

## APPENDIX 2

### ADOPTION LEAVE/PAY GUIDANCE

#### 1.0 ADOPTION PROVISIONS

##### 1.1 Adoption Leave and Pay Entitlements

- 1.1.1 Adoption Leave is available to an employee who is the primary carer of a newly and legally adopted child under the age of 18 or has a child through a surrogacy arrangement.
- 1.1.2 On notification of their pending adoption, the manager should ensure the employee is made aware of the entitlements and ensure that the relevant application form and supporting documentation are submitted to the HR department. Details of which are explained throughout this document.
- 1.1.3 Adoption leave and pay allows one member of an adoptive couple to take 52 weeks leave when their new child starts to live with them. Only one member of the couple is eligible to take the 52 weeks leave, whether they are both employed by University Hospitals Sussex NHS Foundation Trust or not.
- 1.1.4 Employees may also be entitled to adoption leave with pay within the NHS contractual adoption scheme, and/or under the statutory adoption pay (SAP) regulations, depending on hours worked and/or length of service.
- 1.1.5 There are different qualification rules for the two schemes, but essentially the NHS contractual maternity pay scheme gives employees all the benefits they are legally entitled to, with certain additions. If an employee does not qualify for the NHS provisions then statutory adoption pay provides the legal minimum entitlement if they meet the qualifying criteria. Employees will receive those entitlements most favourable to them. If an employee does not qualify for the NHS contractual adoption pay scheme or the statutory adoption pay scheme then they may be entitled to claim adoption allowance.
- 1.1.6 The employee can choose when to start getting their Statutory Adoption Pay. It can start from the date of the child's placement or up to 14 days before the expected date of the placement. Employees can choose how long they want to take leave for, up to the 52 week maximum.
- 1.1.7 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. Where two or more siblings are adopted from the same family within the 39 weeks leave, if a separate matching certificate is issued, a separate entitlement of 39 weeks of Statutory Adoption Pay (SAP)

will commence from the date the second child is placed and two payments of SAP could be payable for the same week/s.

- 1.1.8 Two weeks maternity support (paternity) leave and pay may be available for the other member of the couple or an adopter's partner who is not taking the 52 weeks leave (see appendix 3 of the Maternity, Adoption, Maternity Support (Paternity) and Shared Parental Leave Policy).
- 1.1.9 Employees will not qualify for statutory adoption leave or pay if they arrange a private adoption, become a special guardian or kinship carer or adopt a family member or stepchild,
- 1.1.10 The matching certificate should be available from the Adoption Agency and must be submitted with the application form (Appendix 2b) within 7 calendar days of the date on which they are notified of having been matched with the child, unless this is not reasonably practical.
- 1.1.11 Reasonable time off to attend official meetings in the adoption process should also be given.

## **1.2 Statutory Adoption Pay**

- 1.2.1 SAP is paid for 39 weeks. SAP is paid as 90% of the employee's average salary for the first 6 weeks and then flat rate SAP or 90% of the employee's average salary whichever is the lower for the remaining 33 weeks. The current rates of SAP can be obtained on [www.direct.gov.uk](http://www.direct.gov.uk)
- 1.2.2 If the employee is not entitled to SAP the Payroll department will still check the application and provide an SAP1 form. This form will explain why the employee is not entitled to SAP. If the employee is not entitled to SAP they may be able to claim maternity allowance.
- 1.2.3 If the employee has decided that they are not returning to the NHS at the end of their maternity leave then they will still be eligible to receive SAP.
- 1.2.4 If qualifying conditions are satisfied, SAP will still be payable if the contract of employment ends after the start/during their maternity leave or whilst SAP is being paid. SAP will normally continue to be payable for the 39 week period.

## **1.3 Qualifying Conditions – Statutory Pay**

- 1.3.1 To qualify for SAP the following conditions must be fulfilled:
  - The employee must have been continuously employed by the Trust for at least 26 weeks continuing into the week the employee is matched with a child. This is known as the Matching week (MW).

