

Maternity, Adoption & Maternity Support (Paternity Leave) Policy & Procedure

Policy Number	LEAVE001
Target Audience	CCG Board CCG Staff
Approving Committee	CCG Executive
Date Approved	August 2014
Last Review Date	August 2016
Next Review Date	August 2018
Policy Author	GMSS People Services
Version Number	Final v1.0

The CCG is committed to an environment that promotes equality, embraces diversity and respects human rights both within our workforce and in service delivery. This document should be implemented with due regard to this commitment.

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Version Control Sheet

Version	Date	Reviewed By	Comment
Draft v0.1	April 2014	Staff Forum	
Draft v0.2	May 2014	Exec	
Final v1.0	August 2014		
Final v1.0	Aug 2016	GMSS People Services/ CCG CO	Policy updated and includes legislative changes from April 2015

Analysis of Effect completed:	By:	Date:
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MATERNITY, ADOPTION AND MATERNITY SUPPORT (PATERNITY LEAVE) POLICY**1. POLICY STATEMENTS****1.1 Maternity and Adoption**

Maternity leave is covered by Section 15 of the Agenda for Change Terms and Conditions Handbook and Adoption Leave Section 35. Section 35 states that Adoption Leave entitlements mirror the Maternity Leave entitlements and therefore Section 15 applies where the child is below the age of 18.

Glossary:

OMP – Occupational Maternity Pay

OAP – Occupational Adoption Pay

SMP – Statutory Maternity Pay

SAP – Statutory Adoption Pay

KIT – Keep in Touch

Maternity

This policy is intended to promote a consistent approach and inform employees of their rights and entitlements during, and following pregnancy and conforms to the NHS Agenda for Change Terms and Conditions of Service, the Employment Act 2002 and other current legislation.

Adoption

This policy is designed to implement the statutory rights to leave following the placement of a child for adoption. Adoption leave and pay entitles eligible employees to take paid leave when a child is newly placed for adoption. It is available to individuals who adopt and to one member of a couple where a couple adopt jointly (the couple may choose which partner takes adoption leave). Where the Clinical Commissioning Group employs both parents, one parent will be identified as the primary carer and will be entitled to leave under this policy. The other parent will be entitled to leave under the paternity leave provisions.

Eligibility for occupational adoption pay will be 12 months' continuous NHS service ending with the week in which the employee is notified of being matched with the child for adoption. This will cover the circumstances in which the employee is newly matched with the child by an adoption agency.

The rate of statutory adoption pay (SAP) is the same as for (SMP).

1.2 Paternity (now called Maternity Support)

Paternity leave (now called maternity support) is provided to allow an employee time away from work following the birth or adoption of a child. This policy details the arrangements within the Organisation in relation to Maternity Support (Paternity leave) and pay. This policy will apply to biological and adoptive fathers, nominated carers and same sex partners. It will be referred to as Maternity Support.

2. MATERNITY AND ADOPTION LEAVE – POLICY

People Services will provide advice and support to Line Managers where requested. Training will be provided in the implementation and application of this policy where a training need is identified and training commissioned.

2.1 Entitlement to Maternity/Adoption Leave

All eligible employees will be entitled to 52 weeks maternity/adoption leave. Eligible employees include:

- Pregnant employees (with the exception of circumstances set out in 2.44).
- Primary or single adopter where they have been notified of a match with a child and have agreed that the child will be placed with them (overseas adoption must be supported by an official notification).
- One parent in a surrogacy arrangement where they are eligible and intend to apply for a Parental Order.
- One parent from dual appointed prospective adopters (fostering for adoption).

