

**Joint Agreement on Guidance for
Paternity Leave
in Further Education Colleges**

Between

Association of Colleges (AoC)

AND

Association for College Management (ACM)

Association of Teachers and Lecturers (ATL)

GMB

Unite

University and College Union (UCU)

UNISON

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Joint Agreement on Guidance for Paternity Leave in Further Education Colleges

1 Introduction

- 1.1 This joint agreement on guidance aims to provide a framework for Colleges to develop effective local policies to support an appropriate work-life balance. Such policies are intended to: allow a more effective combination of home and work responsibilities; enhance equality of opportunity at work; and maintain the competitive advantage of the organisation by retaining skilled & valued employees.

2 Scope

- 2.1 This joint agreement on guidance describes paternity rights and obligations for all eligible employees at the College whose baby is due on or after 3 April 2011, or who are notified of a match for adoption on or after 3 April 2011. Employees are also encouraged to refer to related policies such as: {Parental leave, maternity leave and adoption leave}.
- 2.2 The provisions relating to additional paternity leave are complex, therefore employees are encouraged to seek clarification on the procedures with [HR Manager] if they so wish.

3 Legislation

- 3.1 Legislation relevant to this joint agreement on guidance includes:
- Employment Rights Act 1996
 - Paternity and Adoption Leave Regulations 2002
 - Statutory Paternity Pay and Statutory Adoption Pay (General) Regulations 2002
 - Statutory Paternity Pay and Statutory Adoption Pay (Weekly Rates) Regulations 2002
 - Statutory Paternity Pay and Statutory Adoption Pay (Administration) Regulations 2002
 - Work and Families Act 2006
 - Additional Paternity Leave Regulations 2010
 - Additional Statutory Paternity Pay (General) Regulations 2010
 - Additional Statutory Paternity Pay (Weekly Rates) Regulations 2010
 - Additional Statutory Paternity Pay (Birth, Adoption and Adoptions from Overseas) (Administration) Regulations 2010
 - Social Security Contributions and Benefits Act 1992

4 Ordinary Paternity Leave

4.1 Eligibility for ordinary paternity leave (OPL):

4.1.1 Employees who are partners of pregnant women will be entitled to access the College OPL benefits, subject to the eligibility criteria below. This is in addition to the right to parental leave.

4.1.2 To be eligible to take OPL, an employee must:

- have at least 26 weeks of continuous employment leading into the 15th week before the expected week of the childbirth;
- have, or expect to have, responsibility for the upbringing of the child;
- be either the biological father of the child, married to the child's mother or be the partner of the child's mother.

4.1.3 In the case of adoption, to be eligible to take OPL, an employee must:

- have at least 26 weeks of continuous employment ending with the week in which the adopter is notified of being matched with a child;
- have, or expect to have, responsibility for the upbringing of the child;
- be either married to, or the partner of, the child's adopter;
- and must not be taking adoption leave in respect of the child.

4.2 Entitlement to OPL:

4.2.1 Eligible employees are entitled to two weeks leave, taken in a block of either one week or two consecutive weeks. Employees are not entitled to take two non-consecutive weeks of leave.

4.2.2 OPL can take place within 56 days of the child's birth or the expected week of childbirth, whichever is the later. In the case of an adoption, ordinary paternity leave can take place within 56 days of the placement for adoption, or within 56 days of the first day of the expected placement, whichever is the later.

4.3 Application process

4.3.1 Employees should apply for OPL to (line manager/HR manager) on or before the 15th week before the expected week of childbirth. Where this is not possible, notice must be given as soon as is reasonably practicable. Applications must state the intended date of OPL and the length of OPL.

4.3.2 Employees are required to provide a certificate of confinement or birth to validate their application, or proof of the adoption. This can include the Mat B1, followed by the birth certificate.

5 **Additional Paternity Leave (APL)**

5.1 APL entitlement and duration

- 5.1.1 Eligible employees (see 5.2) may take between two weeks' and 26 weeks' APL. APL must be taken in multiples of one week and must be taken in one continuous period.
- 5.1.2 APL cannot begin until at least 20 weeks after the birth of the child or, in the case of adoptions, 20 weeks after the date of the placement of the child. APL must end within 12 months of the birth or, for adoptions, the placement date.
- 5.1.3 By definition, APL is available in addition to OPL. Eligible employees opting to take APL are permitted to have a gap between the end of their OPL and the start of their APL.

