

**Parental Leave and Pay – Policy, Procedure and Guidance**

**Appleton Wiske Community Primary School**

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This Policy has been produced for Schools by North Yorkshire HR. Advice is available for school managers from North Yorkshire HR regarding the application of this policy via [NYHR@northyorks.gov.uk](mailto:NYHR@northyorks.gov.uk), or by telephone 01609 798343.

Access: If this information is required in an alternative format, please contact North Yorkshire HR.

## 1. Scope and Definitions

- 1.1 This document applies to support and teaching staff in schools and covers leave and pay arrangements. There are some differences in entitlement depending on the conditions of service that apply, which are detailed in the body of the document.
- 1.2 Copies of all documentation for staff working in schools should be saved on their employee personnel file by their line manager.

**Table 1 - Key to abbreviations**

LEAVE		PAY	
ML	Maternity leave	SMP	Statutory maternity pay
CML	Compulsory maternity leave	OMP	Occupational maternity pay
MSL	Maternity support leave	MP	Maternity pay
OML	Ordinary maternity leave	MA	Maternity allowance
AML	Additional maternity leave	SPP	Statutory paternity pay
PL	Paternity leave	ShPP	Shared parental pay
ShPL	Shared parental leave	SAP	Statutory adoption pay
UPL	Unpaid parental leave	OAP	Occupational adoption pay
AL	Adoption leave	<b>GENERAL</b>	
		EWC	Expected week of childbirth
		KIT	Keep in touch
		SPLiT	Shared parental leave keep in touch

The current statutory payment rates are available on the Parental Leave page of CYPInfo.

**Table 2 - Types of leave**

Compulsory Maternity Leave	The employee does not have to take her full entitlement to maternity leave. However, she must take a minimum of two weeks of leave from the date of childbirth and may be required to have up to four weeks compulsory leave on health and safety grounds.
Maternity Leave	Provided the employee complies with notification procedures she will be entitled to 26 weeks' Ordinary Maternity leave (OML) and 26 weeks' Additional Maternity (AML) leave, regardless of

	her length of service. The total of 52 weeks is the maternity leave period and must be taken consecutively.
Maternity Support Leave	This is an occupational benefit and applies to support staff. Teachers under Teachers' (Burgundy Book) Conditions of Service are not entitled to Maternity Support Leave. Maternity support leave is one week's paid leave, pro rata for part time workers, normally taken at or around the time of the birth or adoption of a child.
Paternity Leave	This is a statutory benefit available to all employees. Paternity leave is either one week or two consecutive weeks' paid leave at the statutory rate to be taken within eight weeks of the birth or adoption of a child.
Shared Parental Leave	Employees who meet the eligibility criteria will be able to share a 'pot' of leave to be taken in the first year following birth/adoption of a child.
Adoption Leave	Provided the employee complies with notification procedures s/he will be entitled to 26 weeks' Ordinary Adoption Leave and 26 weeks' Additional Adoption Leave, regardless of their length of service. Occupational and / or statutory pay applies dependent on service. The total of 52 weeks is the Adoption leave period and must be taken consecutively. Pre-Adoption: Employees who are going through the adoption process can apply for up to 5 days paid per year (pro rata for part time staff) to attend appointments in preparation for the adoption – Dates of leave will be subject to agreement with line manager.
Fostering Leave	Employees who have been granted foster carer status are eligible for up to 5 days paid leave in the first year of foster caring, recognising that the process to becoming a foster carer is a lengthy one, during the period when carers are expected to complete the training, support and development standards. In subsequent years up to 2 days paid leave to attend annual review, on-going training and other meetings relevant to the placement of the young person. Timing of leave is subject to agreement with line manager.
Parental Leave – Unpaid	All employees with 26 weeks continuous service are entitled to up to 18 weeks unpaid parental leave up until the child's 18 <sup>th</sup> Birthday.

## **2. Maternity Leave (ML)**

### ***Confirming pregnancy***

- 2.1 The employee should tell her line manager that she is pregnant as early as possible, to protect her health and safety and to get paid leave for ante-natal appointments. For further information on absence for ante-natal appointments see the Leave Policy.
- 2.2 She should put in writing to her manager the following:
- That she is pregnant
  - The expected week of childbirth (EWC)
  - The date she wants her maternity leave to start
  - To qualify for occupational maternity pay she must also declare her intention to return to work at the end of her maternity leave
- 2.3 Employees must provide proof of their pregnancy and this will usually be a maternity certificate (MATB1) or doctor's letter. It is an HMRC requirement that evidence of this proof must be retained by the employer. The original MATB1 should be seen by the school and either the original or a copy retained on the employee's personal file. It is acceptable for the school to provide a copy (and not the original) to their payroll provider but they will be asked to certify that they have seen the original certificate.
- 2.4 Notification must be at least 28 days before her absence begins, but preferably by the 15th week before the EWC.
- 2.5 The manager will reply to the employee within 28 days of receiving notification, to advise the expected date of return from ML. This will be based on her full leave entitlement of 52 weeks ML. If ML has been triggered by childbirth or a pregnancy-related absence the manager will similarly write to confirm her expected date of return.

