

Policy on Adoptive Leave

Document Reference and Version Number	Version 3 – 26 th August 2019
Purpose	To inform staff of their rights under Adoptive Leave legislation & guide them through the process required to avail of paid and unpaid leave periods.
Commencement Date	September 2019
Date of Next Review	August 2021
Who needs to know about this document	All Staff
Revision History	
Policy Author	Human Resources Department
Policy Owner	HR Manager
Approved	

Context

This policy was developed to support staff throughout the process of Adopting a child, this policy complies fully with The Adoptive Leave Acts, 1995 and 2005 which provide a number of basic rights to adopting mothers and sole male adopters who are in employment. Such rights include adoptive and additional unpaid adoptive leave, paid time off to attend preparation classes and pre-adoption meetings, and the right to return to the same job or suitable alternative following a period of leave under the Acts. An employee's statutory and contractual rights are protected during any period of leave or time off under the Acts, subject to observation of statutory notification procedures.

The Law

There is no EU requirement to provide adoptive leave to parents. In Ireland, the Adoptive Leave Acts 1995 and 2005 provide for a statutory right to adoptive leave for all adopting female employees and, in certain circumstances, for male adopting employees.

The statutory instruments that are also applicable and are encompassed in this text include:

- S.I. No. 64 of 1995 – Adoptive Leave Act (Commencement) Order 1995;
- S.I. No. 195 of 1995 – Adoptive Leave (Referrals of Disputes and Appeals) Regulations 1995;
- S.I. No. 196 of 1995 – Adoptive Leave (Calculation of Weekly Remuneration) Regulations 1995;
- S.I. No. 724 of 2005 – Adoptive Leave (Commencement) Order 2005;
- S.I. No. 16 of 2006 – Adoptive Leave (Commencement) Order 2006;
- S.I. No. 52 of 2006 – Adoptive Leave (Extension of Periods of Leave) Order 2006.

Rights & Entitlements of Staff

The Adoptive Leave Acts 1995 and 2005 provide protection for all female employees who are adopting a child and for sole male adopters, irrespective of their employment status or their length of service with their employer. The Acts provide a number of basic rights to employees who are female adopters, certain male adopters or sole male adopters:

- a right to time off with 24 weeks of pay for adoptive leave and 16 weeks additional unpaid adoptive leave;
- a right to time off, without loss of pay, for required pre-adoption classes and preparation meetings;
- accrual of annual leave and public holiday entitlements while on adoptive leave and additional unpaid adoptive leave;
- protection against unfair dismissal on the grounds of exercising rights, or contemplation of exercising rights;
- a right to return to work after adoptive leave and additional unpaid adoptive leave;
- subject to the employer's agreement, a right to terminate additional unpaid adoptive leave in the event of becoming ill and a right to postpone adoptive leave or additional unpaid adoptive leave if the child is hospitalised;

-
- in the case of a foreign adoption, some or all of the 16 weeks additional unpaid adoptive leave may be taken before the date of placement in order to facilitate parents traveling to the relevant country prior to the placement date.
 - Absences on additional unpaid adoptive leave are not reckonable for superannuation. The absence will, therefore not count as service but will reckon for incremental purposes, and for qualifying service for annual leave and promotion.
 - Employees on fixed-term contracts also have these entitlements and protections. Where the employment contract is due to expire during the period of adoptive leave or additional unpaid adoptive leave, the leave and any entitlements to benefit expire on the day the contract expires.

Adoptive leave and additional unpaid adoptive leave entitlement

Adopting female employees and sole male adopters are entitled to a minimum period of 24 weeks paid adoptive leave. The leave period commences from the date of placement of the child. In addition to adoptive leave, an employee is entitled to avail of 16 weeks additional unpaid adoptive leave, to be taken immediately following the adoptive leave period.

In the unfortunate event that the mother dies prior to the placement date then the other adoptive parent will be entitled to paid leave of up to 24 weeks.

Employees paying Class D PRSI will be granted full pay from the Institute whilst on adoptive leave. Employees paying Class A1 PRSI must fill in the AB1 form and return it directly to Adoptive Benefit Section, Social Welfare Services, McCarters Road, Letterkenny, Co. Donegal. The adoptive benefit cheque will be kept by the Institute and the employee will receive full pay for the paid adoptive leave period.

There is no requirement under the Acts for employers to pay staff taking leave under the act and where a person is uneligible for pay, the person may be entitled to claim Adoptive Benefit from the Department of Employment Affairs and Social Protection for the duration of his or her 24-week adoptive leave period, provided he or she has the necessary PRSI contributions.

Pre-adoption classes and preparation meetings

Employees are entitled to time off, without loss of pay, to attend pre-adoption classes and preparation meetings, which they are required to attend as part of the adoption process. Such classes and meetings must be held within the State, and will generally be those meetings or classes that the HSE or the adoption agency requires the employee to attend as part of the adoption process. HR will require proof of attendance and where possible 2 weeks notice of the appointment in order to manage the leave being taken i.e. in the case of an academic staff member, time is required in order to reschedule classes on that day.

Annual leave and public holiday benefit

An employee is deemed to have been “notionally working” for the full duration of adoptive leave and additional unpaid adoptive leave. This means that the entire period is reckonable for the purposes of calculating annual leave and public holiday benefits. The employer should regard this time as if the employee had been at work.

Academic Staff

Any annual leave or public holidays that have been accrued during the period of leave taken will be

comprehended during Christmas, Easter or the Summer periods of the academic contract.

