



AGENDA ITEM 'A6'

EAST HERTS COUNCIL

MATERNITY, PATERNITY AND ADOPTION LEAVE
(INCLUDING THE RIGHT TO REQUEST FLEXIBLE WORKING
AND INFORMATION ON MATERNITY PAY)
POLICY AND PROCEDURE

July 2006

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GLOSSARY

OMP	Occupational Maternity Pay
SMP	Statutory Maternity Pay
MA	Maternity Allowance
EWC	Expected Week of Childbirth – the week in which the baby is due – Sunday to Saturday
EDC	Expected Date of Childbirth
QW	Qualifying Week for the payment of SMP – 15 th week before the EWC
SSP	Statutory Sick Pay
DSS	Department of Social Security
NIC	National Insurance Contributions
MATB1	Maternity Certificate – issued by the doctor or midwife approximately 10 weeks before EWC
OML	Ordinary Maternity Leave – 26 weeks leave entitlement
AML	Additional Maternity Leave – up to 40 weeks leave entitlement for employees with more than one year's service
SPP	Statutory Paternity Pay
OAL	Ordinary Adoption Leave
AAL	Additional Adoption Leave

1 Introduction

- 1.1 This guide has been revised to reflect the changes to the statutory provisions arising from the Employment Act 2002 and the NJC Green Book. It incorporates the new legislation from April 2003. Please note that it may be subject to change to reflect any changes to legislation which come into force in April 2007, details of which are currently in draft format.

2 Purpose and Scheme Coverage

- 2.1 The purpose of this document is to provide staff and managers with information on maternity, parental and adoption leave entitlement.
- 2.2 This scheme is applicable to all staff employed by East Herts Council, including part-timers/job-sharers and casual workers.
- 2.3 The Council will endeavour to ensure that an employee does not suffer any detrimental treatment at work whilst exercising their rights to maternity, parental or adoption leave.
- 2.4 The Government website www.tiger.direct.gov.uk has useful tools and information to help employees understand their personal situation in terms of entitlements and obligations.

3 Contractual Relationship During Absence

- 3.1 Having granted a period of paid or unpaid leave, the contract of employment between both parties remains in existence and therefore a commitment to maintain confidence, trust and act in good faith during the period of leave.
- 3.2 Employees on periods of extended leave will be required to maintain regular contact with their Manager and, if appropriate, inform them of any changes in circumstance which may affect their intention to return to work.

- 3.3 Managers are also required to keep in touch with employees on maternity leave by sending information such as Team Update, Team Brief and details of any permanent or temporary vacancies **unless** the employee requests in writing not to be advised. If this is the case then the Manager should only contact the employee to advise of situations which may affect the contractual relationship such as a restructure. The Keeping in Touch Declaration is attached. **If this form is not completed then information will be sent out on a regular basis.**
- 3.4 Staff suspected of abusing the provisions of these procedures or fraudulently applying for leave will be subject to disciplinary investigation as detailed in the Disciplinary Procedure.

4 Granting and Recording Leave

It is the Line Manager's responsibility to consider applications for special leave and use the following information as guidelines.

Maternity Leave, Pay and Conditions

5 Notification to take Maternity Leave

- 5.1 You need to notify Human Resources of your pregnancy, the expected week of childbirth and the date you intend to start your maternity leave at least 28 days before your maternity leave begins, or as soon as reasonably practicable. Human Resources will reply within 28 days of notification stating the expected date of return from maternity leave.
- 5.2 It is advisable for an employee to inform their manager as soon as she has discovered that she is pregnant to allow the manager to make cover arrangements and to do a risk assessment on their work station.
- 5.3 You must also give your employer 28 days notice of the date you wish to start claiming your Statutory Maternity Pay (SMP). Note: SMP can only start on a Sunday and will normally be the Sunday after you start your maternity leave. If you wish to change the date you want to start your maternity leave or you decide to return to work earlier, you must give Human Resources at least 28 days notice.
- 5.4 An employee may notify their manager by completing the Maternity Leave Form (attached). This should be signed by the employee and their manager and returned to Human Resources.
- 5.5 The original MATB1 should also be forwarded to Human Resources. The MATB1 gives confirmation of the expected date of childbirth. This is made available from the mid-wife approximately 10 weeks before the Expected Week of Childbirth (EWC). As an employer we cannot pay maternity leave without your MATB1 form.