### ***Starting maternity leave***

- 2.6 ML, at the earliest, can begin from the eleventh week before the EWC. ML can start from any day of the week and the same is true for MP where this is due.
- 2.7 If ML has not already started, it will be triggered by the birth of the child, or pregnancy-related sickness, from the beginning of the 4th week before the EWC. If triggered by the birth of the child, ML will begin on the day that follows the day on which childbirth occurs. In either of these situations, the employee must notify her line manager as soon as reasonably practicable, that she has given birth or that she is absent wholly or partly because of pregnancy related sickness. If she does not do so, she may lose her right to paid ML. Initial notification can be by telephone but this should be followed up in writing as soon as possible.

- 2.8 Even when a baby has been born prematurely, or is sick, the mother must notify her employer as soon as reasonably practicable that she has given birth, and provide the date that the baby was born. Sometimes the mother is unable to obtain and complete the MAT B1 form before the birth, for example if the baby is born prematurely or the mother and /or the baby is sick. This may mean a delay in getting the form signed and sending it to their payroll provider. Therefore, the mother would not receive Statutory Maternity Pay / Maternity Allowance until the form can be provided. Headteachers and line managers should bear in mind that this is a very stressful time for parents and any communications regarding this or other matters should be approached sensitively and compassionately.
- 2.9 Where an employee has multiple posts within school, their ML and MP will commence on the same date for all posts based on total earnings for all roles.

### ***Illness during latter stages of pregnancy***

- 2.10 If pregnancy related illness occurs from the beginning of the 4th week before the EWC then ML will be triggered. If an employee is absent from work due to pregnancy related illness before this time, and her fit note ends at a date after the beginning of the 4<sup>th</sup> week before the EWC and she wishes to return to work early then she should refer to the NHS guidance on returning to work before the fit note ends and discuss with her line manager.

### ***Changing the maternity leave start date***

- 2.11 If the employee wishes to change her ML start date she must give at least 28 days' notice. This is a requirement in order to receive Statutory Maternity Pay (SMP), and will enable her manager to make cover arrangements. Her manager will write to her within 28 days to confirm her new expected date of return.

### ***Stopping maternity leave and converting to shared parental leave (ShPL)***

- 2.12 An eligible employee can opt into ShPL at any point (after compulsory maternity leave) before their return, as long as there is some untaken ML to share. Employees must give their line manager notification of their entitlement and intention to take ShPL at least eight weeks before the ShPL can begin.

### ***Returning from maternity leave***

- 2.13 Employees who intend to return to work at the end of their full ML entitlement do not have to give any further notification to their manager.
- 2.14 An employee is entitled to return to the job in which they were employed under their original contract of employment and on terms and conditions not less favourable than those which would have been applicable to them if they had not been on maternity leave. "Job" for this purpose, means the nature of the work which they are employed to do and the capacity and place in which they are employed.

- 2.15 Where it is not practicable by reason of redundancy to return to work to the job the employee had before their maternity leave commenced, they must be offered a suitable alternative post, if this is available, which must be on terms and conditions not substantially less favourable than those on which they were originally employed.
- 2.16 Suitable alternative employment may also be offered if exceptional circumstances (other than redundancy e.g. reorganisation), which would have occurred regardless of their absence, necessitate a change in the job in which they were employed prior to their absence. The work to be done should be suitable to them and appropriate to the circumstances and the capacity and place in which they are to be employed. The terms and conditions of employment should not be less favourable to them than if they had been able to return to the job in which they were originally employed.

### ***Returning before the full leave entitlement***

- 2.17 If the employee wants to return before the end of her full leave entitlement of 52 weeks she must tell her manager at least 21 days before her new intended return date (whether in the OML or AML period). These notice periods are the minimum required. To help managers plan cover employees should give as much notice as possible of any changes to their plans.
- 2.18 If the employee does not give the minimum notice, her manager may postpone her return until 21 days after the date she informed her manager that she would like to return early, but not to a date after her ML would have ended.
- 2.19 If the employee does not intend to return at the end of her ML she should give normal contractual notice.

### ***Annual Leave***

- 2.20 Employees will continue to accrue annual leave during both their OML and AML. Where possible all leave should be taken in the current leave year but a maximum of 5 days can be carried forward to the following year and must be taken by 31<sup>st</sup> May.
- 2.21 Employees whose ML spans two years are usually able to carry over 5 days of leave (pro rata for part time employees) in the normal way. In exceptional circumstances provisions can be made to allow employees to carry over any excess leave in to the following leave year, for example if it is agreed that an employee is unable to take all of her annual leave in the leave year in which she commences her ML she will be allowed to carry it over. For employees not returning to work, annual leave will be calculated up to the last day of employment.
- 2.22 Employees should therefore plan to take leave before commencement of ML and may wish to request some leave at the end of the ML period. If an employee does not return to work for a period of at least three months after ML, then any leave taken to which she was not entitled to will be reclaimed.

