



Employment Guide: Statutory Adoption Leave

Note: This publication is intended to provide general guidance only. It does not constitute legal advice and should not be relied upon as doing so.

Overview

The Maternity Leave and Adoption Leave (Guernsey) Ordinance, 2016, in force from 1 April 2016, gives the following statutory rights to employees who are adopting a child under the age of 18. It applies to employees whose expected placement date for adoption is **7 August 2016 or later**:

- basic leave of 12 weeks
- an enhanced period of 26 weeks leave for employees who have worked continuously for the same employer for at least 15 months
- a period of two weeks compulsory statutory leave (this forms part of the basic adoption leave)
- the right to return to her original job or a suitable alternative
- up to ten days keeping in touch days

In addition the partner of an employee who is entitled to basic adoption leave has a right to take two weeks adoption support leave, subject to certain conditions (see below).

Basic Adoption leave

What is it?

An employee, whether male or female,¹ who intends to adopt a child under the age of 18 through an adoption agency is entitled to adoption leave of 12 weeks, regardless of his/her length of service. The child's adopter must advise her employer in writing that she intends to take basic adoption leave as soon as she is reasonably able to do so. She must also inform her employers in writing of the following dates:

- when the child is expected to be placed for adoption
- when she intends her adoption leave to start (this can be no earlier than 14 days before the placement date and no later than the placement date)
- when she intends the adoption leave to end

¹ Adoption leave and adoption support leave applies equally to male and female employees. The word 'she' in the publication can equally be substituted with the word 'he'.

In addition, **if requested** by her employer, the employee must provide evidence from the adoption agency confirming when she was advised that she was matched with the child and when the child is expected to be placed with the employee.

When does basic adoption leave start?

The employee's period of adoption leave starts on:

- the date notified to the employer in writing or
- if, after notifying the employer, the employee asks to alter the starting date and the employer agrees to this

Additional Adoption leave

What is it?

An employee who qualifies for basic adoption leave is also entitled to an enhanced period of leave if she has been continuously employed for 15 months or more at the beginning of the eleventh week before the placement date.

When does the leave start and how long does it last?

For those employees who qualify the leave runs for a period of 26 weeks, starting with the date the **basic** adoption leave commenced.

Can an employer contact the employee to request confirmation of her return?

An employer can ask for confirmation of the date the child was placed for adoption and whether the employee intends to return to work at the end of the additional adoption leave. This request can be made no earlier than 21 days before the end of **basic** adoption leave and must be made **in writing**. It must explain how the employee can work out when her additional adoption leave will end and that the employee may lose protection from unfair dismissal, discrimination or other detriment if she fails to respond within 21 days of receiving the request.

Compulsory Adoption Leave

What is it?

The primary intention of this leave is to encourage bonding between the parent and adopted child. It is a period of two weeks from placement during which an employer must not permit an employee to work. The onus is placed on the employer to ensure that an employee does not work and a breach amounts to an offence with a maximum penalty of Level 2 on the Uniform Scale of Fines. This period of compulsory leave forms part of the period of basic adoption leave.

Return after Adoption Leave

Right to Return to Her Original Job or a Suitable Alternative

What does this mean?

An employee returning from adoption leave is entitled to return to the job in which she was employed before her absence. The employee's seniority, pension rights and similar rights applying before her absence should apply on her return and her terms and conditions (including pay) should be no less favourable.

Where it is not reasonably practicable for an employer to permit the employee to return to her old job the employer can offer an appropriate and suitable alternative role.

What happens if an employee wishes to return to work earlier than the end of her basic or additional adoption leave?

The employee would need to give at least 21 days' notice of her return date. An employer can postpone the employee's return if this notice is not given unless the adoption leave has come to an end.

Redundancy

What protection is there for an employee who is selected for redundancy on the grounds of being entitled to, seeking to take or taking adoption or adoption support leave?

It is automatically unfair for an employee to be selected for redundancy on the above grounds. Employers should consider their redundancy procedures carefully and give due regard to the Code of Practice on Handling Redundancy.