5.2 Eligibility for APL

- 5.2.1 In order to be eligible for APL, an employee must meet each of the following criteria:
- a) He/she must be the child's father or be married to, the civil partner of or the partner¹ of the child's mother. In the case of adoption, he/she must be married to, the civil partner of or the partner of the primary adopter.
 - b) He/she must have or expect to have the main responsibility for the child's upbringing (apart from the mother's responsibility); or, in the case of adoption, must have been matched with the child for adoption.
 - c) He/she must have 26 weeks' continuous service ending with the 15th week before the week in which the child is due to be born; or, in the case of adoption, ending with the week in which he/she was notified of having been matched with the child.
 - d) He/she must remain in continuous employment at the College until the week before the first week of APL.
- 5.2.2 In addition to the criteria in 5.2.1, the following criteria in relation to the mother or the primary adopter must also be satisfied in order for the employee to be able to take APL:
- The mother of the child must be entitled to at least one of: maternity leave, statutory maternity pay or maternity allowance. In the case of adoption, the primary adopter must be entitled to one or both of adoption leave or statutory adoption pay.
 - The mother or the primary adopter must have returned to work and before the end of his/her maternity or adoption leave.
- 5.2.3 APL can only be taken for the purpose of the employee caring for the child in question.

¹ "Partner", in relation to the child's mother or primary adopter, means: a person (whether of a different sex or the same sex) who lives with the mother or the primary adopter and the child in an enduring family relationship, but is not a parent, grandparent, sister, brother, aunt or uncle of the mother or primary adopter.

5.2.4 In the event of a multiple birth, or the placement for adoption of more than one child, the employee's entitlement to APL shall not be affected or increased.

5.2.5 Special provisions apply for additional paternity leave in respect of children adopted from overseas. Details of the provisions for eligibility and notice requirements can be sought from {the HR Department}.

5.3 Giving notice to start APL

5.3.1 In order to be able take APL, an employee must give the College at least eight weeks' written notice. The notification includes three elements:

- A "leave notice" (see section 5.3.2)
- An "employee declaration" (see section 5.3.3)
- A "mother declaration" or an "adopter declaration" (see section 5.3.4)

The employee must provide the College with all three of the above at least eight weeks before the intended start date of APL.

5.3.2 In the case of a birth, the written leave notice must specify:

- The child's expected week of birth;
- The child's actual date of birth; and
- The dates that the employee intends his/her APL to start and end.

In the case of adoption, the written leave notice must specify:

- The date the employee was notified of having been matched with the child;
- The date of placement for adoption; and
- The dates that the employee intends his/her APL to start and end.

5.3.3 The written employee declaration must:

- Be signed by the employee;
- State that the purpose of the APL is to care for the child; and
- Confirm that the employee satisfies the eligibility criteria in sections 5.2.1 (a) and (b) of this agreement.

5.3.4 The written mother declaration must be from the mother of the child, specifying:

- Her name, address and National Insurance number;
- The date that she intends to return to work;
- Confirmation that the employee satisfies the eligibility criteria set out in 5.2.1 (a) and (b);
- Confirmation that to her knowledge the employee is the only person exercising the right to APL in respect of the child;
- Confirmation that she consents to the processing of the information contained within the declaration form; and

- The start date of her MPP period

The written adopter declaration must be from the primary adopter, specifying:

- His/her name, address and National Insurance number;
- The date that he/she intends to return to work;
- Confirmation that the employee satisfies the eligibility criteria set out in 5.2.1 (a);
- Confirmation that to his/her knowledge the employee is the only person exercising the right to APL in respect of the child;
- Confirmation that he/she consents to the processing of the information contained within the declaration form; and
- The start date of his/her APP period.

5.3.5 On receipt of the three forms of written notice, the College may, within 28 days, request that the employee provides a copy of the child's birth certificate and/or the name and address of the child's mother's employer. In the case of adoption, the College may request the employee to provide the name and address of the primary adopter's employer and/or evidence in the form of one or more of: the name and address of the adoption agency, the date on which the employee was notified of having been matched with the child and the date on which the agency expects to place the child with the employee for adoption. When the College makes such a request, the employee must provide the requested evidence within 28 days of the request.

5.3.6 When the employee has given notice of APL, the College will confirm receipt in writing within 28 days, confirming the start and end dates of APL and additional statutory paternity pay (ASPP), if applicable.