### ***Annual Leave calculations for Term Time Only staff***

- 2.23 Employees who take maternity leave must be able to take their contractual leave entitlement (including bank holidays) at a time outside of their ordinary and additional maternity leave.
- 2.24 Due to the way that term-time only employees are contracted and paid, issues around taking annual leave accrued during maternity leave can be complex. To ensure they have received their full contractual and statutory entitlements to leave it may be necessary for term-time only workers to take leave during term-time or to pay them additional leave during school closure periods.
- 2.25 An employee should not receive payment in lieu of untaken annual leave unless she does not return to her job following maternity leave. This will be calculated on a pro rata basis for the leave year in question. However, it should be noted that if an employee does not return to her job she may be required to refund any OMP paid - this may be offset by payments due in respect of holiday pay.
- 2.26 Teaching staff do not have an annual leave entitlement included within their terms and conditions of service. Therefore, the statutory entitlement of 5.6 weeks per year (including Bank and statutory holidays) will be considered to apply for any calculations relating to annual leave. As teachers receive full pay during all school closure periods, any such periods will be counted towards their statutory entitlement. For teaching staff the leave year runs from September to August.

### ***Miscarriage, still birth or death of a child (in relation to maternity leave)***

- 2.27 The school's Health Assured Employee Assistance Programme is able to provide emotional support via a 24/7 helpline, staffed by BACP qualified counsellors.
- 2.28 If the baby is stillborn (i.e. miscarriage occurs) earlier than the 24<sup>th</sup> week of pregnancy, the employee will not be eligible for MP and ML. However, if they are unfit to return to work at this time, they will be eligible to take sick leave, subject to the normal sick pay requirements.
- 2.29 If the baby is stillborn after the start of the 24<sup>th</sup> week of pregnancy, then the employee will still qualify for full MP and ML.
- 2.30 If a child dies within the ML period the employee will remain eligible for MP and ML in the usual way.

### **3. Maternity pay (MP)**

#### ***Who qualifies for statutory maternity pay (SMP)?***

- 3.1 If an employee has completed 26 weeks' continuous service by the 15th week before the EWC (and average earnings are at least the lower limit for N.I. contributions), she will be entitled to SMP i.e. six weeks at 9/10ths (90%) of their normal pay and 33 weeks lower rate of SMP, paid at the lower of 90% of average weekly earnings or the statutory rate set by government.
- 3.2 SMP is worked out based on the average weekly pay received during the eight week period, 15 weeks before EWC (weeks 17 to 25 of pregnancy).
- 3.3 If the baby is born before or during the Qualifying Week (the 15<sup>th</sup> week, Saturday to Sunday, before the week the baby is due) the continuous employment rule is satisfied if they would have completed 26 weeks' continuous employment had it not been for the baby's early birth. The average weekly earnings would then be worked out using the birth date instead of the Qualifying Week.
- 3.4 For employees who are on fixed term contracts who meet the above eligibility but whose contract ceases during the maternity period, SMP will be paid throughout the maternity period. Therefore the contract end date and date of end of SMP payments may be different. If the option for shared parental leave is taken up, SMP will cease and be replaced by Shared Parental Pay (ShPP).
- 3.5 It is important to note that as a salary sacrifice benefit reduces cash pay, the amount of salary that the employee pays National Insurance contributions on is also reduced. Staff who participate in a salary sacrifice scheme will have been informed through the terms and conditions of the scheme of the impact on any allowances including maternity. Any salary sacrifice applicable for the employee during this eight week period will reduce entitlement to SMP. In addition, employees remain responsible for payments due for the goods or services through salary sacrifice during ML. However salary deductions cannot be made during periods of SMP or nil pay and repayment arrangements will have to be set up through a separate agreement. Further information is available via the Everybody Benefits page on CYPInfo. There are some practical considerations for employees to consider and these are set out in the maternity notification letter.

***What if the employee does not qualify for SMP?***

- 3.6 If the employee does not have 26 weeks continuous service prior to the 15th week before the baby is due, they may be eligible for Maternity Allowance (MA) paid by the Department for Work and Pensions.
- 3.7 If the employee is not entitled to SMP, they will be sent a form SMP1 by the school's payroll provider. The form is to be sent to the Department for Work and Pensions along with the original MAT B1.

***Who qualifies for occupational maternity pay (OMP)?***

- 3.8 OMP is available to employees who have completed at least one year's continuous Local Government service at the 11th week before the EWC and



who confirm in writing their intention to return to work after ML. The OMP provisions for both support and teaching staff are summarised in the table below with further detail given at paragraphs 3.11 to 3.18.

	<b>Teaching Staff</b>	<b>Support Staff</b>
Weeks 1 - 6	4 weeks at 100% and 2 weeks at 90% of normal pay (offset against SMP if eligible)	6 weeks at 90% of normal pay (offset against SMP if eligible)
<b><i>Returning to work following maternity</i></b>		
Weeks 7 - 18	12 weeks at ½ pay (plus SMP if eligible) <b>or</b> 6 weeks full pay spread as agreed between employee and employer <b>or</b> 6 weeks paid in full on return to work	
Weeks 19 - 39	21 weeks at flat rate SMP (if eligible)	
<b><i>Not returning to work following maternity</i></b>		
Weeks 7 – 39	33 weeks at flat rate SMP (if eligible)	
Weeks 40 – 52	Unpaid maternity leave	
<b><i>Minimum period employee must return to work</i></b>		
	Period equal to 13 weeks based on contractual hours prior to maternity leave	3 months either full or part-time

3.9 Payments made by North Yorkshire County Council shall be made on the understanding that the employee will return to Local Government Service employment. If the employee does not return, they will be required to pay back the OMP.