6 Ante-Natal Care

- 6.1 Any pregnant employee is entitled to take reasonable paid time off to attend antenatal care appointments. Antenatal appointments are those recommended by a registered

medical practitioner, midwife or health visitor. This includes Aqua-natal care (if recommended).

- 6.2 Employees must agree their time off arrangements with their manager in advance of the appointments and produce their appointment card where appropriate.
- 6.3 Staff on flexi-time should record time to attend appointments as described in the Flexi-Time Policy in the section relating to hospital appointments.

Maternity Leave Generally

Depending on their Status, employees can take up to 52 weeks maternity leave, currently made up of paid and unpaid leave. This can be no more than 11 weeks before the EWC and the balance of their entitlement can be taken after the birth of the child. This entitlement is likely to change in April 2007.

7.1 Ordinary Maternity Leave

- 7.1.1 All pregnant women are entitled to 26 weeks Ordinary Maternity Leave (OML). This is regardless of how long you have worked for local government and how many hours you work.

7.2 Additional Maternity Leave

- 7.2.1 If you have worked for the local government (continuous service) for 26 weeks by the 15th week before EWC you can also take a further 26 weeks Additional Maternity Leave (AML). AML is unpaid leave and starts at the end of OML, giving women who qualify for it a maximum entitlement of 52 weeks.

7.3 Compulsory Maternity Leave

- 7.3.1 Women are required by law to take a minimum of two weeks leave after the birth of the child.

7.4 Conditions applying to Maternity Leave

- 7.4.1 Maternity leave and pay will commence on a Sunday following the week in which an employee has stopped work due to maternity reasons.
- 7.4.2 Maternity Leave can commence no earlier than 11 weeks and any time up to the week before the EWC (except see 7.4.3 below). Or from the time of childbirth if that is earlier.
- 7.4.3 An employee who is absent from work due to a pregnancy related reason after the beginning of the fourth week before the EWC of childbirth but before the date she notified, her maternity leave begins automatically on the day after her first day of absence.
- 7.4.4 If, regrettably, the baby dies or is still-born after 24 weeks pregnancy, the maternity scheme applies. Where this occurs before 24 weeks (miscarriage) or there is a termination, the needs of the employee and medical opinion will be considered in deciding the appropriate leave (be it sick leave or bereavement leave), according to the circumstances.

7.5 Annual Leave

- 7.5.1 The entitlement to annual leave continues to accrue whilst on maternity leave. Where maternity leave straddles 2 annual leave years, annual leave accrued during maternity leave up to the end of the first leave year should be taken before the commencement of the maternity leave in order that it is not lost.
- 7.5.2 An employee requesting to return to work on a part-time contract will normally take all annual leave accrued on the full-time contract before the new working arrangements commence.

7.6 Maternity Support Leave

- 7.6.1 Employees are entitled to a weeks paid Maternity Support Leave if they are the father, partner or nominated carer of an expectant mother.

7.7 Paternity Leave

7.7.1 The government has introduced two weeks paternity leave for every new father at the same rates as statutory maternity pay or 90% of average weekly earnings if this is less.

7.7.2 Paternity leave can be taken from the date of birth or up to eight weeks from the birth and may be taken as one week at a time or two weeks together but not in odd days.

7.7.3 To qualify for SPP, the father will need to have worked for the local government for 26 weeks by the 15th week before the EWC and earn more than the Lower Earnings Limit. You have to give Human Resources notice of the EDC by the 15th week before the baby is due.

For further information visit tiger.direct.gov.uk/cgi-bin/paternity.cgi.