- The employee must have average weekly earnings of not less than the lower earnings limit for the payment of national insurance contributions which applies in the MW.
- To check if they qualify employees can use an online calculator at the following website address: <https://www.gov.uk/pay-leave-for-parents>

#### **1.4 NHS Contractual Adoption Pay Scheme (Occupational Pay)**

- 1.4.1 Occupational adoption pay is 8 weeks full pay, 18 weeks half pay plus statutory adoption pay (providing this does not total more than the employees full pay) and a further 13 weeks of flat rate SAP only. Adoption pay in excess of average weekly earnings will not be paid. Occupational pay is calculated from the 8 weeks leading up to the week the employee is matched with a child.
- 1.4.2 By prior agreement with the Payroll department occupational adoption pay (not including SAP) can be paid in a different way, for example, a combination of full pay and half pay or a fixed amount spread equally over the leave period.

#### **1.5 Qualifying Conditions – NHS Contractual Pay**

- 1.5.1 To qualify for occupational adoption pay the following conditions must be satisfied:
- 12 months continuous service or more with the NHS at the 11<sup>th</sup> week before the employee is matched with a child.
  - Return to work for a minimum period of 3 months with the same or another NHS employer at the end of the adoption leave.

#### **1.6 Notification Requirements**

- 1.6.1 The employee should inform their manager of the pending adoption at least 28 days prior to the commencement of the adoption leave or as soon as reasonably possible.
- 1.6.2 Formal notification of the adoption should be submitted in writing by the employee to their manager using the application form at appendix 2a within 7 days of being matched with a child. This should include the expected or actual date of placement, the date adoption leave is intended to commence and whether the employee intends to return to work following their leave. The Matching Certificate or other evidence from the Adoption Agency will also need to be submitted with the application form.
- 1.6.3 The Human Resources department will then be able to send a letter to the employee confirming:
- their entitlement to leave and pay;
  - their dates of leave, including the expected return date/end of leave which will be based on 52 weeks leave;
  - the length of any accrued annual leave that it has been agreed can be taken following the end of the leave period;

- the need for the employee to give at least 28 days written notice if they wish to return to work earlier than 52 weeks.

1.6.4 The letter will be sent within 28 days of receipt of the application form.

1.6.5 If the employee does not wish to return to work following their period of leave they should submit a resignation letter to their manager in addition to their application form for adoption leave.

1.6.6 If the employee is unsure as to whether they wish to return to work following their leave then they can opt to receive SAP only (if they are eligible to receive this). If they do return to work at the end of their leave then the difference between SAP and OAP will be paid to them if they are eligible to receive it.

1.6.7 If the employee subsequently wishes to change the date from which they wish to start their leave, they should notify their manager in writing at least 28 days beforehand (or if this is not possible as soon as is reasonably practicable beforehand). If they wish to return to work at the end of their 52 weeks leave they will not be required to give any further notification.

## **1.7 Childcare Vouchers, Salary Sacrifice Schemes and Impact on Pay**

1.7.1 If the employee is in one or more salary sacrifice schemes (i.e. childcare vouchers, car parking, cycle to work scheme) then this will have an effect on the amount of adoption pay that they receive. The calculations for pay will be reduced by the annual amount received as part of the salary sacrifice scheme.

1.7.2 If the employee does not want their pay to be reduced they will need to leave the relevant scheme at least 8 weeks before the 15<sup>th</sup> week before the date of placement. This is known as the Relevant Period.

1.7.3 If they wish to change their order for childcare vouchers they will need to notify the Childcare Co-ordinator 4 weeks before the Relevant Period in time for the paperwork to be processed by the start of the Relevant Period. Please contact the Payroll department for further advice.

## **1.8 Employees Holding a Fixed Term or Temporary Contract or Training contract**

1.8.1 If the employee is eligible for occupational adoption pay and their contract is due to expire after the 11<sup>th</sup> week before the MW, their contract will be extended to allow them to receive their adoption pay and 52 weeks leave.

1.8.2 Absence on leave for up to 52 weeks before a further NHS appointment will not constitute a break in service.

1.8.3 If the employee has no right to return because the contract would have ended if the adoption had not occurred, then they will not be required to pay back OAP.