2.2 Entitlement to Occupational Maternity/Adoption Pay under the NHS Scheme

An employee working full or part-time is entitled to maternity/adoption pay under the NHS scheme provided that the employee:

- has 12 months continuous service with one or more NHS employers and continues to be employed by the Organisation until at least the beginning of the 11th week before the expected week of childbirth (EWC) (Maternity) or 12 months' continuous NHS service ending with the week in which the employee is notified of being matched with the child for adoption (Adoption);
- notifies the Organisation, via the employees line manager at least 15 weeks before her expected date of childbirth (EDC) (or with seven days of them being notified by their adoption agency that they have been matched with a child in respect of adoption), unless this is not reasonably practicable;
- intends to return to work for a minimum period of three months with the same or another NHS employer; and
- submits a statement (MAT B1) signed by a registered medical practitioner or a practising midwife at least 28 days before commencement of maternity leave, indicating the expected date of childbirth or a matching certificate in respect of adoption.

2.3 Entitlements under the Scheme

2.3.1 An employee who **qualifies for full benefits and intends to return to work with the same or another employing NHS organisation** will be entitled to 52 weeks maternity leave, paid as follows:-

- 8 weeks at full pay including any SMP, Maternity Allowance (MA) or equivalent benefits receivable;
- 18 weeks at half pay reduced only where half pay plus any SMP, MA, or equivalent benefits payable exceeds full pay;

- 13 weeks at SMP, if payable;
- 13 weeks unpaid leave.

2.3.2 An employee who **qualifies for full benefits and does not intend to return to work for the same or another employing NHS Organisation** will be entitled to 52 weeks Maternity/Adoption Leave, paid as follows:

- 6 weeks SMP/SAP, paid as 90% of full pay (average weekly earnings);
- 33 weeks at the lesser of standard rate SMP/SAP or 90% of average weekly earnings;
- 13 weeks unpaid leave.

2.3.3 An employee who **does not qualify for full benefits under the NHS Scheme** but who has at least 26 weeks service with the current employer by the 15th week before the EWC **and** meets the earnings' rule whether or not she intends to return to work will be entitled to 52 weeks Maternity/Adoption Leave, paid as follows:

- 6 weeks at 90% of full pay (average weekly earnings);
- 33 weeks at the lesser of standard rate SMP or 90% of average weekly earnings;
- 13 weeks' unpaid leave.

2.3.4 An employee who **does not qualify for SMP/SAP**, whether or not they intend to return to work, will be entitled to 52 weeks maternity/adoption leave. No payments will be made during the maternity leave period although Maternity Allowance or other benefits may be payable directly from Jobcentre Plus.

2.3.5 There are a number of options in the way in which the employee can choose to have their occupational maternity/adoption leave paid e.g. a combination of full pay and half pay or a fixed amount spread equally over the maternity/adoption leave period. Prior agreement from the employer is required.

2.3.6 In exceptional circumstances, for example in the case of a multiple birth or sick pre-term babies, the unpaid element of leave may be extended beyond 13 weeks. Requests for this should be submitted in writing to the employees' Line Manager who may seek advice from People Services.

2.4 Timing of Leave – Maternity Specific

Maternity leave may commence at any time between 11 weeks before the EWC and the expected week of childbirth, provided the required notice is given. Early childbirth and maternity related sickness absence will affect this as follows:

Early childbirth

2.4.1 Where childbirth occurs before the 11th week before the EWC and the employee has worked during the actual week of childbirth, maternity leave will start on the first day of the employee's absence.

- 2.4.2** Where childbirth occurs before the 11th week before the EWC and the employee has been absent from work on certified sickness absence during the actual week of childbirth, maternity leave will start the day after the day of birth.
- 2.4.3** Where an employee's baby is born before the 11th week before the EWC, and the baby is in hospital, she may split her maternity leave entitlement, taking a minimum period of two weeks' leave immediately following the birth and the rest of her leave following the baby's discharge from hospital.
- 2.4.4** Where an employee has a miscarriage before the 25th week of pregnancy then normal sick leave provisions will apply.
- 2.4.5** In the event of a stillbirth after the 24th week of pregnancy the employee will be entitled to the same amount of maternity leave and pay as if her baby was born alive.