3.10 Regardless of the date of return, SMP cannot be paid in part weeks, whereas OMP would be paid up to the day before the employee returns.

### ***Support Staff***

3.11 For support staff OMP is equivalent to an additional six weeks full pay. It is paid on the understanding that the employee will return to local authority employment for at least three months (excluding any period of unpaid parental leave). This time period will apply even if the employee returns to work under different working arrangements e.g. reduced hours following a flexible working request.

3.12 It is generally paid between weeks seven and 18 on top of SMP or Maternity Allowance (MA), at the rate of half a week's pay, without any deduction of SMP or MA. However, half pay plus SMP (or MA and any dependant's allowances if not eligible for SMP) cannot exceed full pay.

3.13 Alternatively, the equivalent amount (six weeks' pay) can be paid in any other mutually agreed distribution, such as 3/10ths pay per week for the remaining 20 weeks of OML, or the amount in full when the employee returns to work after ML.

3.14 Therefore a support member of staff who qualifies for OMP will be entitled to receive:

- For the first six weeks of leave, they will be entitled to 9/10ths (90%) of their week's pay
- If the employee has declared their intention to return to work, they will be entitled to 12 weeks of leave at half pay – i.e. 6 weeks full pay - (or alternative equivalent arrangement – see above) plus the lower rate SMP which is paid at the lower of:
  - 90% of average weekly earnings, or
  - the statutory rate set by government as long as the total maternity pay does not exceed full pay.

3.15 Pay calculations are based on when money is due rather than when it is paid, so the 'half pay plus SMP must not exceed full pay' refers to the weekly calculation based on weeks 7-18 when OMP is due. In addition to the above, 21 weeks of leave at the lower rate SMP, which is paid at the lower of 90% of average weekly earnings or the statutory rate set by government.

3.16 Where an employee has multiple posts, the OMP applies on all of their established posts at the time they are going on, ML. Should they meet the continuous service requirement for OMP i.e. if they have local Government service in an established post (NOT relief) for more than 12 months then their OMP will reflect the multiple posts.

### ***Teaching staff***

3.17 For teaching staff OMP is paid on the understanding that the employee will return to their job for at least 13 weeks (or longer equivalent period if they return on fewer hours than they were previously working) excluding any period of unpaid parental leave.

3.18 A teacher who qualifies for OMP will be entitled to receive:

- Full pay for the first four weeks of leave (off-set against SMP)
- Two weeks paid at 9/10ths (90%) of their week's pay (off-set against SMP)
- If the employee has declared their intention to return to work, they will be entitled to 12 weeks of leave at half pay – i.e. 6 weeks full pay - (or alternative equivalent arrangement – see above) plus the lower rate SMP which is paid at the lower of:
  - 90% of average weekly earnings, or
  - the statutory rate set by government as long as the total maternity pay does not exceed full pay.

3.15 The twelve week's half pay is generally paid between weeks 7 and 18 on top of SMP or Maternity Allowance (MA), without any deduction of SMP or MA. However, half pay plus SMP (or MA and any dependant's allowances if not eligible for SMP) cannot exceed full pay.

- 3.16 Alternatively, the equivalent amount (six weeks' pay) can be paid in any other mutually agreed distribution, such as 3/10ths pay per week for the remaining 20 weeks of OML, or the amount in full when the employee returns to work after ML.
- 3.17 Pay calculations are based on when money is due rather than when it is paid, so the 'half pay plus SMP must not exceed full pay' refers to the weekly calculation based on weeks 7-18 when OMP is due. In addition to the above, 21 weeks of leave at the lower rate SMP, which is paid at the lower of 90% of average weekly earnings or the statutory rate set by government.
- 3.18 Where an employee has multiple posts, the OMP applies on all of their established posts at the time they are going on, ML. Should they meet the continuous service requirement for OMP i.e. if they have local Government service in an established post for more than 12 months then their OMP will reflect the multiple posts.

### ***Keeping in touch days (KIT days)***

- 3.19 The maternity regulations allow an employee to work for up to 10 days/occasions during ML without bringing their ML to an end. Whilst KIT days are covered by statute, they may only take place by agreement between the employer and the employee. Where a request is made it should not be unreasonably refused. Working for part of a day will count as one day/occasion and the employee will be paid for the hours worked at their contractual rate. Payment will be offset against any maternity pay/allowance paid for that week. The employee will not lose any SMP/OMP/MA for working up to 10 days. Work is defined as any work that is done under their contract of employment and this may include training or any activity undertaken for the purposes of keeping in touch with their workplace.
- 3.20 A school cannot insist that an employee carries out work and equally the employee cannot insist that they are given work to do during this period under the KIT arrangements.
- 3.21 Where work is done during their maternity period they will continue to receive their SMP/OMP/MA where it is due and they should also be paid for any work that they do under their contract of employment. This work will be paid at the employee's hourly contractual rate and will be offset against any maternity benefits due.
- 3.22 However, they will not be able to carry out any work during the first two weeks following the birth of their child i.e. during the compulsory maternity leave period.
- 3.23 A form for recording keeping in touch days and a claims form for payment for keeping in touch days are available on the CYPInfo. It is important to note that once an employee has used up the 10 keeping in touch days/sessions if they then work again they will not receive their maternity or adoption benefits for that week. Therefore, records must be kept to avoid this.