## **1.9 Rotational Training Contracts**

- 1.9.1 If the employee is on a planned rotation of appointments with one or more NHS employer as part of an agreed programme of training, they will have the right to return to work in the same post or in the next planned post irrespective of whether their contract would otherwise have ended. In such circumstances their contract will be extended to enable them to complete the agreed programme of training.

## **1.10 Bank Only Staff**

- 1.10.1 Although Bank workers are not eligible for Occupational Adoption Pay, they may be entitled to receive SAP. The relevant application form and supporting documentation should be submitted and individuals are advised to contact the Payroll department to determine their entitlements.

## **1.11 Deciding Not to Return**

- 1.11.1 If the employee changes their mind about returning to work whilst they are on adoption leave they should inform their manager as soon as possible. Should they fail to return to their job or commence work with another NHS employer for a 3 month period within 15 months of beginning their leave, the Payroll department can seek a refund of the OAP paid. They will not, however, have to repay SAP.

## **1.2 Adopting from Overseas**

- 1.2.1 The qualifying conditions and notification procedures are slightly different if an employee is adopting from overseas.
- 1.2.2 The qualifying week is the week in which official notification is received. Official notification is written notification from the relevant domestic authority (usually the Department of Health) that it is prepared to or has issued a certificate to the overseas authority concerned with the adoption of the child confirming that the adopter is eligible to adopt and has been assessed and approved as being a suitable adoptive parent. The employee should therefore use this qualifying week when considering whether they meet the qualifying conditions for SAP and OAP.
- 1.2.3 The employee should notify their manager using the form in appendix 2a within 28 days of receiving the official notification or completing 26 weeks continuous service with the NHS whichever is the later. Their adoption leave cannot begin until the child enters Great Britain and the latest adoption leave can commence is 28 days after that date of entry.

## **1.3 Surrogacy Arrangements**

- 1.3.1 Parents in a surrogacy arrangement who are entitled to and intend to apply for a Parental Order under the Human Embryology and Fertilisation Act 2008 will be able to take adoption leave and pay and paternity leave and pay if each parent meets the normal qualifying conditions. Both parents in a surrogacy arrangement are also entitled

to take unpaid time off work to attend two antenatal appointments with the woman carrying the child.

## **1.4 Fostering for Adoption**

- 1.4.1** Employee's undergoing a formal Fostering for Adoption arrangement will be entitled to adoption leave and pay if they meet the normal qualifying conditions. Employees can claim adoption leave and pay from the time they start acting as a Fostering for Adoption Carer or it can be delayed until the placement for adoption happens.

## **2.0 ADDITIONAL CONTRACTUAL ARRANGEMENTS DURING ADOPTION LEAVE**

### **2.1 Contact During Leave**

- 2.1.1** Prior to commencing leave the employee and manager should discuss and agree arrangements for keeping in touch during the leave period. This should include:

- Any arrangements that may be found helpful to keep in touch with developments at work, for example, sending newsletters, job bulletins, details of departmental or Trust changes and any other information concerning the Trust or department, and nearer the time of the employee's return, any arrangements that may facilitate the return to work. This may also include arranging to attend work for Keeping in Touch (KIT) Days (see section 2.2).
- An agreed method of communication e.g. phone, e-mail or letter.
- Keeping the manager in touch with any developments that may affect the intended date of the employees return to work.

- 2.1.2** Appendix 2b can be used as a template letter to confirm discussions between the employee and the line manager.

### **2.2 Keeping In Touch Days**

- 2.2.1** By agreement with the manager, the employee may take up to 10 Keeping in Touch (KIT) days under their contract of employment during the leave period. These days may be used to allow the employee to return to work gradually towards the end of the leave period for training events or staff meetings.

- 2.2.2** KIT days can be arranged for any time within the employees leave period. KIT days will be paid at the basic rate of pay for the hours worked less the appropriate leave payment for those days.

- 2.2.3** The manager will inform the Payroll department that the employee has worked a KIT day and the hours that they have worked.

- 2.2.4** One KIT day will be deducted regardless of the amount of hours worked in any one day.

