adoption, and without first complying with the above requirements.

8.10 Temporary/fixed-term employees

Non-renewal of fixed term contracts due to pregnancy is likely to be seen as discrimination. Therefore please seek advice from Human Resources at Hackney Learning Trust before taking any action in these circumstances.

If an employee's fixed term contract expires during the maternity/adoption/paternity leave period, no matter what the length of service, they do not normally have the right to return to work. However, if there is a requirement to extend the contract for the same work, the contract should be offered to this employee in the first instance.

If the temporary arrangements are due to end either before or during the period of maternity/adoption/paternity leave, and the need to carry out the work remains, the correct practice is to renew their contract and employ another person on a temporary basis to cover the post during maternity/adoption/paternity leave.

The contract should only end if the requirement to carry out the work duties comes to an end or if the temporary arrangement was to cover an absence from the workplace and the permanent post holder returns.

If the contract is terminated, the employee will continue to receive any SMP/SAP, OMP/OAP, to which they are entitled (apart from the last four weeks of half pay under OMP/OAP).

If a decision is taken to permanently recruit to the post that the employee temporarily held whilst on maternity/adoption/paternity leave, they should be provided with an equal chance to apply. However, it is preferable that the recruitment process does not take place during the maternity/adoption/paternity leave period and in any case, no sooner than four weeks following the birth/placement.

8.11 Conditions of maternity, adoption and paternity leave

Only one entitlement of leave and/or pay may be agreed for each birth or adoption. Therefore, where there is a multiple birth or adoption of two or more children, the employee may only receive one entitlement.

8.12 Stillbirth/miscarriage

In the event of the employee's baby dying or being stillborn after the 24th week of pregnancy, the provisions of the maternity and paternity schemes will still apply.

If miscarriage should occur before the 24th week of pregnancy, managers should give sympathetic consideration to any request for special leave, or sickness absence as appropriate.

8.13 Parental leave

Parental leave is a right for parents to take time off work to look after a child or make arrangements for the child's welfare. Parents can use it to spend more time with children and strike a better balance between their work and family commitments.

To be entitled to parental leave, employees need to have, or expect to have, parental responsibility for a child and have a minimum of one year's continuous service. Parental leave is unpaid, and can be taken up to 18 weeks for each child. For more information please refer to the Leave Entitlements Policy.

8.14 Time off for dependants

Employees are entitled to take reasonable time off in order to deal with certain unexpected or sudden emergencies involving a dependant, and to make any necessary longer-term arrangements. For more information please refer to the Flexible Working Policy.

8.15 Second pregnancy during maternity leave

8.15.1 Maternity leave

If an employee becomes pregnant whilst on Maternity Leave, they will be entitled to a second period of Maternity Leave (OML/AML) in accordance with this policy.

The Employee will need to notify their Headteacher/line manager in accordance with [3.2 Notification of intention to take maternity leave](#), on page 9.

8.15.2 Maternity pay

The employee will be entitled to a second period of OMP which will start on the date the employee has indicated that they wish to commence their second period of Maternity Leave.

In order to receive SMP, the employee has to have 'average weekly earnings' at or above the lower earnings limit for NI contributions for the period between the 23rd and 15th week prior to the EWC.

If the employee meets this criterion, then the employee will be entitled to receive SMP/OMP in accordance with this policy.

If the employee does not meet this criterion, the employee may be entitled to a Maternity Allowance paid by the Department for Work and Pensions (see [6.2.3 Maternity allowance](#), on page 17).

If the employee receives OMP, then she will have to return to work for 26 weeks (13 weeks per maternity leave) following the end of the second period of Maternity Leave, in order to retain/receive the last 8 weeks of OMP (4 weeks per maternity leave).

8.16 Further information

Further information and advice may be obtained from the Human Resources department at Hackney Learning Trust.

Appendix 1 – Intention to Take Maternity Leave

Intention to Take Maternity Leave (Schools)

You need to complete this form by the 15th week before your baby is due and ask your Headteacher to approve it. Send the completed form to your HR representative. They will send you a letter detailing your maternity entitlements. Refer to the Maternity/Adoption Guide on the Intranet or contact HR for further guidance.