8 Maternity Pay

8.1 Employees with less than 1 year's continuous local government service at the beginning of the 11th week before EWC

8.1.1 SMP will be paid at 90% of your average earning for 6 weeks and £100 per week (or 90% of average weekly earnings if this is less) for 20 weeks.

8.2 Employees with at least 1 year's continuous local government service at the beginning of the 11th week before EWC

8.2.1 SMP will be paid at 90% of your average earnings for the first 6 weeks.

Then 50% of your average earnings for 12 weeks plus SMP at £100 per week. Total will not exceed full pay. NB If you do not intend to return to work see 8.2.2. below.

Remaining 8 weeks at £100 per week (or 90% of average weekly earning if this is less).

8.2.2 An employee who does not return to work at all or who does not return for a period of three months after maternity leave will be required to repay the twelve weeks half pay.

9 Notification to Return to Work

9.1 Employees with less than 26 weeks service by the 15th week before EWC

9.1.2 The Council will assume that the employee will be returning at the end of the 26 weeks. No written confirmation is required to return to work on that day.

9.1.3 An employee wishing to return to work earlier than this date should give 7 days notice in writing. Where less than 7 days notice is given, the manager may postpone the return to ensure 7 days notice, but not beyond the maternity leave period.

9.1.4 An employee not intending to return to work is required to give 28 days notice in writing before the end of the Ordinary Maternity Leave (OML) period. The contract of employment will terminate at the end of the 26 weeks.

9.2 Employees with more than 26 weeks service by the 15th week before EWC

9.2.1 An employee wishing to return to work earlier than the end of the 26th week should give 7 days notice in writing. Where less than 7 days notice is given, the manager may postpone the return to ensure 7 days notice.

9.2.2 Employees who are entitled to AML should notify their manager in writing at least 21 days before the day on which she proposes to return, if this is before the end of the AML period. Where less than 21 days notice is given the manager may postpone the return to ensure 21 days notice, but not beyond the maternity leave period.

9.2.3 An employee not intending to return to work is required to give 28 days notice in writing before the end of the OML period. The contract of employment will terminate at the end of the 26 weeks.

- 9.2.4 An employee who does not return to work at all or who does not return for a period of three months after maternity leave will be required to repay the twelve week's half pay. National Insurance Contributions will not be refundable.
- 9.2.5 Where an employee is unable to return to work on the expected day due to sickness the absence will be covered by the sickness scheme in the normal way.
- 9.2.6 For an employee where, because of an interruption of work (whether due to industrial action or some other reason), it is unreasonable to expect her to return on the due date, she may instead return when work resumes or as soon as reasonably practicable.

10 Return to Work

- 10.1 An employee has the right to return to the job in which they were employed under her original contract of employment and terms and conditions not less favourable than those, which would have been applicable to her if she had not been absent. Where this is not practicable by reason of redundancy, an employee will be entitled to be offered suitable alternative employment where one exists.
- 10.2 Suitable alternative employment may also be offered in exceptional circumstances other than redundancy (e.g. a general re-organisation), which would have occurred if the employee were not absent.
- 10.3 The work to be done should be suitable to the employee and appropriate to the circumstances. The capacity and place in which the employee is to be employed and the terms and conditions of employment should not be less favourable to the employee if the employee had been able to return to the job in which they were originally employed.

11 Right to Request Flexible Working

- 11.1 An employee who has parental responsibility for a child under the age of six or a disabled child under the age of 18

has the right to request flexible working. This includes biological parents, legal guardians, adoptive and foster parents and spouses of these, including same sex partners as long as they have parental responsibility for the child.

11.2 Employee Request to Work Flexibly

- 11.2.1 The request should be made in writing setting out that the request is being made under the statutory right to apply for flexible working and should confirm that employee's relationship with the child. This right can only be exercised if a previous application has not been made in the previous 12 months.
- 11.2.2 Employees returning from maternity leave should make their request to work flexibly in sufficient time to enable arrangements to be put in place to cover the work, if the request is to be granted. Therefore the request should be made at least 12 weeks before the anticipated return to work.
- 11.2.3 The request should set out what effect they think this will have on the service and any proposals they may have to deal with the change.
- 11.2.4 Under the terms of this right any contractual change will be permanent and there will be no automatic right to return to the previous pattern of work unless their manager agrees a temporary variation for a specific time. If both manager and employee agree, a trial period can be set up.