3.24 If the employee works for another employer during the SMP period but before the baby is born then SMP will continue be paid. If the employee works for another employer during the SMP period but after the baby is born, the school should check whether she worked for the other employer during the 15th week before the baby was due. If she did, SMP should be paid as usual. If, however, the employee is working for another employer for which she did not work during the 15th week before the baby was due, the school will stop paying SMP from the start of the week that the employee works for the other employer. It is up to the employee to inform the school that she is working for someone else during her statutory maternity pay period.

#### **4. Maternity guidance for line managers**

##### ***Health and safety risk assessment***

4.1 Line managers should undertake the relevant risk assessments as soon as they are informed about the employee's pregnancy. The risk assessment recording should be undertaken and recorded using the "Risk assessment for new and expectant mothers at work document". Advice on health and safety issues is contained in HSE guidance: [A guide for new and expectant mothers who work](#). Advice and guidance is also available from the school's safety risk management team or health and wellbeing services.

4.2 Where a significant risk has been identified that could damage the health or safety of a new or expectant mother or their unborn child, the school will take any protective or preventative measures required to eliminate it. If this would not avoid the risk, the following steps are carried out in the hierarchy below:

1. If it is reasonable to do so, alter working conditions or hours of work;
2. If the risk cannot be avoided in this way, employees should be offered suitable alternative employment. Suitable alternative employment means work which is both suitable in relation to the employee and appropriate for her to do in the circumstances and on existing or no less favourable terms and conditions.
3. If no suitable alternative work is available, she is medically suspended. This means she is entitled to paid leave or, where suitable alternative work is available but refused by her, unpaid leave.

4.3 An employee can be medically suspended in this way at any time starting from when she becomes pregnant until either:

- The date on which she has notified her maternity leave starts;
- The start of the 4<sup>th</sup> week before the EWC if the above date has not been notified.

4.4 Should medical suspension occur after the 4<sup>th</sup> week before the EWC, this will automatically trigger the start of maternity leave. Suspension on health and safety grounds can also occur during any period from the end of her maternity

leave up until the 6<sup>th</sup> month from the date of childbirth (later if breastfeeding goes beyond this date).

- 4.5 A new or expectant mother who works nights and provides a medical certificate showing that her health and safety is at risk if she continues with night work should be offered suitable alternative employment. Where that is not possible she is given paid leave. This protective measure operates from when the school is aware that the employee is pregnant until the later of six months after the date of childbirth, or miscarriage where this occurs, or until she stops breastfeeding.

#### ***Notification requirements***

- 4.6 The employee's line manager must write to the employee within 28 days of receiving the Maternity Notification Form stating the expected date of return from ML. This will be based on the full entitlement to 52 weeks ML. If ML has been triggered by childbirth or pregnancy-related absence the line manager will likewise confirm the expected date of return.
- 4.7 The employee's line manager must notify their payroll provider in writing as soon as the employee is known to be entitled to SMP and/or OMP and send them a certified copy of the employee's MatB1 form (see paragraph 2.3). A notification of maternity leave entitlement form can be used for this purpose.

#### ***During maternity leave – line manager contact with the employee***

- 4.8 The line manager can make 'reasonable contact' with the employee whilst they are on maternity leave. This would normally be to discuss return arrangements or to discuss work-related training that may be available or to inform the employee of any changes in the workplace that may affect them.
- 4.9 Employers should ensure that employees who are on maternity leave are not disadvantaged when it comes to having the opportunity to apply for vacancies within the organisation. They should therefore consider putting in place a system of notifying employees on maternity leave of vacancies that arise. This might involve, for example, a regular general email rounding up all vacancies, or more personal contact from the employee's line manager where a vacancy in an area in which she is interested arises.
- 4.10 If a suitably qualified employee who is on maternity leave wishes to apply for a vacancy, she is entitled to be considered for the position even though she may not be able to start the vacant post until her maternity leave ends.

#### ***During maternity leave – employee detriment and dismissal***

- 4.11 An employee who is pregnant or on maternity leave is protected from detrimental treatment (being treated unfairly or less favourably due to an act, or deliberate failure to act by the employer) or dismissal because she:
- is pregnant;

- has given birth to a child;
- has taken, or seeks to take, ordinary and additional maternity leave;
- has taken, or seeks to take, any of the benefits of ordinary maternity leave;
- has been suspended from work on maternity health and safety grounds;
- is being made redundant during her maternity leave and has not been offered any available suitable alternative employment.