What happens if there is a redundancy situation during adoption leave?

The right to return will not apply if the role is made redundant during an employee's adoption leave. However, if a redundancy situation arises, an employee on basic or additional adoption leave is entitled to be offered any suitable vacancy. This is effective from the termination of her previous contract and her continuity of service will be preserved. The work must be suitable and appropriate to her circumstances and the conditions must not be substantially less favourable than the previous contract.

Is Adoption Leave Paid or Unpaid?

There is no statutory obligation on employers to provide paid adoption leave and it is a decision for the employer to make as to whether to provide for paid adoption leave. However, what is provided should be clearly stated in the written terms and conditions of employment or contract to ensure that employees are fully aware of their entitlement.

Keeping in Touch Days (KIT)

What is it?

An employee can work for her employee for a period of up to ten days during adoption leave (with the exception of the compulsory adoption leave) without altering or bringing the period of adoption leave to an end. This return can be for one continuous period or a series of separate days providing this does not exceed ten days in total. The employee should give one month's notice (or such notice that is reasonably possible) to her employer of return for KIT days. She is entitled to the same rate of pay and allowances as she was receiving before taking adoption leave.

Adoption Support Leave

What is it?

Adoption support leave is a period of two weeks which is available to the partner of an employee who is entitled to basic adoption leave. It starts on the day the child is placed with the employee for adoption. To qualify, the partner must have 15 months' continuous service at the beginning of the eleventh week before the employee's expected placement date. 'Partner' is defined as the adoptive parent's spouse or co-habiting partner unless she nominates another person in writing

Is there an entitlement to basic adoption leave where a child is adopted from overseas?

Yes, subject to this falling under the Adoption (Designation of Overseas Adoptions) Ordinance, 1979. Further information can be obtained from the Employment Relations Service. Please see contact details at the end of this publication.

Protection against unfair dismissal, sex discrimination

What does this mean?

Under the Ordinance it is considered to be automatically unfair to dismiss an employee if:

- the employee had adopted a child within the meaning of the Ordinance
- the employee took or sought to take adoption leave or adoption support leave

It is unlawful to discriminate against a person on the grounds of sex, marital status or gender reassignment. The Ordinance also makes it unlawful to discriminate against a woman² who:

- has adopted a child
- has given notice of the intention to be absent from work on adoption leave
- is returning to work after adoption leave

² Under Section 2 of the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005 the provisions relating to sex discrimination against women are to be read as applying equally to the treatment of men.

An employee also has the right not to suffer a detriment for taking, or seeking to take, adoption support leave.

Checklist for Employer's Adoption Policy

Employers are advised to have an adoption policy which meets the statutory requirements of the Ordinance as follows:

- two weeks compulsory leave after placement
- up to 12 weeks basic leave (which is inclusive of compulsory leave)
- additional leave which would bring the total leave to 26 weeks (for employees with more than 15 months service at the 11th week before the placement date)
- state the employee's right to return to her original job or a suitable alternative
- consider including a requirement to provide evidence of adoption from the adoption agency
- ensure that notification periods for employees and response times for employers are noted within the policy and comply with the Ordinance
- provide for "keeping in touch" days (KIT) days
- check or create a redundancy policy to ensure that employees on adoption leave are treated in accordance with the Ordinance
- check or create adoption support leave provisions to ensure they comply with the Ordinance
- two weeks leave for employees with more than 15 months service at the 11th week before the placement date
- where partners are seeking to take adoption leave support consider including a requirement for written confirmation of the nomination from the person who is adopting
- train line managers to ensure that they are aware of the provisions of the Ordinance and do not apply less favourable treatment to any employee seeking to exercise their rights

Other Publications

Publications can be downloaded from the website on a wide range of employment relations matters including local employment legislation and best practice guidance on other employment related matters.

Contact Information

For further advice

- Check www.gov.gg/employmentrelations
- Email employmentrelations@gov.gg
- Contact the **Employment Relations Service**, Edward T Wheadon House, Le Truchot, St Peter Port, GY1 3WH
- Telephone number: **01481 220026**