11.3 Manager's Response to a Request for Flexible Working

- 11.3.1 Where managers agree such a request, they should seek advice from Human Resources on how to respond.
- 11.3.2 If the manager agrees to the proposal he/she should write back to the employee confirming the arrangement within 28 days of receipt of the application.

- 11.3.3 If the request is not workable, the manager should arrange a meeting within 28 days of receiving the application. The employee may bring a union representative or work colleague and the manager may be supported by a representative from Human Resources.
- 11.3.4 The outcome of the meeting will be confirmed by the manager within 14 days of the date of the meeting.

11.4 Right of Appeal

- 11.4.1 If the request is rejected the reason will be given and the employee notified of the right of appeal.
- 11.4.2 If the employee exercises his/her right to appeal, this should be made within 7 working days of the date of the letter from management advising of the decision.
- 11.4.3 The appeal hearing will take place within 14 days of the notification to appeal and will be heard by a more senior manager, who may be supported by HR. The employee will have the right to be accompanied.
- 11.4.4 The decision of the appeal hearing will be communicated within 14 days of the hearing.

11.5 Other Considerations

- 11.5.1 An employee reducing their hours of work will normally be required to take all annual leave accrued from their original working arrangements before their return.
- 11.5.2 Employees entitled to lease car contributions who return on a part-time basis will have the level of contribution made by the council reduced on a pro rata basis. The

employee should contact the Head of Payroll for further details.

12. Impact on Conditions of Service

12.1 Generally

An employee returning to local government following a break for maternity reasons will be entitled to have previous service recognised for the purpose of calculating:

- Annual Leave
- Periods of Notice
- Sickness Payments
- Redundancy Payments
- Maternity Leave

Maternity Leave may have implications on other conditions of service. These have been detailed below.

12.2 Pension

12.2.1 An employee who is a member of the Local Government Pension Scheme (LGPS) will continue to pay contributions, however this will be based on 6% of the employee's actual earnings during maternity leave.

12.2.2 An employee wishing to maintain their contributions or make contributions during the unpaid period of Maternity Leave must contact the Head of Payroll before Maternity Leave commences.

12.2.3 For further guidance contact the Head of Payroll or ITnet. An employee with a private pension should contact their pension provider for guidance.

12.3 Car Contributions

12.3.1 Payments towards a car loan and lease car contributions will continue to be deducted from an employee's salary. An employee taking unpaid AML must make arrangements

with the Head of Payroll to continue to make payments during that period.

12.3.2 Employees in receipt of an essential user allowance will continue to receive this payment during maternity leave at a rate of three months at full and three months at half, after which payments will cease until the employee returns to work.

12.3.3 An employee in possession of a council vehicle must ensure that it is left with East Herts before they take maternity leave. The vehicle will be returned to the employee on their return to work. Payment for the maintenance of the vehicle will cease during this period.

12.4 Council Property

12.4.1 An employee will be required to return Council property, for example, a council mobile phone.

12.4.2 An employee will not be required to return items such as, for example, their security cards or uniforms.

12.4.3 An employee not returning to the Council's employ must ensure that all Council property is returned with their notice of resignation.

13 Parental Leave

13.1 There is a right for both parents to take up to 13 weeks unpaid parental leave per parent per child, up until your child's 5th Birthday. You must have more than one year's continuous service in local government. This leave is also available to parents who adopt a baby.

13.2 You can take Parental leave at the end of Maternity Leave providing you give 21 days notice.

13.3 Parents of a child entitled to a disability living allowance are entitled to 18 weeks parental leave.

13.4 The regulations have been extended to parents of a child born or placed for adoption between 15 December 1994 and 15 December 1999. Those parents have up to the child's 18th Birthday if the child is entitled to a disability living allowance.