## **2.3 Working on the Bank**

- 2.3.1 If the employee is a bank member as well as holding a substantive post, they cannot work on the bank during their leave. Any bank shifts worked will constitute a return to work and the end of the pay and leave period.

## **2.4 Working for Another Employer**

- 2.4.1 If the employee works for another employer after their child is adopted and they are receiving SAP from the Trust, the SAP will be stopped with effect from the week they started working for the second employer if they were not employed by them during the week they were matched with a child. In these circumstances, the Trust will also cease to pay OAP. If however, they were employed by their second employer during the week they were matched with a child, the SAP will continue to be paid by the Trust in addition to OAP. It is the employee's responsibility to notify the Trust if they start or go back to work for another employer after the child is adopted. This includes Agency work.

## **2.5 Returning to Work**

- 2.5.1 The employee has the right to return to their job at the end of their leave under their original contract and on no less favourable terms. The only exception would be if a reorganisation that affected their job had taken place whilst they were on leave. If this happened they would be consulted about the changes whilst they were happening and they would be entitled to be considered for an appropriate alternative job.
- 2.5.2 If the employee is taking adoption leave and wishes to return to work earlier than the 52 weeks of leave, they should write to their manager to inform them of the new return to work date at least 28 days prior to returning.
- 2.5.3 Once a return to work date has been confirmed, the manager should complete a Staff Change Request Form and send it to the Payroll department and the Human Resources Transactional Team to ensure that the employee's normal pay is resumed. Should they be taking annual leave prior to actually attending work on their return, the date of return will be classed as the first day of their annual leave.

## **2.6 Parental Leave**

- 2.6.1 The employee may take four weeks unpaid parental leave at the end of their adoption leave period. If they wish to take this leave they should discuss this with their manager in advance of their leave wherever possible. If this is not possible they should give their manager 21 days' notice of their intention to take parental leave at the end of their leave period. During any period of parental leave, they retain all contractual rights except remuneration. Please see the Special Leave guidance notes for further information regarding parental leave.

## **2.7 Returning on Flexible Working Arrangements**

- 2.7.1 If at the end of their leave they wish to return to work on different hours their manager will try to facilitate this wherever possible. If it is not possible to accommodate their request, their manager will provide written reasons for this within 28 days of their request. Any request for flexible working will be managed in line with the Work Life Balance policy and accompanying guidance notes.

## **2.8 Annual Leave and Bank Holidays**

- 2.8.1 Annual leave will continue to accrue during leave whether paid or unpaid, and will include bank holidays. Accrual of bank holidays is calculated in real time and the annual leave calculator should be used when confirming an employee's entitlement. Any annual leave due should be taken before the commencement of leave. However it may be agreed that a period of accrued annual leave can be taken following the end of the adoption leave period. Annual leave should be discussed and agreed with the line manager prior to the commencement of leave. If agreed, a period of accrued annual leave can be taken at the end of the leave period and this should be recorded prior to the commencement of the leave period.

## **2.9 Increments**

- 2.9.1 Absence on leave, whether paid or unpaid, counts towards service for incremental purposes. If the employee is due to progress through a KSF gateway during their leave this would automatically happen if no concerns had been raised with them about their ability to meet their KSF outline prior to their leave. If concerns have been raised they should discuss this with their manager prior to their leave commencing.

## **2.10 NHS Pension Scheme**

- 2.10.1 Leave counts as pensionable service and employees will be liable for contributions on all periods of leave if they are a member of the NHS Pension Scheme. Their contributions will be based on the amount of pay they receive rather than on their level of earnings immediately before their leave commenced.
- 2.10.2 During a period of unpaid leave employees will be liable for contributions based on their rate of pay which applied immediately prior to the period of unpaid leave. Such contributions will be calculated by Payroll and recovered over a similar period of time on return to work.

## **2.11 Career Breaks**

- 2.11.1 Occupational pay is calculated from the 8 weeks leading up to the 15<sup>th</sup> week before the date of placement.
- 2.11.2 If a member of staff plans to adopt whilst on a career break they may wish to consider amending their career break arrangements to avoid any possibility of their Ordinary and/or Statutory Pay not being paid. Please contact the Payroll Office for further advice.