Sickness Absence during Pregnancy and Leave

- 2.4.6** Where an employee is off work ill, or becomes ill, with a pregnancy related illness during the last four weeks before the EWC, maternity leave will normally commence at the beginning of the fourth week before the expected week of childbirth or the beginning of the next week after the employee last worked, whichever is the later. Absence prior to the last four weeks before the EWC, supported by a medical certificate or self-certificate will be treated as sick leave in accordance with normal leave provisions. Normal sick leave provisions will be suspended once maternity leave has commenced.
- 2.4.7** Odd days of pregnancy related illness during the period may be disregarded if the employee wishes to continue working until the maternity leave start date previously agreed.
- 2.4.8** Where an employee is absent due to illness which is not pregnancy related then normal sick leave provisions will apply until the date previously agreed that maternity leave would commence.

2.5 Timing of leave – Adoption Specific

- 2.5.1** Leave can start from the date of the child's placement (whether this is earlier or later than expected) or from a fixed date which can be up to 14 days before the expected date of placement. Leave can start on any day of the week.
- 2.5.2** Only one period of leave will be available irrespective of whether more than one child is placed for adoption as part of the same arrangement.
- 2.5.3** If the date of a placement changes, the employee should give 28 days' notice to change the start date of their adoption leave, where this is reasonably practicable. In any event, as much notice as possible should be given and the adopter's manager must be kept informed.
- 2.5.4** If there is an established relationship with the child, e.g. fostering prior to adoption or when a step-parent is adopting a partner's child/children, there may be scope for local arrangements to be agreed on the amount of leave and pay in addition to time off for official meetings.

2.6 Ante-natal and Post-natal Care – Maternity/Adoption

- 2.6.1** Pregnant employees have the right to reasonable paid time off for ante-natal care including relaxation and parent craft classes.
- 2.6.2** Employees who return to work shortly after giving birth will be given paid time off for post natal care e.g. attendance at health clinics.

2.7 Time off to attend appointments Births – Partners/Fathers

- 2.7.1** Where the employee is to become a father or is the partner of the mother, they will be entitled to unpaid time off to attend two antenatal appointments (up to 6.5 hours is allowed for each appointment). This arrangement will also apply to those employees who become parents via a surrogacy arrangement if they expect to satisfy conditions for and apply for a Parental Order.

2.8 Time off to attend appointments – Adoption

- 2.8.1** Single adopters or the primary adopter will be entitled to paid time off to attend up to 5 adoption appointments (up to 6.5 hours is allowed for each appointment).
- 2.8.2** Joint adopters; one of the adopters would be entitled to up to 5 appointments as outlined above, the other adopter may be entitled to unpaid time off to attend up to 2 adoption appointments (up to 6.5 hours is allowed for each appointment).

2.9 Calculation of Pay – Maternity/Adoption

- 2.9.1** Maternity pay is calculated on average earnings paid for two months prior to the qualifying week which is the 15th week before the EWC. Adoption pay is calculated on average earnings paid for two months prior to the start of the week after that in which the adopter is notified of being matched with a child for adoption. Employees with average weekly earnings below the Lower Earnings Limit who do not qualify for SMP/SAP may be entitled to MA or other benefits claimed via Job Centre Plus.

2.10 Implementation of a Pay Award or Annual Increment – Maternity/Adoption

- 2.10.1** Absence on maternity leave, whether paid or unpaid, counts as service towards the normal annual increment.
- 2.10.2** Where a pay award and/or annual increment are implemented from a date prior to the paid maternity leave period, the maternity pay will be calculated as though the pay award had effect throughout the entire SMP calculation period. If a pay award is agreed retrospectively, the maternity pay will be recalculated on the same basis.
- 2.10.3** Where a pay award and/or annual increment is implemented from a date during the paid maternity leave period, the maternity pay due from the operative date of the pay award or annual increment should be increased accordingly. Again, if such a pay award were agreed retrospectively, the maternity pay should be recalculated on the same basis.