Your details (Please complete all fields)

Name:	Job title:	
School:		
Start date (continuous employment):	Start date with LB Hackney:	Start date at current school:

Pregnancy details (Please complete all fields)

Expected week of confinement (specify the Sunday before the expected date of birth):

Form MATB1 attached: Yes: No: To follow: Sent previously:

Maternity leave details (Tick as appropriate)

I intend to take only the first 26 weeks Maternity Leave (OML): I intend to take the full 52 weeks Maternity Leave (OML + AML):
Other: please specify:

I wish to start my Maternity Leave on this date:

I intend to take outstanding annual leave prior to my Maternity Leave (not applicable to term time only or teaching staff): Yes: No: How many days: _____
Not sure:

My last day at work will be:

Return to work details (Tick as appropriate)

I intend to return to work following my Maternity Leave: Yes: (please answer the following question) No:
I intend to return to work on: _____
I intend to return to work on a date to be advised: **Note:** If you intend to return before the date stated, you must give your Headteacher 8 weeks advance warning in writing.

Comments (Add any comments as appropriate, and sign and date the form)

Comments:

I have completed this form to the best of my knowledge and fully understand the terms and conditions.

Employee's signature: _____ Date: _____

Authorisation

Approved: Yes: No: Comments: _____

Monthly salary: _____

Headteacher's signature: _____ Name: _____ Date: _____

The Headteacher should retain the form for their records and send a copy to their HR representative.

Appendix 2 – Intention to Take Adoption Leave

Intention to Take Adoption Leave (Schools)

You need to complete this form and ask your Headteacher to approve it. Send the completed form to HR. They will send you a letter detailing your adoption entitlements. Refer to the Maternity/Adoption Guide on the [Intranet](#) or contact HR for further guidance.

Your details (Please complete all fields)

Name: _____ Job title: _____
 School: _____ Start date (of continuous employment): _____

Adoption details (Please complete all fields)

The date of the child's placement is: _____
 Matching certificate attached: Yes: No: To follow: Sent previously:

Adoption leave details (Tick as appropriate)

I intend to take only the first 26 weeks Adoption Leave (OAL): I intend to take the full 52 weeks Adoption Leave (OAL + AAL):
 Other: please specify: _____

I wish to start my Adoption Leave on this date: _____

I intend to take outstanding annual leave prior to my Adoption Leave Yes: How many days: _____
 (not applicable to term time only or teaching staff): No: Not sure:

My last day at work will be: _____

Return to work details (Tick as appropriate)

I intend to return to work following my Adoption Leave: Yes: No:
 I intend to return to work on: _____ **Note:** If you intend to return before the date stated, you must give your Headteacher 8 weeks advance warning in writing.
 I intend to return to work on a date to be advised:

Comments (Add any comments as appropriate, and sign and date the form)

Comments: _____

I have completed this form to the best of my knowledge and fully understand the terms and conditions.

Employee's signature: _____ Date: _____

Authorisation (Tick as appropriate, add any comments and specify the monthly salary of the employee)

Approved: Yes: No: Comments: _____

Please state the monthly salary of the employee: _____

Headteacher's Signature: _____ Name: _____ Date: _____

Send the form to the HR Team at Hackney Learning Trust

www.learningtrust.co.uk


Appendix 3 – Intention to Take Paternity Leave

Intention to Take Paternity Leave (Schools)

Please complete this form and ask your Headteacher to approve it. Send the completed form to HR. Contact HR for further guidance.

Your details (Please complete all fields)

Name: _____ Job title: _____

School: _____ Start date (of continuous employment): _____

Paternity details (Please complete all fields)

The baby is due on: _____ or, if the baby has already been born, specify the date: _____

Paternity leave details (Tick as appropriate)

I wish to start my Paternity Leave on this date: _____, or:

I wish to start my Paternity Leave on the date of **Note:** Please ensure that you notify your Headteacher of the actual date of birth as soon as possible.

I wish to take Paternity Leave for: 1 week: 2 weeks:

Will you also take a period of annual leave: Yes: How many days: _____ No:

I declare that... (Tick as appropriate. You will need to tick all boxes to qualify for Statutory Paternity Leave)

I am the baby's biological father, or

I am married to or in a civil partnership with the mother/adopter, or

I am living with the mother/adopter in an enduring family relationship but am not an immediate relative.

I have responsibility for the child's upbringing:

I will take time off work to support the mother/adopter or care for the child:

Comments (Add any comments as appropriate, and sign and date the form)

Comments: _____

I have completed this form to the best of my knowledge and fully understand the terms and conditions:

Employee's signature: _____ Date: _____

Authorisation (Tick as appropriate, add any comments and specify the monthly salary of the employee)

Approved: Yes: No: Comments: _____

Please state the monthly salary of the employee: _____

Headteacher's Signature: _____ Name: _____ Date: _____

Send the form to the HR Team at Hackney Learning Trust.

www.learningtrust.co.uk  hackney learning trust