## **2.12 Professional Registration Renewal**



2.12.1 If an employee's professional registration is due to expire during their leave it **MUST** be renewed in time as per the Trust's Professional Registration Policy. Failure to do this may result in disciplinary action being taken and may also have an impact on any Statutory or Occupational Pay being received. It is the employee's responsibility to ensure that their professional registration is always current and up to date.

### **2.13 Other Deductions from Pay**

2.13.1 If the employee currently has deductions from their pay (e.g. union membership) these will continue during the leave period. Please contact the Payroll Office for further advice.

### **2.14 Incentive Bonus Scheme**

2.14.1 If the employee is receiving payments under an incentive scheme, these will continue during the weeks in which they are absent on paid leave. The rate will be the average bonus paid to them for the 12 weeks prior to their leave.

## APPENDIX 2a

### APPLICATION FOR MATERNITY or ADOPTION LEAVE/ PAY

**This form must be completed and sent with notification of the date you wish to commence maternity/ adoption leave to your line manager who will forward to Human Resources.**

#### PERSONAL DETAILS

NAME:	
ADDRESS:	
CONTACT TEL NO:	
JOB TITLE:	
DEPARTMENT:	
START DATE WITH TRUST:	
DATE CONTINUOUS SERVICE IN NHS BEGAN:	
EXPECTED DATE OF CONFINEMENT (pregnancy):	
EXPECTED DATE OF PLACEMENT (adoption):	
DATE MATCHING NOTIFICATION RECEIVED (adoption):	

Please complete the statement below which applies to your intentions for maternity or adoption leave.

#### SECTION A

To be completed by staff who do not wish to return to work:

I do not intend to return to work and understand that my only entitlement provided I have sufficient service and earnings, will be statutory maternity or adoption pay.

I wish my last day of duty to be:.....

Signature: ..... Date: .....

Manager's Signature: ..... Date: .....

Manager's Name and Post Title.....

**(NOTE TO MANAGER – PLEASE COMPLETE A LEAVERS FORM NOW AND SEND TO HR)**

## SECTION B

To be completed by staff who are uncertain as to whether they will return and therefore wish to be paid at the lower maternity/adoption rate:

I wish my maternity or adoption leave to commence: .....  
(This section continues over the page)

I understand that I must notify my manager in writing of my intention not to return to work (if applicable) at the earliest opportunity after the birth or placement of the child for adoption.

Please withhold all maternity/ adoption entitlements, except that to which I am entitled to under the statutory maternity or adoption pay provisions.

Signature: ..... Date: .....

Manager's Signature: ..... Date: .....

Manager's Name and Post Title.....

## SECTION C

To be completed by staff who wish to return to work:

I wish my maternity or adoption leave to commence on: .....

My anticipated return date is:.....

**(Note: You are required to give your manager at least 28 days notice of the exact date of your return to work unless you intend to return to work at the end of your full 52 weeks of maternity or adoption leave)**

Any accrued annual leave agreed with line manager to be carried into the next leave year and taken at the end of the maternity/ adoption leave period is .....(hours)

I understand that should I fail to return within 15 months of starting maternity or adoption leave, for a minimum of three months to University Hospitals Sussex NHS Foundation Trust, or elsewhere within the NHS, then I am liable to refund the maternity or adoption pay that I received discounting statutory maternity pay provisions.

If I qualify for occupational maternity/ adoption pay I would like my pay (not including SMP/ SAP) paid as a fixed amount spread equally over the leave period (please tick): ☐ YES ☐ NO

Signature ..... Date .....

Manager's Signature ..... Date .....

Manager's Name and Post Title.....

## Human Resources use only

Authorised by HR: ..... Date: .....

## Payroll Office use only

Car parking charges actioned appropriately: Yes/No

## APPENDIX 2b

[Department]  
[Hospital site]  
[Address]

[Employee name]  
[Address or department]

Dear [name]

### Contact during adoption leave

Prior to the commencement of your leave I thought it would be useful to confirm the discussions that we've had regarding what arrangements can be put into place for keeping in touch with you about developments and news at work during your leave period.