2.11 Employees on a Fixed-Term or Training Contract – Maternity/Adoption

- 2.11.1** An employee who is entitled to full benefits under the NHS Scheme, i.e. who satisfies the conditions under section 2.2 and whose contract is due to end after the 11th week before the EWC, will have her contract extended to enable her to receive 52 weeks maternity leave which includes paid occupational and the remaining 13 weeks of unpaid leave.
- 2.11.2** Under these circumstances, there will be no right of return to be exercised because the contract would have ended if pregnancy and childbirth had not occurred.
- 2.11.3** Employees who do not satisfy the conditions under section 2.2 and whose contract ends after the 15th week prior to the EWC but before the 11th week prior to the EWC, will not be entitled to maternity leave but SMP may be payable. In this case, the contract will not be extended but the Organisation will be responsible for paying any SMP due. Under these circumstances, the employee must inform the Organisation if she starts work for another employer following the birth of the baby and must still provide evidence of pregnancy via the MAT B1 form.

2.12 Contractual Rights – Maternity/Adoption

- 2.12.1** An employee retains all her contractual rights, except remuneration, during the maternity leave period.

2.13 Leave (Annual leave, Bank Holidays) – Birth/Adoption

- 2.13.1** Annual leave and bank holidays will continue to accrue during maternity/adoption leave, whether paid or unpaid.
- 2.13.2** Where the amount of accrued leave would exceed the normal carry over provisions, the manager and employee should agree arrangements for the leave to be taken either prior to or immediately following the maternity/adoption leave period.
- 2.13.3** In exceptional circumstances, where leave cannot be carried over for operational reasons, payment in lieu of annual leave may be considered.
- 2.13.4** All maternity/adoption leave, including unpaid maternity leave, will count as service for the purpose of satisfying the service qualification for accruing additional annual leave entitlements.

2.14 Pension - Maternity/Adoption

- 2.14.1** Contributions will be deducted from salary as normal during paid maternity/adoption leave and continue to be payable during unpaid leave. On return to work, arrears of contributions will be recovered and deducted from salary over an agreed period of time.

2.15 Pay Progression Framework – Maternity/Adoption

- 2.15.1** The expectation is that an employee on maternity leave will progress through a pay progression gateway on the due date if concerns have not been raised about the employee's capability prior to maternity leave commencing.

3. MATERNITY AND ADOPTION LEAVE – PROCEDURE

3.1 How to Claim Maternity Leave/Pay

Form MA1 should be completed no later than the end of the 15th week before the EWC and signed by the employee and their line manager or equivalent. The original form should be sent to People Services. On receipt of form MAT B1 from a registered medical practitioner or a practising midwife, the original should be sent to People Services, at least 28 days before the commencement of leave. Payroll can then determine whether the employee qualifies for SMP. If the employee does not qualify for SMP, they will be sent form SMP1 together with the Maternity Certificate MAT B1. These forms will be needed to claim Maternity Allowance from Jobcentre Plus.

Adoption Pay/Leave

Employees must inform their manager of their intention to take adoption leave within seven days of them being notified by their adoption agency that they have been matched with a child for adoption, unless this is not reasonably practicable.

Employees to provide a matching certificate from their adoption agency as evidence that includes basic matching and expected placement details and complete Form MA1. The originals should be sent to your direct Line Manager and copies to People Services. The form asks for the employee to state the date the child is likely to be placed with them and the date they would like their adoption leave to start. The start date of leave may be changed provided that 28 day's notice is given, unless this is not reasonably practicable.

Employee receives confirmation

The employee will receive written confirmation within 28 days of receipt of Form MA1 of:

- their maternity/adoption entitlements, both paid and unpaid
- the expected return date based on 52 weeks paid and unpaid leave unless an earlier return date has been given
- details of any accrued annual leave that is to be taken at the end of the maternity/adoption leave period
- the need for the employee to give at least 28 days notice if she/he wishes to return to work before the expected return date.

3.2 Return to work

3.2.1 If the employee wishes to take her full entitlement to maternity/adoption leave she need not give any further notification of her return to work. An employee has the right to return to her job under her original contract and on no less favourable terms and conditions.

3.2.2 If the employee wishes to return to work before the end of her full entitlement to leave, she must give at least 28 days notice of her date of return. Form M2 will be included with the letter mentioned in 3.1 above for use in these circumstances.