Academic – Non Statutory Adoptive leave to the end of the Academic year

A lecturer who on completion of Adoptive leave, Additional Adoptive leave may avail of further unpaid adoptive leave referred to as “Non Statutory Adoptive Leave to the end of the Academic Year” subject to obtaining written sanction from the Institute. Any such request should be made to the HR Department through their Head of School not later than 4 weeks prior to a person’s intention to return to work.

Professional, Management and Support Staff

Public holidays that arise during the periods of leave will be tagged onto the end of the Adoptive leave period. This leave will be paid leave.

At the end of the adoptive leave and additional unpaid adoptive leave period, the employee will have a number of days of annual leave outstanding. The employee can take these days to coincide with their return date to work or where the entirety of leave is not possible to exhaust prior to their return then a plan must be agreed with their manager when they can exhaust fully the leave accrued.

Procedure for Notification

The employee informs the Department Head/Manager in writing of the pending adoptive leave as soon as is practicable, but no later than eight (8) weeks’ before the commencement of adoptive leave. For practical reasons, it is desirable that employees provide as much notice as possible so that appropriate arrangements can be made, vis-à- vis, workload distribution or replacement.

The employee applies to the Human Resources Department for adoptive leave using an Application for Adoption Leave Form AL1. A certificate of placement must be submitted to Human Resources Department as soon as is reasonably practicable, but no later than four weeks after the placement.

The HR Department will validate the leave claim and communicate directly with the employee, having received the AL1.

The HR Department will inform payroll.

An employee must complete the Adoptive Benefit Form and send it to Adoptive Benefit Section, Department of Employment Affairs and Social Protection. The employee will find the most up to date forms for this benefit on the departments website www.welfare.ie

The HR Department will fill out section 4 of the Adoptive Benefit Form.

If the employee wishes to avail of the sixteen (16) weeks’ extended leave, s/he must do so by writing to the Department of Human Resources and the Head of Department at least four (4) weeks prior to the expected date of return.

In foreign adoption cases, the adopting employee may take some or all of the additional leave before the date of placement. Written notification must be supplied to the Head of Department at least four (4) weeks before the leave begins.

Return to work

Employees must inform the Institute in writing of their intention to take additional unpaid adoptive leave not later than four weeks before the end of the paid adoptive leave period. Employees are also required to provide written notification of their intention to return to work at least four weeks before the due date of return.

Postponement of adoptive leave

Where the child is hospitalised during adoptive leave, the employee may request the option to split or postpone the period of adoptive leave or additional unpaid adoptive leave. This request is subject to the Institute's agreement, and issues such as resourcing and replacement staff have to be considered.

Where an employee opts to postpone his or her adoptive leave in the circumstances outlined above and the employer is in agreement, the parties must then agree as to whether the employee will return to work for the duration of the postponement, or whether he or she will avail of another type of leave such as annual leave or unpaid leave. Any arrangement made should be clearly documented.

Where an employee becomes ill during the period of postponement, there is no entitlement to take sick leave and the employee will resume his or her adoptive leave or additional unpaid adoptive leave.

Additional unpaid adoptive leave and illness

Should an employee on additional unpaid adoptive leave become ill, they may request the option to terminate their unpaid additional unpaid adoptive leave and transfer to the sick leave scheme. This may enable the employee to benefit from the organisation's sick pay scheme or to claim Disability Benefit. This could also have implications for the employee's annual leave, public holiday and other entitlements.

The Institute will require medical evidence to back up such an application. The Institute can refuse such a request. Both the request by the employee and its acceptance or rejection by the employer must be in writing. It is important to notify the employee that they will lose any future entitlement to the remaining additional unpaid adoptive leave if they transfer to sick leave.

Return to normal work

Employees returning from adoptive leave and additional unpaid adoptive leave have a right to return to work in the same job, under the same contract of employment (or an identical one, in the case of a new employer). They are also entitled to work under terms and conditions no less favourable than if they had not been absent from work.

Where it is not possible for an employee to return to the same position that they held before taking adoptive leave or additional unpaid adoptive leave, the Institute will provide them with suitable alternative work under terms and conditions that are not substantially less favourable than the terms and conditions held under their previous role. The salary, working hours and

status of the new role will be comparable to that of the employee's original role.

The Institute will not accept any resignation or issue any notice of dismissal (to include redundancy notice) during the periods of adoptive leave, additional unpaid adoptive leave and protective leave.

Replacement staff

When an employee is on protective leave, such as adoptive leave or additional unpaid adoptive leave, the Unfair Dismissals Acts 1977 to 2015 provide that a specified purpose contract may be given to replacement staff. In such situations, the unfair dismissals legislation will not apply to a termination of the contract of the temporary employee when the permanent employee returns (see section A *Recruitment* for details of specified-purpose contracts).

Social Welfare

In order to apply for social welfare benefits you need to contact the Department of Employment Affairs and Social Protection. To apply for this benefit you will have to fill in an AB1 form for Adoptive Benefit, part 4 of this form will be completed by the Institute so please bring the form into Rebecca Downes in the HR Office who will complete part 4 of this form.

Contact Details are as follows –

Department of Employment Affairs and Social Protection,
McCarters Road,
Buncrana,
Donegal,
Ireland

Telephone: 01 4715898 or 1890 690 690

Website: www.welfare.ie

Contact Details

For Queries within the HR Office:

Ms Rebecca Downes,
HR Office,
IADT

Rebecca.downes@iadt.ie

Phone: 01 2394618