Such arrangements can include the sending of newsletters, job bulletins, details of departmental and/ or Trust changes and any other information concerning the Trust and/ or the department.

*[Delete the following paragraph if the employee has confirmed that they will not be returning to work at the end of their leave period or if they are not entitled to KIT and/ or SPLIT days]*

If you are eligible you may work for up to a maximum of 10 KIT days without bringing your adoption leave to an end. If taking shared parental leave you may work for up to a maximum of 20 SPLIT days. The work can be consecutive or not and can include training or other activities which can enable you to keep in touch. Any such work must be by agreement and neither you nor I can insist upon it. You will be paid at your basic hourly rate for the hours you work.

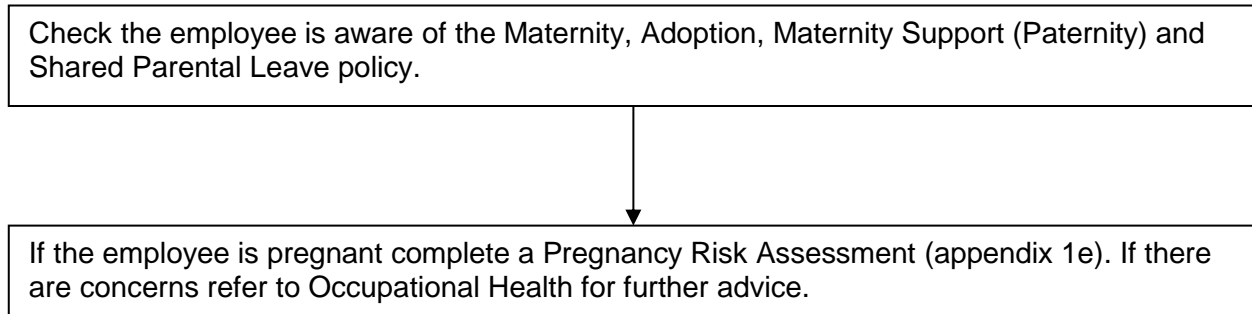
*[Confirm outcome of discussions including agreed communications/ what/ when/ how/ anything else]*

