Maternity, Paternity & Adoption Policy

Policy Statement:
Under the new Government scheme mothers will be able to transfer the last six months of their maternity/adoption leave to their partner. This right will apply where the child is due on or after 3 April 2011 or is expected to be placed on or after this date. This policy provides guidance on the Pre-schools maternity and adoption scheme. This includes risk assessment, maternity/adoption leave and pay arrangements, provisions for return to work maternity/adoption support leave and paternity leave and pay factors.

1.2 Who does the policy apply to?
This policy covers all staff. However, where this policy is varied to suit the requirements of the individual Pre-school’s it must still meet the minimum statutory demands that form the foundation of this document.

1.3 Responsibility:
The policy is applicable to all employees of the Pre-school who meet the eligibility criteria, regardless of the number of hours worked. Part-time employees also receive the same entitlement as full-time employees - where appropriate this will be on a pro-rata basis.

1.4 Confidentiality:
All information will be handled sensitively and used only for its proper purpose. Under the Data Protection Act 1998 individuals have the right to see their own personal data held subject to the rights of confidentiality of any third parties involved in that information.

1.5 Dealing with abuses of the policy:
Employees who attempt to abuse this policy may face disciplinary action. The Pre-school takes false or misleading accusations very seriously which may result in further action taken through the Disciplinary Procedure. This will not include ill-founded allegations that were made in good faith.

1.6 Publicising/distribution of the policy:
A copy of this policy is available from the Manager and will be emailed to all employees on request. New employees will be informed of the existence and location of this policy in recruitment and induction information.

2. Procedure:

2.1 Maternity leave criteria:
The main entitlements to maternity leave are based on the following criteria:
- All female employees have a right to 52 weeks of maternity leave – the 'maternity leave period’;
- All female employees have a right to 26 weeks of ordinary maternity leave (OML) and 26 weeks of additional maternity Leave (AML), regardless of the number of hours worked or length of service;
- Employees must comply with notification procedures;
- During the period of OML, the contract of employment and benefits continue – the employee is seen as temporarily absent from work;
- The contract of employment continues throughout the AML period;
- Maternity Leave can start no earlier than 11 weeks before the Expected Week of Childbirth (EWC);
- Leave can also be triggered by the actual childbirth, or by a pregnancy related absence if this happens from the start of the 4th week before the Expected Week of Childbirth (EWC);
- No employee is allowed to work during the first 2 weeks after giving birth - this is a compulsory maternity leave period.
The following gives some examples of the aspects of pregnancy that may lead to changes in the work environment:

- The Office Manager should look at certain options provided while the pregnant employee is at work.
- The Manager who is aware of the operating environment should ensure that regular workplace risk assessments are reasonably practicable.
- The Performance Standard states that: “All risks that may affect new and expectant mothers will be assessed and all reasonable practicable action will be taken to prevent or control those risks.”
- The Manager who is aware of the operating environment should ensure that regular workplace risk assessments are provided while the pregnant employee is at work. Where risks are identified, which may adversely affect the health and safety of the employee or their baby, the Office Manager should look at certain options:
  - A temporary adjustment of her working conditions and/or her hours of work;
  - An offer of suitable and appropriate alternative work if it is available - her normal rate of pay should be provided;
  - Where the above opportunities are not feasible, provide her with paid leave for as long as necessary to protect her, and/or the child's, health and safety. Within the assessment, the Manager should look to see if any hazards may affect the employee. The following are examples of the type of risks that can arise in the workplace:
    - For pregnant women and women who have had a caesarean section, lifting heavy items can lead to injury. The amount of physical work should be reduced or suitable aids supplied;
    - Physical fatigue from standing or poor posture position for long periods of time can lead to miscarriage, premature birth and low birth weight. Potential remedies include avoiding excessive volume and hours of work, seating being made available, longer rest breaks or work stations being adjusted;
    - Work involving substantial vibration or movement may lead to miscarriage. Tasks should be avoided if they risk whole body vibration or jolts to the abdomen;
    - Prolonged exposure to noise could lead to blood pressure problems. Consideration should be given to the requirements under the relevant legislation.
    - Exposures to radiation, chemical & biological agents, lead, infectious diseases, work related stress, other people's smoke in the workplace or extremes of cold and heat should also be avoided. Although the level of radiation from display screen equipment poses no significant risks to health, any concerns should be sympathetically addressed and the employee encouraged to seek medical guidance if they require further reassurance. The outcomes of the risk assessment may mean alternative work or alternative hours need to be offered to the employee. In some situations, it may even lead to the employee being suspended and given paid leave.