4.12 Protection includes any detrimental treatment or dismissal after she failed to return to work following ordinary or additional maternity leave where either:

- Her line manager did not notify her in accordance with the statutory duties or otherwise of the date on which her maternity leave would end and she reasonably believed that her maternity leave had not ended;
- Her line manager gave her less than 28 days' notice of the date her maternity leave would end and it was not reasonably practicable for her to return on that date.

4.13 Employees can claim unfair dismissal regardless of length of service if related to pregnancy or maternity leave. An employee dismissed at any time during pregnancy or maternity leave is entitled to written reasons for dismissal (whether requested or not). Employers can dismiss employees for reasons unrelated to pregnancy, such as conduct, and any such employee must have two years' continuous service to claim unfair dismissal at an employment tribunal.

## **5. Paternity leave (PL)**

5.1 An employee who is a father to be or will share the responsibility with a partner for bringing up a child, may have the right to Statutory Paternity Leave and Pay. This includes those who are adopting a child.

5.2 Paternity leave can be either one or two whole weeks. This will be the same amount of leave if the partner has a multiple birth (e.g. twins).

5.3 Leave must be taken in one go. A week is the same amount of days that is normally worked in a week, e.g. if the employee only works on Mondays and Tuesdays a week is two days.

5.4 To qualify for paternity leave and pay employees must:

- have or expect to have responsibility for a newly born or adopted child's upbringing. The employee may be the biological father of the child, the mother's husband, the father, partner or the adoptive parent who is not the primary carer.
- have worked continuously in local government service for 26 weeks by the 15th week before the baby is born, or by the week the child's adopter is notified of having been matched with a child
- have average weekly earnings at or above the lower earnings limit
- provide a copy of either the MAT B1 form or the adoption matching certificate.

5.5 Employees can start their leave from:

- the date of the child's birth or date of placement for adoption; or
- a chosen number of days or weeks after the date of the child's birth or date of placement for adoption; or
- another chosen date

5.6 Paternity leave can start on any day of the week but must be completed:

- Within 56 days of the actual birth date of the child; or
- Within 56 days of the child's placement for adoption; or
- If the child arrives early, between the actual birth date and 56 days after the EWC

5.7 Only one period of leave can be taken however many children are born or placed for adoption at the same time.

5.8 Employees can choose to be paid SPP for either one or two consecutive weeks, but not odd days. Employees need to complete a SPP self-certificate form. Statutory Paternity Pay (SPP) is the same as SMP, or 90% of average weekly earnings, whichever is less.

***Miscarriage, still birth or death of a child (in relation to paternity leave)***

5.9 Employees still qualify for paternity leave and pay if the baby is either:

- stillborn from 24 weeks of pregnancy
- born alive at any point in the pregnancy but later dies

**6. Maternity support leave (MSL)**

**Please note that maternity support leave is a contractual entitlement under the Green Book which applies to support staff only. This benefit does not apply to teachers employed under Teachers' (Burgundy Book) Conditions of Service.**

6.1 Maternity support leave is one week's paid leave, pro rata for part time workers, at or around the time of the birth or adoption of a child. This is an occupational benefit for support staff and applies to all employees who meet the qualifying criteria.

6.2 MSL payment is based on normal weekly contractual hours (or an average week's pay, where varied hours are regularly worked).

6.3 To qualify for maternity support leave and pay school employees must:

- Be the person nominated by an expectant mother or a soon-to-be adoptive parent (where that adoptive parent will be the primary carer to the child), to

be the primary provider of support and care to her at or around the time of the arrival of her child

- The nominated carer may be:
  - the biological father of the child, the mother's or primary carer's husband or partner, or the adoptive parent who is not the primary carer
  - Someone else with a caring relationship to the mother/ primary carer and/or the child may be eligible for MSL, but will need to demonstrate their relationship and why they are taking on this role
- Have completed 26 weeks' continuous service with NYCC or a related employer at the time they make the request
- Provide a copy of either the MAT B1 form or the adoption matching certificate.

6.4 MSL is not statutory but should be refused only in exceptional circumstances, to meet service needs.

## 7. Combining paternity and maternity support leave

7.1 An employee eligible for Paternity Leave may also be eligible for MSL. An employee who takes one week of MSL can take only one week of Statutory Paternity Leave with Statutory Paternity Pay (where eligible for SPP).

7.2 Employees are entitled to either MSL, PL or a combination, and the associated NYCC policy on maternity support leave pay for the relevant individual is as follows:

	MSL	Paternity	Payment
Biological father	Yes	Yes	One week pay, one week SPP*
Husband or Partner of primary carer	Yes	Yes	One week pay, one week SPP*
Secondary adoptive parent	Yes	Yes	One week pay, one week SPP*
A relative with close caring relationship (e.g. parent)	Yes	No	One week pay
Someone else with a caring relationship to the primary carer and/or child**	Yes	No	One week pay
Teachers (who also meet 1, 2 or 3 above)	No	Yes	Two weeks SPP*

\* Where eligible for SPP

\*\* Need to demonstrate nature of relationship and why they are taking on this role.