Yours sincerely

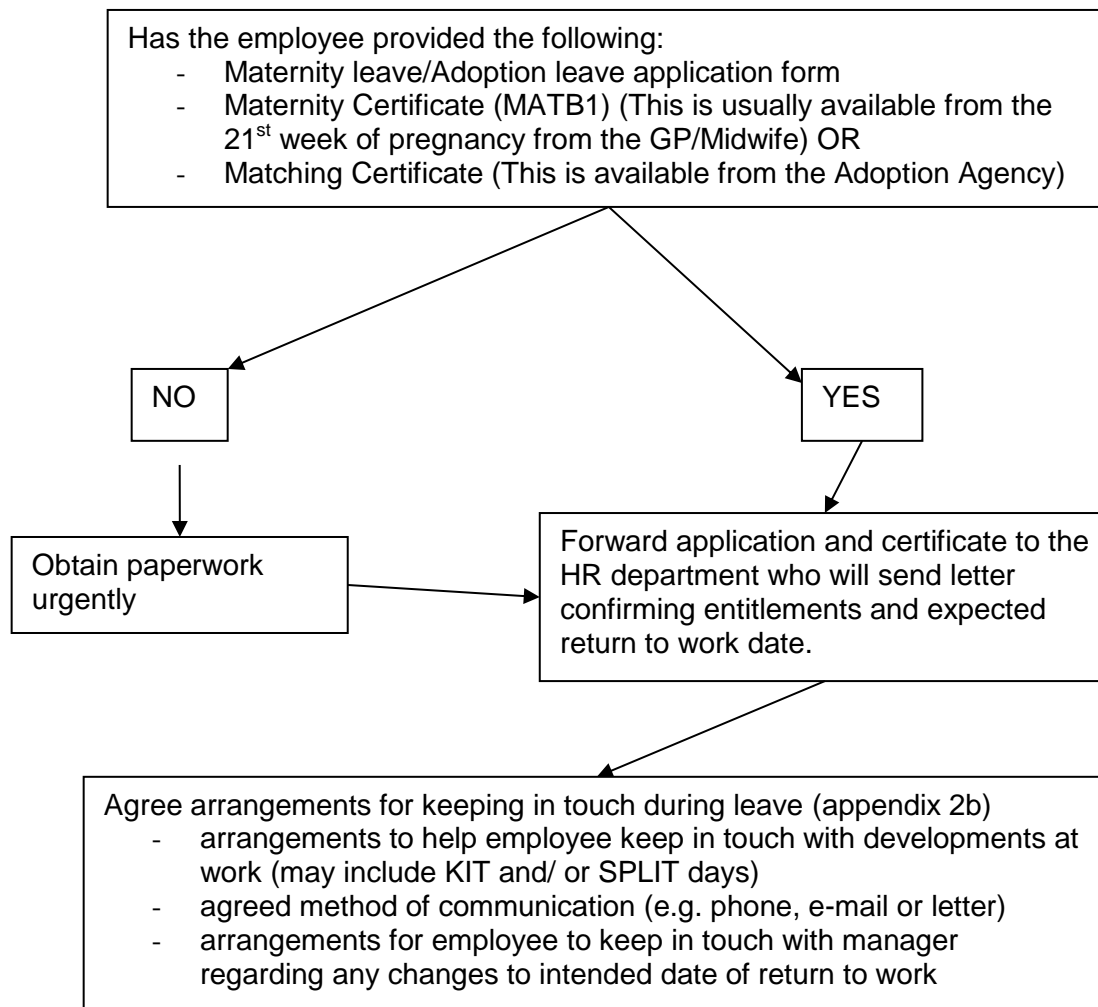
[Manager name]  
[Job title]  
[Contact phone number and email address]

## APPENDIX 2c – flowchart for maternity and adoption leave

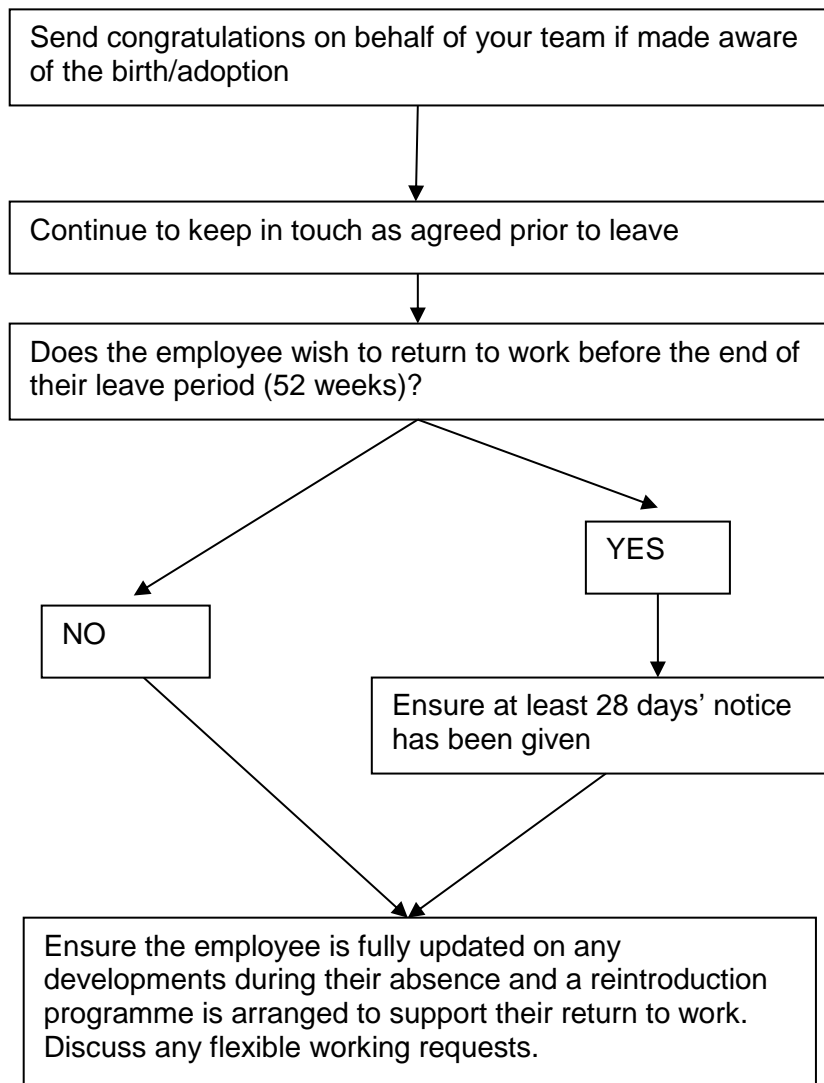
### When you are informed of an employee's pregnancy/intention to adopt a child