The following gives some examples of the aspects of pregnancy that may lead to changes in the work environment:

- Morning sickness, early shift work, exposure to nauseating smells, backache, standing, manual handling, posture, varicose veins, haemorrhoids, working in hot conditions, frequent visits to toilets, work in confined spaces, lifting & handling, dexterity, agility & coordination, speed of movement & reach.
2.4 Antenatal care:
All pregnant employees, regardless of hours worked, pay or length of service, have the right to paid time off for antenatal care. They must provide evidence of appointments if requested to do so. All time off, including travelling time, must be paid at a normal hourly rate of pay (i.e. the normal rate of pay for normal working hours). Where an employee does not have normal working hours, the rate of pay during any time off should be her average rate in the last 12 complete weeks prior to the time off.
Fathers-to-be, partners/civil partners and nominated carers can also be granted paid time off for appointments connected to antenatal care where the following provisions have been met:
- The employee has provided reasonable notice (2 weeks) of the appointment and has agreed the time-off provisions with the Manager;
- The Pre-school will not be adversely affected by the absence of the employee;
- It is not possible to attend the appointment in the employee's own time;
- The employee provides evidence of their attendance at any appointment

2.5 Premature births:
If a baby is born prematurely, the Manager will consider each case on an individual basis as to what assistance may be relevant. For example, it may be appropriate to extend the maternity leave arrangements.

2.6 What if something goes wrong?
As well as meaning the live birth of a child, the reference to childbirth can also mean a stillbirth or a pregnancy lasting 24 weeks. Therefore, in the unfortunate event that the baby is lost, the employee can take maternity leave if they have been pregnant for at least 24 weeks.
Where something happens before 24 weeks through a miscarriage or there is a termination, the Manager will give sympathetic consideration to the individual circumstances. Where necessary, compassionate leave, special leave or sick leave may be appropriate, depending on the needs of the employee and any medical opinion.

2.7 Sickness arrangements (Maternity):
The main details in relation to maternity are as follows:-
- Any pregnant staff member absent through sickness before the 4th week before the EWC will receive Occupational/Statutory Sick Pay (SSP), if appropriate. Before this time, where the staff member is affected by a pregnancy related absence, it is not automatic to trigger the maternity leave immediately. It may be acceptable to let the staff member carry on working if the absence is for a short period and they actually wish to remain at work. Clearly medical advice should be taken if there is any doubt.
- Occupational sick pay/SSP may still be allowable after the 4th week before the EWC if any absence is due to anything other than a pregnancy related condition.
- Staff members who are sick during their maternity leave period are not entitled to SSP as they will be receiving SMP.
- Maternity leave will not be treated as sick leave and will, therefore, not be taken into account when calculating a person's sickness record.
- Where a staff member cannot attend work at the end of her maternity leave due to sickness, the normal contractual arrangements for sickness absence will apply.
- Maternity and leave will be classed as continuous service for the purposes of existing sickness, annual leave and maternity schemes.

2.8 Adoption leave criteria:
The main entitlements to adoption leave are based on the following criteria:
- All employees have the right to 52 weeks of adoption leave that may be taken around the time of the adoption process. Where a couple are adopting, only one parent, the main carer, can make a claim (the other partner may be entitled to adoption paternity leave and payments). In addition, only one period of Adoption Leave can be taken at any one time, regardless of the number of children adopted. The leave can be taken for any child placed for adoption up to the age of 18.
- All employees have a right to 26 weeks Ordinary Adoption Leave (OAL) followed by 26 weeks of Additional Adoption Leave (AAL). It will be presumed that an employee will be taking the full 52 weeks of leave unless the employee notifies the Office Manager otherwise.
- Employees must comply with notification procedures;
- During the period of OAL, the contract of employment and benefits continue - the employee is seen as temporarily absent from work;
Adoption leave and pay are not available in circumstances where the child is not newly placed for adoption i.e. a step-parent adopting a partner’s child. The contract of employment continues throughout the AAL period.