- 3.2.3** An employee has the right to apply to return to work on a part-time or flexible working basis. Applications should be made to their line manager and will be given fair and objective consideration. Refer to the CCGs Flexible Working Policy.

3.3 Sickness following the end of Maternity/Adoption Leave

- 3.3.1** Where an employee is unable to return to work following the date she was due to return as a result of illness, normal sick leave provisions will apply.

3.4 Failure to return to work – Maternity/Adoption

- 3.4.1** An employee who has notified the Organisation of her intention to return to work for a minimum of three months for the same or another NHS employer, and fails to do so within 15 months of the beginning of her maternity leave will be liable to refund the whole of her maternity pay, less any SMP received.

- 3.4.2** In cases where the Organisation considers that to enforce this provision would cause undue hardship or distress, the organisation has the discretion to waive the right of recovery.

3.5 Health and Safety

- 3.5.1** Where an employee is pregnant, has recently given birth or is breastfeeding, then a risk assessment of her working recently given birth or is breastfeeding, then a risk assessment of her working conditions will be carried out – Risk Assessment forms can be obtained from Occupational Health. If it is found, or if a medical practitioner considers, that an employee or her child would be at risk were she to continue with her normal duties, she will be provided with suitable alternative work for which she will receive her normal rate of pay. Where it is not reasonably practicable to offer suitable alternative work, the employee will be suspended on full pay.

These provisions also apply to an employee who is breastfeeding if it is found that her normal duties would prevent her from successfully breastfeeding.

3.6 Compulsory Period of Maternity Leave

- 3.6.1** The legal minimum period of maternity leave which an employee is required to take is 2 weeks. This will commence on the day that the baby is born.

3.7 Childcare Voucher Scheme

- 3.7.1** Information on the childcare voucher scheme and provisions available locally can be obtained from People Services or the CCG website.

3.8 Keeping in Touch

- 3.8.1** Before going on maternity/adoption leave employees should discuss and agree with their line manager any voluntary arrangements for keeping in touch during their leave. It should be noted that staff absent on maternity/adoption leave should receive details of vacancies and other pertinent business information; this is normally done via the post to the employees' home address.

- 3.8.2** Keeping in Touch (KIT) days allow employees to do a limited amount of work under their contract during the maternity/adoption pay period without loss of SMP/SAP for the week. They are intended to facilitate a smooth return to work

for employees returning from maternity/adoption leave and can include training or other activities which enable the employee to keep in touch with the workplace.

- 3.8.3** An employee may work a maximum of 10 KIT days without bringing their maternity/adoption leave to an end. Any days of work will not extend the maternity period.
- 3.8.4** An employee may not work during the two weeks of compulsory maternity leave immediately after the birth of her baby.
- 3.8.5** Working for part of any day will count as a whole KIT day.
- 3.8.6** The employee will be paid at their basic daily rate for the hours worked less appropriate maternity/adoption leave payment for KIT days worked. KIT days must be recorded on workforce recording system in place in the CCG for submission to payroll.
- 3.8.7** Any work must be by agreement and neither the employer nor the employee can insist upon it.
- 3.8.8** Employees who are breastfeeding will be risk assessed in accordance with Section 3.5.1 and facilities will be provided, where possible as stated in Section 3.9.
- 3.8.9** In certain circumstances, the Organisation may consider the reimbursement of reasonable childcare costs in order to enable the employee to take up the opportunity to work KIT days.

3.9 Provision for Nursing Mothers

- 3.9.1** If you are a nursing mother returning to work, please inform your Line Manager as soon as possible so they are able to make the necessary arrangements.
- 3.9.2** An employee who is breastfeeding will be given suitable access to a private room to express and store milk in an appropriate refrigerator. Requests for flexible working arrangements to support breastfeeding mothers at work will be considered.