5.4 Provisions for when the employee ceases to be eligible for APL

5.4.1 An employee must withdraw his/her request for APL if any of the following situations occur:

- i. The employee no longer meets the eligibility criteria set out in 5.2.1(a) or (b);
- ii. The mother is no longer entitled to maternity leave, statutory maternity pay or maternity allowance; or for adoptions, the primary adopter is no longer entitled to adoption leave or statutory adoption pay;
- iii. The mother or primary adopter has not returned to work.

5.4.2 In the event of one of the situations outlined in 5.4.1, the employee must give the College written withdrawal notice at least six weeks before the APL start date, or if this is not possible as soon as reasonably practicable.

5.4.3 Where the employee gives notice of withdrawal, the College may still require the employee to take a period of APL, or to remain on APL, if the employee fails to notify the College at least six weeks before the start of the

APL (if the APL period has not yet begun) or after the APL has begun, and if it is not reasonably practicable for the College to cancel the employee's APL. In such circumstances, the leave will still be treated as APL, will start on the intended start date for APL (if it has not already begun) and shall end of the earlier date of:

- a) Six weeks after the date the notice in section 5.4.2 was given; or
- b) The end date specified in the employee's notice to take APL.

5.4.4 Where the College requires the employee to take APL in this way, the College will notify the employee of the dates of the leave as soon as is reasonably practicable and, in any event, before the start of the APL that the employee is required to take.

5.5 Variation or cancellation of APL before it has begun

5.5.1 The employee may cancel his/her APL or vary the APL dates, by giving the College written notice at least six weeks before the earlier of:

- The original date of APL to be cancelled or varied, or
- The new date of APL

If it is not reasonable practicable to give six weeks' notice, then the employee must notify the employee must notify the College as soon as is reasonably practicable.

5.5.2 Where the employee does not give six weeks' notice and it is not reasonably practicable for the College to accommodate the employee's request, the College may require the employee to take a period of APL. In such circumstances the APL will begin on the original APL start date and will end no later than the earlier of:

- a) Six weeks after the employee gave notice of variation or cancellation of APL; or
- b) The end date specified in the original notice of APL.

5.6 Keeping in touch during APL

5.6.1 During APL, a "keep in touch day" (KIT day) may be used to enable the employee to attend work without losing his/her right to additional paternity pay. Up to 10 KIT days may be undertaken during the APL period without bringing the APL to an end and without loss of additional paternity pay.

5.6.2 There should be no pressure on the employee to come into work. There is no obligation on an employee to undertake work, nor is there any obligation on the College to provide work. The KIT days (and the amount of salary paid for work done on KIT days) must only be arranged by mutual agreement. It is recommended that the employee should receive normal salary for working on a KIT day.

5.6.3 If a KIT day is agreed, the purpose should be agreed in advance so that both parties are clear what the employee will actually do. This can include training, a meeting or other activities to help the employee keep in touch.

5.7 Terms and conditions during APL

5.7.1 During the APL period the employee is entitled to benefit from the terms and conditions of his/her contract that would have applied had he/she not been absent except in relation to remuneration. The employee is bound by any obligations under his/her contract except those that are inconsistent with his/her rights to take APL, such as the obligation to attend work.

5.8 Early return from APL

5.8.1 If the employee wishes to return to work earlier than the date notified to the College in the employee's leave notice, he/she must give the College at least six weeks' notice.

5.8.2 If the employee attempts to return to work early without giving six weeks' notice, the College is entitled to postpone the employee's return to a date that would give six weeks' notice. In this situation, the College will notify the employee that he/she is not to return to work before the postponed date. The College will not be obliged to pay the employee if he/she still returns to work before the postponed date after having received written notification from the College.

5.9 Death of the mother or primary adopter

5.9.1 In the unfortunate event that the mother or primary adopter dies, the employee may be able to take a longer period of APL. Details of the provisions that would apply in this instance should be sought from the {HR Department}.

6 **Paternity pay**

6.1 Ordinary Statutory Paternity Pay (OSPP)

6.1.1 An employee will be eligible to receive OSPP if he/she:

- has completed 26 weeks of continuous employment leading into the 15th week before the expected week of the childbirth, or with the week in which the child's adopter is notified of the match;
- earns an amount equivalent to at least the lower earnings limit for National Insurance contributions; and
- notifies the College of his/her intention to take OPL, in line with Section 4.4.