2.9 Adoption notification requirements:
The staff member should advise the Manager within 7 days of being told that they have been matched with a child. Details to be provided include:
• The date the child is to be placed with the primary adopter;
• The date the employee wants the Adoption Leave to begin.

The staff member will also have to provide documentary evidence of the adoption through the provision of a matching certificate which can be obtained by the adopting person through their agency.

The staff member can choose to start their OAL on the date the child is placed or another predetermined date. The pre-determined date should be no more than 14 days before the date the child is expected to be placed and no later than that date. An employee’s can choose to vary their leave date provided they give 28 days’ notice. Leave can start on any day of the week.

2.10 Pre adoption:
A staff member seeking to adopt may also be entitled to no more than 3 days of paid leave in any 12-month period for pre-adoption purposes.

2.11 Sickness arrangements (Adoption):
• Where a staff member cannot attend work at the end of their adoption leave due to sickness, the normal contractual arrangements for sickness absence will apply.
• Adoption leave will not be treated as sick leave and will, therefore, not be taken into account when calculating a person’s sickness record.
• Adoption leave will be classed as continuous service for the purposes of existing sickness, annual leave and maternity schemes.

2.12 Communication during maternity and adoption leave:
A number of measures have been introduced through the Work and Families Act 2006 to encourage communication and contact between employers and employees during maternity or adoption leave in the form of ‘reasonable contact from time to time’ and ‘Keep in Touch’ (KIT) days.

2.12.1 Reasonable contact:
This can be arranged through the Manager or with another contact person, if this is thought to be more appropriate. Discussions should be held with the staff member before maternity or adoption leave starts to agree ways of doing this.

In addition the staff member needs to be informed of issues like vacancies, workplace developments and training opportunities. This contact could include discussions on the right to request flexible working. For example, it may be appropriate to explore options like part time working, job-share, tele working, family leave etc., alongside the needs of overall service provision.

Any discussions should also consider the practicality of any other support facilities that the staff member may need. For example, the needs of breast-feeding employees must be taken into account.

It is important to note that ‘reasonable contact’ is quite distinct from KIT days. It simply encourages communication and contact without the employee doing any actual work.

2.12.2 Keeping in touch (KIT) days:
The new legislation includes Keeping in touch days (KIT days). These are up to 10 mutually agreed days where a staff member can work during her maternity or adoption leave without bringing their leave period to an end or her losing a week’s Statutory Maternity Pay (SMP) or Statutory Adoption Leave (SAP), provided no more than 10 days are worked.

However KIT days are not allowed to be worked during the compulsory leave period (i.e. the first two weeks after the birth).

KIT days are not limited to the staff member’s normal job. It can include attending training events, appraisals, meetings as well as easing a staff member’s return to work. Working part of a day will count as one full day for the purpose of calculating KIT days.

The 10 days are allocated per person, not per job, where a staff member may have multiple contracts. A person’s normal rate of pay, offset against any SMP or SAP paid will be paid for such days. Payment arrangements should be discussed and clearly understood and agreed before any work is undertaken.

However, an employer cannot insist that work be carried out during the statutory maternity/ adoption leave period. Regulations provide the employee with protection from detriment and unfair dismissal in this situation. Similarly, a staff member cannot insist on working during the period – it must be mutually agreed.

2.13 Returning to work:
Apart from a redundancy situation detailed below, a staff member should return to the job in which he/she was employed under the original contract of employment. The staff member should also come back on terms and conditions not less favourable than those that would have applied if he/she had not been absent. “Job”, for this purpose, refers to the nature of the work in which she is employed to do, along with the place and capacity of work.
It may not be possible for a staff member to return to their original job if it has been affected by redundancy. The Pre-school must offer a suitable alternative vacancy where one exists.