4. MATERNITY SUPPORT (PATERNITY LEAVE) – Policy

4.1 Maternity Support (Paternity Leave)

- 4.1.1** Qualifying employees can have up to 2 weeks ordinary Maternity Support (Paternity Leave) with Occupational Paternity Pay. The leave can be taken in a block of 2 weeks or as 2 complete separate weeks (i.e. not odd days). Only two weeks' leave is available irrespective of whether more than one child is born as a result of the same pregnancy or more than one child placed together for adoption. To qualify employees must:
 - have, or expect to have, responsibility for the child's upbringing;

- be the biological father of the child, or be the mother's spouse, partner or civil partner but not the father of the child, or be the adopter's spouse or partner;
- have worked continuously for 12 months for one or more NHS employers by the beginning of the week in which the baby is due or the adopted child is due to be placed.
- where an employee satisfies the conditions in 2.2 above, payment will be made at full salary, including regular payments, less any Statutory Paternity Pay (SPP), for up to two weeks.
- an employee who satisfies the conditions in 2.2 above, except 2.2.3, will be entitled to SPP and leave provided they:
- have 26 weeks continuous service with one or more NHS employers, ending with the 15th week before the baby is due or the week in which notification of the adoptive match occurs;
- be employed by your employer up to the date of birth or placement of a child:
- have average weekly earnings at or above the Lower Earnings Limit.
- SPP is the same as the standard rate for, or 90% of average weekly earnings if this is less than SPP.
- if the baby is born earlier than the fourteenth week before it is due and, but for the birth occurring early, the employee would have been employed continuously for 26 weeks, then the employee will be deemed to have the necessary length of service.

4.1.2 Leave can start from:

- the date of the child's birth or placement (whether this is earlier or later than expected), **or**
- a chosen number of days or weeks after the date of the child's birth or placement (whether this is earlier or later than expected), **or**
- a chosen date

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

- within 56 days of the actual date of birth or placement of the child, **or**
- if the child is born early, within the period from the actual date of birth up to 56 days after the expected week of birth.

4.1.4 Employees will be entitled to reasonable time off to attend ante-natal classes or official meetings in the adoption process.

4.1.5 Annual leave will accrue during ordinary Maternity Support (Paternity Leave).

- 4.1.6 Paid Special/Other leave may be granted where there are difficulties at the time of birth.

5. MATERNITY SUPPORT (PATERNITY LEAVE) PROCEDURE

5.1 How to Claim Maternity Support (Paternity Leave) and Pay

Maternity Support (Paternity Leave)

- 5.1.1 An employee must, wherever possible, give at least 28 days notice of their intention to take ordinary Maternity Support (Paternity Leave) by completing form PAT1 and submitting it to their manager.
- 5.1.2 Form PAT1 is evidence that the employee meets the eligibility conditions and includes the following information:
- the week the baby is due or the child is expected to be placed;
 - whether one week or two consecutive weeks is requested;
 - the date ordinary Maternity Support (Paternity Leave) is to start;
 - the employee's confirmation of eligibility.
- 5.1.3 In the event of a stillbirth, if the birth takes place after the 24th week of pregnancy the employee will be entitled to the same amount of ordinary Maternity Support (Paternity Leave) and pay as if the baby had been born alive.

6. SHARING OF LEAVE

- 6.1 See the Shared Parental Leave Policy for more information and guidance about sharing maternity or adoption leave with partners.

7. EQUALITY

- 7.1 In applying this policy, the Organisation will have due regard for the need to eliminate unlawful discrimination, promote equality of opportunity, and provide for good relations between people of diverse groups, in particular on the grounds of the following characteristics protected by the Equality Act (2010); age, disability, gender, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, and sexual orientation, in addition to offending background, trade union membership, or any other personal characteristic.

8. MONITORING & REVIEW

- 8.1 The policy and procedure will be reviewed periodically by People Services in conjunction with operational managers and Trade Union representatives. Where review is necessary due to legislative change, this will happen immediately.
- 8.2 The implementation of this policy will be reviewed periodically by the CCG Executive in conjunction with operational managers and Trade Union Representatives. Where review is necessary due to legislative change this will happen immediately.