

## Leave and pay when you have a child through surrogacy

Surrogacy is when someone else carries and gives birth to a baby for the intended parents.

If you use a surrogate, the surrogate will be the child's legal parent at birth.

You must apply to become the legal parent within 6 months of the child's birth to get surrogacy rights, leave and pay.

You must apply for:

- a parental order – if one intended parent is genetically related to the child
- an adoption order – if the intended parents are not genetically related to the child

If you apply for an adoption order, the rules for adoption are different.

[Find out your adoption leave, pay and other rights.](#)

You can also read more about:

- [how to become the child's legal parent on GOV.UK](#)
- [parental orders on the Children and Family Court Advisory and Support Service](#)

If you're taking time off work to have a child through surrogacy, you might be eligible for:

- Statutory Adoption Leave
- Statutory Adoption Pay

This is the legal minimum your employer must give you.

Your employer might offer a better adoption leave and pay scheme. Check your contract or speak to your employer.

## 2. If you're in a couple

If you're in a couple, only one of you can get adoption leave and pay. You should decide between yourselves who will get it.

The partner who does not get adoption leave and pay might be able to get [paternity leave and pay](#).

Both of you might also be able to use [Shared Parental Leave and Pay](#) to take time off.

# Adoption leave

Statutory Adoption Leave can last for up to 52 weeks. This is the same as [maternity leave](#).

## Eligibility

To be eligible for adoption leave, you must:

- be [legally classed as an employee](#)
- tell your employer and give them the correct notice
- give proof of surrogacy, if your employer asks you for it

[Find out how to tell your employer and give proof of surrogacy.](#)

# Adoption pay

Statutory Adoption Pay is 39 weeks. This is the same as for [maternity pay](#).

Adoption pay starts when you take your adoption leave.

## For the first 6 weeks

You get 90% of your average weekly earnings.

## For the following 33 weeks

You get whichever is lower:

- Statutory Adoption Pay – currently £151.20 a week
- 90% of your average weekly earnings

## Eligibility

To get Statutory Adoption Pay, you must:

- be [legally classed as an employee](#)
- have been continuously employed by your employer for at least 26 weeks
- earn at least £120 a week, before tax, in the 8 weeks before your 'qualifying week'
- tell your employer and give them the correct notice
- give proof of the surrogacy, if your employer asks you for it

If you're not eligible for paid leave, you can ask your employer if you can take unpaid leave.

## Your qualifying week

You need to work out when your 'qualifying week' is so you know:

- when you need to give notice to your employer to get adoption leave and pay
- whether you'll get either Statutory Adoption Pay

To work out your qualifying week, use a calendar to count 15 weeks back from the week your baby is due.

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You must tell your employer no later than the 15th week before your baby is due that you intend to take adoption leave.

You must tell your employer:

- the expected week of childbirth
- when you want your leave to start

Where possible, you should give your employer at least 28 days' notice of the date you want your adoption pay to start.

It's a good idea to provide this information in writing.

### 3. How your employer must respond

After you've told your employer, they must:

- reply in writing
- reply within 28 days
- confirm the date your adoption leave will run to

### Telling your employer sooner

You can tell your employer sooner if you wish. Having an early and informal conversation can:

- be a good opportunity for you and your employer to talk about when you'd prefer to take leave
- help your employer plan for your leave

Your employer might also offer you support and you could discuss your flexible working options with them.

[Find out how to make a flexible working request.](#)

### Giving proof of surrogacy

Proof is not needed for adoption leave or pay unless your employer asks for it.

If they do, you must tell your employer in writing that in the 6 months after the child's birth you:

- have applied for a parental order
- intend to apply for a parental order

## Time off for pregnancy-related appointments

The person carrying the baby will be entitled to time off to attend pregnancy-related ('antenatal') appointments.

As the intended parent, you can get unpaid time off to attend 2 antenatal appointments with the person giving birth.

If you're in a couple, only one of you can accompany the person giving birth to the antenatal appointments. You should decide between yourselves who that will be.

If you choose to take time off during working hours, you have the right to take up to 6 and a half hours off work per appointment.

Your employer cannot ask for proof of the appointment. They might ask for a written declaration, which you must sign, to confirm that you're taking time off to go to an antenatal appointment.

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For UK and overseas surrogacy arrangements, you can start adoption leave from the birth or the day after the birth.

To work out the dates for your adoption leave, you can use the [adoption leave planner on GOV.UK](#).

## 4. Holiday entitlement

You still build up ('accrue') your [holiday entitlement](#) as normal during adoption leave, even if this means carrying it forward into a new holiday year.

This means you could return to work with a lot of holiday to take. So it's a good idea to agree with your employer before you go on adoption leave how you're going to take your holiday.

If your employer agrees, you can add holiday to the beginning or end of your adoption leave.

## Changing the date you start your adoption leave

If you want to delay starting your your adoption leave, you must tell your employer at least 28 days before the date it's currently due to start.

If you want to start your adoption leave earlier than planned, you must tell your employer at least 28 days before the date you want to change it to.

## If your baby arrives early

If your baby is born earlier than expected or is premature, your adoption leave starts straight away.

You'll need to let your employer know as soon as you can. You can ask your partner, a friend or a family member to do this for you if you need to.

You do not have to give your employer any formal evidence, but your workplace might have a policy that needs you to contact them as soon as possible.

## Working during adoption leave

You can choose to work for up to 10 days during your adoption leave without it affecting your leave or pay. These are called keeping in touch (KIT) days.

You can use a KIT day to keep up to date with your workplace and to help you return to work.

It's up to you to agree with your employer:

- if you want to work KIT days
- how many KIT days you want
- what type of work you'll do on the days
- how much you'll get paid for the work

Half or part days worked still count as a full KIT day.

If you work more than 10 KIT days, your adoption leave and pay automatically ends by law.

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## 5. Telling your employer when you'll return

You do not need to tell your employer when you'll return to work. But if you know the date you want to return, you can let your employer know before you leave. This will help your employer plan for your return.

## If you do not tell your employer about a return date

If you're not sure when you want to return or you do not give your employer a return date, they'll assume you'll return to work after 52 weeks.

## Changing the date you return

If you want to return to work early, you must give your employer 8 weeks' notice.

It might be possible to agree a return date with less than 8 weeks' notice but only if your employer agrees.

## Not returning to work

If you do not want to return to work after your adoption leave, you must give your employer notice. Check your employment contract to find out how much notice you must give.

## Return to work rights

### If you've taken adoption leave of up to 26 weeks

You have the right to return to the same job.

### If you've taken adoption leave of more than 26 weeks

You have the right to return to the same job unless your employer has a good reason to offer you another one. For example, if the job no longer exists or there have been changes to the organisation, your employer must offer you a suitable alternative job.

In this case, the job cannot be worse for you than your previous job. For example, the job cannot be in a worse location and your employer cannot decrease your:

- pay
- benefits
- holiday entitlement
- seniority

### If you think your employer is not being fair

Your employer should not sack ('dismiss') you or treat you unfairly just because you're taking adoption leave.

If you're selected for redundancy during adoption leave, your employer must offer you a suitable alternative job.

[Check your redundancy is fair.](#)

## Flexible working

You might want to change your hours or working arrangements when you return to work. This is called 'making a flexible working request'.

[How to make a flexible working request.](#)

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