There are a number of practical issues to consider when a staff member is returning to work:

- A staff member cannot return to work within 2 weeks of the actual date they give birth.
- The Manager should have maintained appropriate contact with the staff member while on maternity or adoption leave.
- It will be assumed that a staff member will return to work at the end of her AML or AAL, unless different information is provided.
- A staff member must advise the Pre-school at least 21 days before the day he/she intends to return, if this is before the end of 52 weeks of leave entitlement. This notification can be in writing if requested. If the notice given is less than 21 days, the Pre-school can postpone the return to ensure 21 days of notice. However, any postponements like this must not go beyond the end of the maternity or adoption leave period.
- If the Pre-school has not written to the staff member then they cannot postpone any return to work.
- Where an interruption to work - for example, industrial action - stops a staff member returning to work, it is unreasonable to expect the staff member to return on the due date. Therefore, he/she may instead return when work actually resumes, or as soon as reasonably practicable after that point.
- An employee who does not want to return to work after maternity/adoptions leave must give their employer the notice required by their contract of employment.
- A woman coming back to work may have particular wishes and needs connected to the new baby. This could range from changes in the working environment to assistance with breastfeeding arrangements (see below).
- Time should be put aside to re-induct the employee into work.

### 2.13.1 Breastfeeding on return to work:

When a woman returns to work after maternity leave, she may have particular wishes and needs connected to the new baby, including needing time and facilities to help with breastfeeding. Breastfeeding has been shown to provide positive health benefits for both babies and mothers. A risk assessment may identify issues connected to this subject. Consideration should be given to any health and safety implications for breastfeeding employees. Although it is appreciated that space is often at a premium in our buildings, every effort should be made to provide suitably quiet and private facilities for women who are breastfeeding or expressing milk. The ladies toilets are not an acceptable facility.

### 2.14 Payments:

#### 2.14.1 Statutory Maternity Pay (SMP):

Statutory Maternity Pay (SMP) is an entitlement that the Pre-school pays on behalf of the Government. SMP is payable for the first 39 weeks where the qualifying conditions are met. Payments can start on any day of the week, provided that the maternity leave starts on the same day. However, where maternity leave is triggered by childbirth or a pregnancy related absence, the SMP can start on the following day.

The payment consists of:
- **Weeks 1 – 6**: 90% of a week’s pay
- **Weeks 7 – 39**: SMP payment
- **Weeks 40 – 52**: No payment

Please note: If a staff member does not qualify for SMP, they may qualify for maternity allowance (MA) or other benefits. These are paid directly by the Department for Work and Pensions (DWP).

#### 2.14.2 Statutory Adoption Pay (SAP):

SAP is an entitlement that the Pre-school pays on behalf of the Government. SAP is payable for the first 39 weeks where the qualifying conditions are met. Payments can start on any day of the week, provided that the adoption leave starts on the same day.

To be eligible, a staff member must:
- Have parental responsibility for a child and be classed as the primary adopter through the adoption process;
- Have been continuously employed for at least 26 weeks by the week the adopter is notified of being matched with a child;
- Be ‘newly matched’ with a child for adoption by an approved agency;
- Be aware of the date of the placement.

It is not available where a child is not newly matched for adoption, for example, where a step-parent is adopting a partner’s child. Where a couple are adopting jointly, only one partner will be entitled to take adoption leave. Their spouse or partner may be entitled to paternity leave/additional paternity leave.

The payment consists of:
- **Weeks 1 – 6**: 90% of a week’s pay
- **Weeks 7 – 39**: SMP payment
- **Weeks 40 – 52**: No payment
2.15 Paternity leave:

2.15.1 Paternity Leave criteria:
Paternity leave provides a right to further time off for some employees and applies to:-

- The biological father of the child
- Partners and civil partners of mothers
- The partner or civil partner of a person adopting a child from Great Britain
- And those adopting from overseas where the child enters Great Britain on or after 3 April 2011.