6.1.2 Not all employees will be eligible for OSPP. Those below the earnings threshold should apply to the Benefits Agency to see whether they may be entitled to Income Support.

6.2 Additional Statutory Paternity Pay (ASPP)

6.2.1 An employee will be eligible to receive ASPP if he/she:

- meets the eligibility criteria to take APL, outlined in Section 5.2.1;
- earns an amount equivalent to at least the lower earnings limit for National Insurance contributions;
- notifies the College of his/her intention to take APL, in line with Section 5.3.

6.2.2 If, when returning to work, the mother or primary adopter has not used his/her full 39-week entitlement to statutory maternity pay, maternity allowance or statutory adoption pay, the employee may take the outstanding statutory payment as ASPP. The employee will only be eligible to receive ASPP during the period that the mother or primary adopter would have received statutory maternity pay or statutory adoption pay had she/he not returned to work.

6.3 Pension Contributions

6.3.1 An employee in receipt of remuneration, whether salary or paternity pay, or both, during his/her paternity leave will be treated as though he/she is working normally for the purposes of access to occupational pension scheme membership and benefits. Member and employer contributions will continue during paid paternity leave according to the scheme rules. Further guidance should be obtained from the relevant pension authority.

6.3.2 Employees who wish to continue pension contributions during her period of unpaid paternity leave should contact the pension authority to obtain the appropriate advice on how to do so.

6.4 Circumstances in which statutory paternity pay is lost

6.4.1 An employee will lose his/her right to receive OSPP or ASPP if:

- (a) He/she is taken into legal custody.
- (b) He/she starts work for another employer during the paternity pay period that he/she did not work for during the 15th week before the child's expected week of birth.
- (c) He/she returns to work (excluding circumstances when a "keeping in touch day" is undertaken under Section 5.6).

7 The right to return to work after OPL or APL

7.1 In almost all cases, an employee who takes OPL and/or APL will be entitled to return to the same job in which he/she was employed before the leave began.

7.2 If the OPL or APL followed on directly from a period of additional maternity leave, additional adoption leave or a period of parental leave of more than four weeks, then the employee will have the right to return to the same job, but if that is not

reasonably practicable then he/she will have the right to return to a job that is both suitable for him/her and appropriate for him/her to do in the circumstances.

- 7.3 If the employee's job becomes redundant during a period of APL, the College will offer him/her any other suitable alternative work that becomes available. He/she will have the right to be considered for such work, even though he/she is on APL. The offer will be made before his/her previous employment ends and (if accepted) the new employment will commence immediately. It must be suitable for the employee and appropriate for him/her to do in the circumstances, and the terms and conditions must not be substantially less favourable than those of the old contract. If there is no suitable alternative work available, then he/she will be made redundant and receive redundancy pay in line with his/her statutory and contractual entitlements.

8 General issues

- 8.1 Paternity leave is not sick leave, and will not be taken into account when calculating any period of sick leave entitlement for sick pay purposes.
- 8.2 The College will keep the employee informed of staff vacancies during the period of paternity leave.
- 8.3 The College is entitled to maintain reasonable contact with the employee during the paternity leave period should circumstances make this necessary. This entitlement is separate from the keeping in touch arrangements described in Section 5.6 above, and may be necessary to communicate and consult with the employee about issues relevant to his/her employment. For example:
- to communicate important news about the College or to update the employee on any developments which have occurred during his/her absence;
 - to keep the employee advised of any changes that may arise which could affect his/her job, such as mergers, restructuring or job evaluation; and
 - to discuss and plan the employee's return to work.

Communication could take the form of a staff newsletter, HR bulletin or individual letter.

- 8.4 Any employee who is unable to return to work at the end of their paternity leave period due to illness will be treated as if they were on sick leave, and will therefore be entitled to sick pay.
- 8.5 Periods of paternity leave are regarded as continuous service for the purpose of calculating entitlements to employment benefits.
- 8.6 Employees are protected from unfair treatment due to taking paternity leave or if the College believed he/she was likely to take APL.
- 8.7 This scheme will be reviewed on a regular basis in accordance with legislative developments and the need for good practice within the Corporation.

Joint Agreement on Guidance on Paternity Leave in Further Education Colleges

Signatures of the parties to this agreement:

AoC

Nick Lewis

ACM

Modell

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S. Crane

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UNITE - The Union

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Date of Commencement of this Agreement:

December 2010