13.5 To apply for parental leave you need to write to your Head of Service who will forward your request to Human Resources and take advice.

14 Adoption Leave

14.1 Entitlement to Adoption Leave

14.1.2 Employees can apply to take Adoption Leave if they have 26 weeks continuous service with East Herts by the end of the notification week and have notified the adoption agency that he/she agrees that the child should be placed with him/her and on the date of placement.

14.1.3 Adoption leave mirrors maternity leave and managers should seek advice on applying the rules when individuals exercise their right to this leave. Therefore, qualifying service for both leave and pay would apply in the same way. Those employees who have had an adoption match should complete the Adoption Match form and pass it to HR in order to secure their statutory entitlement.

14.2 Ordinary Adoption Leave

14.2.1 As with maternity leave, ordinary adoption leave is 26 weeks. It starts on the date the employee has specified or on the expected date of placement.

14.3 Additional Adoption Leave

14.3.1 An employee who takes ordinary adoption leave is also entitled to additional adoption leave unless the ordinary adoption leave has ended prematurely. Additional Adoption Leave is a further period of 26 weeks, giving one year's leave in total.

14.4 Placement Disrupted

- 14.4.1 Where after starting the leave, an employee is notified that the child will not be placed, or after the child is placed, the child dies or is returned to the adoption agency, the employee will not be entitled to the full adoption leave period. In this situation the adoption leave will end 8 weeks after the end of the week in which the disruption occurred.

14.5 Notification of Adoption Leave

- 14.5.1 Applications for leave should be made to the Line Manager within at least 28 days of the expected date of placement or if the employee wants the leave to start on a predetermined date, notice must be provided at least 28 days before that date.

14.6 Returning to Work after a period of Adoption Leave

- 14.6.1 Employees who wish to return to work before the end of the AAL period must give 28 days notice of his/her return. If the employee fails to provide sufficient notice the employer may postpone the return so 28 days notice is given, but may not postpone beyond this.
- 14.6.2 If disruption on the placement occurs during AAL, the employee should still provide 28 days notice.
- 14.6.3 Employees who fail to return to work after a period of adoption leave or resign before completing three months service on return from adoption leave will be required to repay all monies received during the period of leave.

14.7 Parental Leave for Adoptive Parents

- 14.7.1 Parents/guardians of adoptive children may also be entitled to Parental Leave and should complete an SC4 form available on the intranet in order to obtain any statutory pay entitlement.

**EAST HERTS DISTRICT COUNCIL
MATERNITY LEAVE CHECKLIST**

Employee Details

First Name _____ Surname _____

Payroll No. _____ Post No. _____

Maternity Leave Details

Details sent: _____ Arrange to see re: policy by: _____

Notice received: _____ MATB 1/matl 1 received: _____

Leave date: _____ EDC: _____

Confirmation letter sent: _____ Entitlement: OMP/SMP/MA* (delete as approp)

Changes Input

Input to Establishment: _____ Input to Delphi: _____

Copied & sent to Payroll: _____ Copied to Mgr: _____

Return Details (start date: _____) Child born: _____

18 wk: _____ 40 wk: _____ Ent: SML/OL



Let re: notice to return to be sent by: _____ (send during 14th week)

Letter @ 18 wk if appl required by: _____ Letter received: _____

Letter @ 40 wk if appl required by: _____ Letter received: _____

Expected Return date: _____ Actual Date returned: _____

Input on Delphi: _____ Input on Establishment: _____

MATERNITY LEAVE KEEPING IN TOUCH FORM

I confirm that I do not wish to be advised of any news at East Herts Council during my maternity leave. I understand that it will be my responsibility to keep myself informed of any secondment and job vacancies or other information which may be of interest.

I further understand that my Manager is obliged to advise me of any situations that may impact on the contractual relationship between myself and East Herts, such as restructures.