The main entitlements are based on the employee meeting the following qualifying criteria:
- Have been continuously employed for 26 weeks by the end of the 15th week before the EWC or in the case of adoption the date of placement;
- They must expect to have responsibility for the upbringing of the child;
- Time off must be taken for a reason connected to caring for the child or supporting the child's mother/adopter.

Anyone not eligible for MSL/ASL (Maternity Support leave/Adoption Support Leave) is entitled to a maximum of 2 weeks of paternity leave. Anyone taking paternity leave must take it in a full block of one week. Where the employee is entitled to 2 weeks of paternity leave they must be taken consecutively or the second week will be lost. The leave must be taken at or around the time of the birth or placement - normally within 56 days of the child's birth or placement to ensure paternity payments can be made. If the baby is born early, this time limit is extended to within 56 days of the EWC. Leave can start on any day of the week.

The employee should normally choose to start their leave from a specific date. This will be either:
- The date the child is born; or
- A certain number of days or weeks after the child is born; or
- From a pre-determined date after the first day of the EWC - if the child has not been born by this date, the employee must choose another date.
- The adoption placement date but within 56 days of this date

If the employee chooses to start his/her leave on the date of the child's birth or placement date and they are at work that day, then the leave will actually commence on the following day. Only one period of leave is available per pregnancy. Therefore, if the employees' partner/civil partner gives birth to twins or adopts two children at the same time, the maximum entitlement will still be 2 weeks.

2.15.2 Notification requirements for paternity leave:
The employee must advise the Manager of the following by the end of the 15th week before the EWC or as soon as reasonably practicable:
- The EWC/or adoption placement certificate;
- The length of the leave requested;
- The date that the leave will start;

This information can be provided in writing.

In addition, the employee should provide a signed declaration confirming the reason for taking the leave. The employee should also advise the Office Manager of the date the child was born. People can change their minds about the start date for leave. However, they should normally provide 28 days of notice of any change, unless this is not reasonably practicable.

2.15.3 Paternity pay:
The father (including partner, civil partner, and adopter) must have been eligible for Statutory Paternity Leave and still be in the same employment until the week before he starts Additional Paternity Leave SPP will only be paid if the average weekly earnings are at or above the lower earnings limit for National Insurance contributions. Employees who do not qualify for SPP may be able to get income support while on paternity leave. To qualify for SPP, the employee should tell the Office Manager that they want SPP at least 28 days beforehand. The self-certification model in the Toolkit should be utilised for this purpose.

2.15.4 Additional Paternity Leave:
The right to Additional Paternity Leave (APL) under the new Regulations will apply to parents of babies born, or in the case adoption placed on or after 3rd April 2011. Eligible employees will have the right to take up to six months of leave to care for the child if the child’s mother or primary adopter returns to work without exercising their full entitlement to maternity or adoption leave.
Additional paternity leave can only be taken once the mother has returned to work and the child is over 20 weeks old and under one or the child has been with its adoptive parents for 20 weeks, in the first year of being placed for adoption. The minimum period of APL is two consecutive weeks and the maximum period is 26 weeks. APL will be the same rate as the prescribed rate of statutory maternity pay, provided the mother (or primary adopter) has not exhausted their entitlement to SMP/SAP. The total amount of paid leave will remain at 39 weeks; the balance of what the mother has not used will be payable to the father.

The employee will qualify for additional paternity leave in a birth situation, if he or she is the child’s father, or is married to, the partner of, or the civil partner of the child’s mother. The employee must have, or expect to have, the main responsibility (apart from the child’s mother) for the child’s upbringing.

In an adoption situation, an employee who is one of a couple adopting a child will qualify for additional paternity leave if he or she has at least 26 weeks’ continuous employment with the employer, ending with the week in which he or she is notified of the adoptive match (or for an adoption from overseas, 26 weeks’ continuous employment ending with the week in which official notification was sent from the relevant domestic authority. The employee taking additional paternity leave “takes over” the period of maternity leave or adoption leave. If the child’s mother, or the other adoptive parent, dies in the first year of the child’s life, the additional paternity leave can begin at any time after the death and last until the child’s first birthday. Additional paternity leave must be taken as one continuous period, in multiples of complete weeks.