### 15 weeks before the baby is due/within 7 days of notification of matching for adoption



## When the baby is born/adoption takes place



## APPENDIX 2d – summary of entitlements for maternity/adoption leave and pay

ENTITLEMENT TO LEAVE AND PAY IF YOU <u>ARE RETURNING</u> TO WORK		
Your length of service	Leave entitlement	Pay Entitlement
Less than 26 weeks continuous service within the Trust at the QW	52 weeks maximum leave.	May qualify for occupational maternity/ adoption pay if NHS service is continuously 12 months or more at the QW
Less than 12 months NHS service but 26 weeks or more continuous service with the Trust at the QW	52 weeks maximum leave.	Statutory maternity adoption payments paid for 39 weeks as follows (subject to earnings being at least equal to the lower earnings limit for National Insurance Contributions): Weeks 1 – 6 inclusive - 90% of average weekly earnings Weeks 7 – 39 inclusive – lower rate SMP/ SAP
12 months or more continuous NHS service at the QW	52 weeks maximum leave.	Occupational maternity/ adoption payments paid for 39 weeks as follows: Weeks 1 – 8 inclusive - Full pay Weeks 9 – 26 inclusive – Half pay plus lower rate SMP/ SAP (if half pay plus SMP/ SAP and any other NI benefits exceed full pay the half pay will be reduced so that full pay is not exceeded) Weeks 27 – 39 inclusive – lower rate SMP/ SAP
<p>Full pay shall be calculated on the basis of your average earnings.</p> <p>The maternity/adoption pay will be recalculated and any arrears due will be paid if a backdated pay award is notified.</p> <p>Payment will be made at the same intervals as you normally receive your wage/salary.</p> <p>By prior agreement with the Pay Office, occupational maternity/ adoption pay may be paid in a different way, for example a combination of full pay and half pay or a fixed amount spread equally over the maternity/ adoption leave period.</p> <p>Lower rate SMP/ SAP is 90% of your average earnings or the standard rate SMP/ SAP, whichever is the lower. The current rate of SMP and SAP can be found on <a href="http://www.direct.gov.uk">www.direct.gov.uk</a></p>		
ENTITLEMENT TO PAY IF YOU <u>ARE NOT RETURNING</u> TO WORK		
Your length of service	Pay Entitlement	
Less than 26 weeks continuous service within the Trust at the QW	Nil	
26 weeks or more continuous Trust service at the QW	Statutory maternity/adoption payments paid for 39 weeks as follows (subject to earnings being at least equal to the lower earnings limit for National Insurance Contributions): Weeks 1 – 6 inclusive - 90% of average weekly earnings Weeks 7 – 39 inclusive – lower rate SMP/SAP	
<p>The maternity pay will be recalculated and any arrears due will be paid if a backdated pay award is notified.</p> <p>Payment will be made at the same intervals as you normally receive your wage/salary.</p> <p>Lower rate SMP/SAP is 90% of your average earnings or the standard rate SMP/SAP, whichever is the lower. The current rate of SMP and SAP can be found on <a href="http://www.direct.gov.uk">www.direct.gov.uk</a></p>		