## **8. Adoption leave (AL)**

### ***Confirming adoption***

- 8.1 The employee should tell their manager as soon as they have been approved as the primary adopter so that the manager can plan working arrangements. This may be before the employee has received or needs to submit their documentary evidence. The manager should respond in writing using the appropriate template letter to acknowledge their initial notification. Employees can access AL from the start of their employment with NYCC; there is no qualifying period for the leave element.
- 8.2 The employee must inform their manager in writing of their intention to take AL within seven days of being notified by their adoption agency that they have been matched with a child for adoption. This is known as the notification period.
- 8.3 They should tell their manager in writing:
- That they are adopting a child
  - When the child is expected to be placed with them
  - When they want their adoption leave to start
- 8.4 In addition they should:
- Give at least 28 days' notice of the date they expect any payments of Statutory Adoption Pay (SAP) to start, if reasonably practicable
  - Declare their intention to return to work at the end of the period of AL, to qualify for OAP; and give their manager a 'matching certificate' from their adoption agency as proof of their entitlement to SAP and AL. Employees should ask their adoption agency for this certificate, which will include basic information on matching and expected placement dates
- 8.5 Managers will respond in writing using the appropriate template letter within 28 days of receiving the above notification to advise the expected return date from AL. This will be based on their full leave entitlement of 52 weeks unless notified otherwise.
- 8.6 Employees going through the adoption process can apply for up to 5 days paid leave per year (pro rata for part time staff). This pre adoption leave can be used in preparation for the adoption – Appointment timing subject to agreement with line manager.

### ***Starting adoption leave***

- 8.7 Employees can choose to start their leave on any day of the week, either:
- From the date of the child's placement; or
  - From a fixed date which can be up to 14 days before the expected date of placement; or

- From a 'fixed point' to be agreed, where a child is being adopted from overseas
- 8.8 If the employee's placement is delayed for any reason and they have already started AL they will not be able to stop it and start again at a later date, unless it becomes a disrupted placement. If the employee plans to start AL before the actual date of placement they should check the placement is to start as planned.
- 8.9 If the employee has started AL before the placement of the child and they are subsequently notified that the placement will not be made; or, if during the employee's AL the child placed with them is returned to the adoption agency or dies; then, the manager will discuss with them sympathetically an appropriate date on which to return to work. Usually in this situation the employee's AL finishes eight weeks after the end of the week in which the disruption took place, or earlier if their AL was due to finish before this time. The employee should still give 28 days' notice to return to work.

### ***Changing the AL start date***

- 8.10 If the employee subsequently wants to change the date on which their leave starts, they must give at least 28 days' notice if reasonably practicable. The manager will reply in writing within 28 days to confirm their new expected date of return.

### ***Keeping in touch (KIT) days***

- 8.11 During AL employees are entitled to work KIT days on the same basis as during maternity leave (see paragraphs xx to xx above). Where work is done during the adoption leave period they will continue to receive their SAP where it is due and should also be paid for any work that they do under their contract of employment. This work will be paid at the employee's hourly contractual rate and will be offset against the SAP/OAP due.

## **9. Adoption pay**

### ***Statutory adoption pay (SAP)***

- 9.1 SAP is payable if the employee has been in continuous employment for 26 weeks by the week in which they are matched with a child for adoption, and has average weekly earnings equal to or above the lower earnings limit. Adopters who have average weekly earnings below the Lower Earnings Limit for National Insurance Contributions will not qualify for SAP. Employees who are not entitled to these may be able to access other benefits, and should contact their local Jobcentre Plus, Benefits office, or adoption agency.
- 9.2 SAP ceases if the employee starts working for a new employer after the child has been placed, or if the placement is disrupted.
- 9.3 SAP is paid for up to 39 weeks, starting from any day of the week. The first six weeks of pay is paid at 9/10ths (90%) of a week's pay (offset against OAP),

followed by 33 weeks at the current SAP rate (the statutory rate set by government).

### **Occupational adoption pay (OAP)**

#### **Support Staff**

- 9.4 Occupational Adoption Pay is available to employees who have completed 1 year's continuous local government service at the 11th week before the expected week of the child's placement. Support staff entitlements are as follows:
- For the first six weeks 9/10ths of a week's pay offset against SAP payments
  - For employees who declare in writing that they intend to return to work will for the subsequent 12 weeks receive half a week's pay plus SAP, where eligible, to a limit of full pay. This is paid on the understanding that they return to local authority employment for at least 3 months (excluding any period of unpaid parental leave)
- 9.5 Employees can alternatively have the equivalent amount of the 12 weeks' half pay paid in any other mutually agreed distribution, for example as 3/10th pay per week for the remaining 20 weeks of OAL or the amount in full when they return to work after the AL period. (This is an advisable option if they are undecided whether or not to return to work). The pay arrangements should be agreed before they begin their leave.
- 9.6 For the remainder of the AL period employees will receive their entitlement to SAP where eligible.