2.15.5 Additional paternity leave notification requirements:
In a birth situation, the employee must give the Manager at least eight weeks’ notice of his or her additional paternity leave, and at the same time must provide two written declarations, one by the employee and one by the child’s mother. The employee’s declaration must state that:
• The purpose of the leave is to care for the child;
• The employee is the child’s father, or is married to, or the partner or civil partner of, the child’s mother; and
• The employee has, or expects to have, the main responsibility (apart from any responsibility of the child’s mother) for the upbringing of the child.

The mother’s declaration must state:
• Her name and address;
• The date that she intends to return to work;
• Her national insurance number;
• That the employee is the child’s father, or is the mother’s spouse, partner or civil partner;
• That the employee has, or expects to have, the main responsibility (apart from any responsibility the mother has) for the upbringing of the child;
• That the employee is, to the mother’s knowledge, the only person exercising the right to take additional paternity leave in respect of the child; and
• That she consents to the council processing this data.

In an adoption situation, the employee must give the Manager at least eight weeks’ notice of his or her additional paternity leave, and at the same time must provide two written declarations, one by the employee and one by the child’s primary adopter. The employee’s declaration must state that:
• The purpose of the leave is to care for the child;
• He or she is married to, or the partner or civil partner of, the adopter; and
• He or she has been matched with the child for adoption.

The adopter declaration must state:
• The adopter’s name and address;
• The date that the adopter intends to return to work;
• The adopter’s national insurance number;
• That the employee is married to, or the partner or civil partner of, the adopter; and
• That the adopter consents to the employer processing this data.

2.15.6 Additional paternity Pay:
If the child’s mother, or the main adopter in an adoption situation, ends his or her period of maternity or adoption leave before using the maximum entitlement to 39 weeks’ statutory maternity pay, statutory maternity allowance or statutory adoption pay, the employee taking additional paternity leave is entitled to be paid for the remainder of the 39-week period, assuming that he or she has average earnings of at least the lower earnings limit for national insurance purposes.
In effect, the couple will be paid for 39 weeks between them. Additional paternity leave pay will be paid at the statutory maternity pay rate, or 90% of the employee’s earnings, if this is less than the statutory rate.
2.16 Protection from dismissal and victimisation:

An employee should not be dismissed during the period from the beginning of the pregnancy to the end of maternity leave for any reason connected to the pregnancy. Similarly, an employee should not be dismissed for taking or seeking to take maternity leave, adoption leave, maternity support leave or paternity leave. Exceptionally, dismissals can occur if the reason is not connected to the employee's condition or circumstances and correct procedures are followed. In addition, the employee must not be victimised or suffer a detriment for taking approved maternity leave, adoption leave, maternity support leave or paternity leave.

It is automatically unfair to dismiss a woman/adopter:

- For a pregnancy related reason;
- At the end of her maternity leave because she has given birth or a related reason;
- After maternity/adoption leave because he or she has availed themselves of maternity/adoption benefits;
- Where a requirement to suspend on health and safety grounds is the reason for dismissal;
- Where he or she is made redundant during her maternity/adoption leave, or when she is returning to work, and has not been offered suitable alternative employment.

Where a woman is dismissed at any time during her pregnancy or maternity/adoption leave she should automatically be provided with written reasons for the dismissal.

After a period of ordinary or additional paternity leave, an employee has the right to return to the same job on the same terms and conditions of employment as if he or she had not been absent. An employee who takes a period of parental leave after his or her paternity leave has same right of return provided that the period of parental leave does not exceed four weeks.

2.17 Keeping records:

The Manager should ensure that all relevant records are consistently maintained for the purposes of leave and payment issues connected to this policy. Particular attention should be made to maintaining records of the notification sent to the employee about their expected to return to work date.