Name:

Job Title:

Date:

Maternity Timetable

These tables illustrate timescales required for advising HR and accessing statutory and additional maternity benefits.

Ordinary Maternity Leave

15 weeks before to 26 weeks after Child Birth

Before the birth

14 th week	Latest date to advise HR of expected week of childbirth
11 th week	Earliest Ordinary Maternity Leave can begin
10 th week	Approx date MATB1 form will be available from mid-wife
4 th week	Maternity leave will be automatically be triggered is the employee is absent from work wholly or partly because of pregnancy. Otherwise the employee has the right to choose when to start her maternity leave.
	NB where the baby is born before maternity leave commences, the date of childbirth will be regarded as the first day of maternity leave.

Following the Birth

Employee must take 2 weeks compulsory maternity leave following birth of child
Request for flexible working should be made 12 weeks before return to work
28 days notice required if employee does not intend to return to work after OML
28 days notice required by employee if they want to return before end of 26 weeks OML.

Matching Certificate:

Statutory Adoption Leave and Pay

This certificate when completed by the appropriate adoption agency, may be used as evidence for the purposes of Statutory Adoption Leave and Pay. It confirms that the named person(s) has been matched with a child for adoption.

A. Name and address of adoptive parent(s):

I confirm that the person(s) named above has been matched by this agency with a child for adoption and, they were notified of this on:

--

It is expected that the child will be placed with them on:

--

The child has already been placed with them, this occurred on:

--

B. Agency name and address:

Agency stamp

This is an adoption agency within the meaning of the Adoption Act 1976 or the Adoption (Scotland) Act 1978.

Name		Title	
Signature		Date	



Department of Trade and Industry

Notes for adoptive parents: Statutory Adoption Leave and Pay

This certificate can be used as evidence for the purposes of Statutory Adoption Leave and Pay. It confirms that you

have been matched with a child for adoption by an adoption agency.

Statutory Adoption Leave and Pay

If you are matched with a child (whether from the UK or overseas) by an adoption agency, you may be entitled to:

- Statutory Adoption Pay (SAP) – at least part of your wages will be paid for 26 weeks. You will get £100 a week or 90% of your average weekly earnings if this is less than £100.
- Adoption Leave – time off work of up to 52 weeks (26 weeks ordinary adoption leave plus 26 weeks additional adoption leave).
- If you are adopting the child jointly with your partner, you must have chosen to take adoption leave and pay. Your partner, or the partner of an individual adopting, may be eligible for Statutory Paternity Leave and Pay.

Depending on your circumstances, you may not qualify for adoption leave and pay. Your employer will let you know. If this is the case, you will get more advice and information at the time.

You can find more information on Statutory Adoption and Paternity Leave and Pay from:

- The DTI booklet, *Adoptive Parents – rights to leave and pay – a guide for employers and employees*, available from DTI publications orderline on 0870 1502 500.
- www.tiger.gov.uk
- www.inlandrevenue.gov.uk/employer

Other help

Booklet BC1, *Babies and Children*, is a basic guide to benefits and tax credits for anyone expecting a baby or caring for children and is available from your local jobcentre plus or social security office.

Terms and conditions

In these notes, we haven't covered all of the law that relates to Statutory Adoption Leave and Pay. If you are in any doubt about your entitlement, in the first instance talk to your employer.

You must:

- Be matched with a child for the purposes of adoption by an adoption agency.
- Have worked continuously for your employer for 26 weeks, up to and including the week the adoption agency told you that you were matched with the child.

You must give your employer:

- 28 days notice of when you expect your SAP to start, or if that is not reasonably practicable, as soon as is reasonably practicable.

- Notice for adoption leave within 7 days of the adoption agency telling you that you have been matched with your child, saying when you expect your leave to start.

If this is not possible, please discuss the situation with your employer.

Disagreements

If you are unable to resolve any disagreement or you need further advice about:

- SAP – contact your Inland Revenue office, you will find the number in the Phone Book.
- Adoption Leave – contact ACAS, you will find the number in the Phone Book.