#### **Teaching Staff**

- 9.7 Teachers with at least one year's continuous local government service by the week of notification of a match are entitled to occupational adoption pay as follows:
- For the first four weeks full-pay offset against SAP payments
  - For the next two weeks 9/10ths of a week's pay offset against SAP payments
  - For employees who declare in writing that they intend to return to work will for the subsequent 12 weeks receive half a week's pay plus SAP, where eligible, to a limit of full pay. This is paid on the understanding that they return to their job employment for at least 13 weeks or equivalent period (excluding any period of unpaid parental leave).
- 9.8 Employees can alternatively have the equivalent amount of the 12 weeks' half pay paid in any other mutually agreed distribution, for example as 3/10th pay per week for the remaining 20 weeks of OAL or the amount in full when they return to work after the AL period. (This is an advisable option if they are undecided whether or not to return to work). The pay arrangements should be agreed before they begin their leave.

9.9 For the remainder of the AL period employees will receive their entitlement to SAP where eligible.

## **10. Shared parental leave (ShPL)**

10.1 ShPL and ShPP is available to employees who are expecting a baby or adoption placement, from the date of the baby's birth or the adoption of a child, subject to eligibility. The leave must be taken before the child's first birthday or one year from the adoption date. The mother/primary adopter can share the leave with their partner if they're also eligible for ShPL, and choose how much of the leave each of them will take.

10.2 Employees are encouraged to discuss their potential plans regarding ShPL at the earliest opportunity, to enable the organisation to support them effectively.

### ***Eligibility criteria for ShPL***

10.3 ShPL can only be used by two people:

- The mother/adopter; and
- one of
  - the father of the child (in the case of birth)
  - or the spouse, civil partner or partner of the child's mother/adopter

10.4 Additionally, an employee seeking to take ShPL must satisfy each of the following criteria:

- Mother/adopter must be/have been entitled to statutory maternity/adoption leave or have been entitled to statutory maternity/adoption pay or maternity allowance and must have ended or given notice to reduce any maternity /adoption allowances.
- The employee must still be working for the organisation at the start of each period of ShPL.
- The employee must pass the 'continuity test' requiring them to have a minimum of 26 weeks service at the end of the 15th week before the EWC/matching date.
- The employee's partner must meet the 'employment and earnings test' requiring them (in the 66 weeks leading up to the EWC/matching date) to have worked for at least 26 weeks and earned an average of at least £30 a week (this is correct as of the date of this document review but may change annually) in any 13 of those weeks.
- The employee must correctly notify their line manager of their entitlement and provide evidence as required.

### ***ShPL entitlements***

10.5 The number of weeks available is calculated using the mother/adopter's entitlement to maternity/adoption leave, which allows up to 52 weeks

leave. The mother/adopter can reduce this entitlement; they and/or their partner can opt into the ShPL system and take any remaining weeks as ShPL.

- 10.6 If the mother/adopter is not entitled to maternity/adoption leave, but is entitled to SMP, SAP or MA they must reduce their entitlement to less than 39 weeks.
- 10.7 If such a mother chooses to reduce her statutory maternity pay or maternity allowance period and take fewer than 39 weeks of pay or allowance, then her employed partner could take the untaken weeks as shared parental leave if he (or she) is eligible for leave. In this case, the number of weeks of pay or allowance must be deducted from 52 weeks to calculate the number of weeks of shared parental leave that will be available for the partner to take.

### ***Timing of ShPL***

- 10.8 The mother can take ShPL after she has taken the legally required two weeks of CML immediately following the birth of the child.
- 10.9 The adopter can take ShPL after taking at least two weeks of AL.
- 10.10 The father/partner/spouse can take ShPL immediately following the birth/placement of the child, but may first choose to exhaust any PL entitlements.
- 10.11 If a mother/adopter gives notice to curtail their maternity/adoption entitlement then the partner can take leave while the mother/adopter is still using their maternity/adoption allowance.

### ***Giving notice of the intention to take ShPL***

- 10.12 Employees must give at least eight weeks' notice to their employer of their intent to take ShPL. This notice must be in writing, and include:
- The name of the employee
  - The name of the other parent
  - The start and end dates of any maternity/adoption leave or pay, or maternity allowance, taken in respect of the child and the total amount of ShPL available
  - The date on which the child is expected to be born, and the actual date of birth, or in the case of an adopted child, the date on which the employee was notified of having been matched with the child and the adoption placement date
  - The amount of ShPL the employee and their partner each intend to take
  - A non-binding indication of when the employee expects to take the leave
- 10.13 Variation is only permitted by mutual consent of both parents, and leave already booked can only be varied with eight weeks' notice of the change.

## ***Employee notification requirements***

10.14 Employees must provide the line manager with a signed declaration stating:

- That they meet, or will meet the eligibility conditions and are entitled to take ShPL.
- That the information they have given is accurate.
- If they are not the mother/adopter they must confirm that they are either the father of the child, or are the spouse, civil partner or partner of the mother/adopter.
- That should they cease to be eligible they will immediately inform the organisation.

10.15 The school may, within 14 days of the ShPL entitlement notification being given, request:

- The name and business address of the partner's employer (where the partner is no longer employer or is self-employed their contract details must be given instead).
- In the case of biological parents, a copy of the child's birth certificate (or where one has not been issued, a declaration as to the time and place of birth).
- In the case of an adopted child, documentary evidence of the name and the address of the adoption agency , the date of the matching notification and the date which the child is expected to be placed for adoption.

10.16 The organisation reserves the right to investigate further where there is cause to believe that a fraudulent claim has been made. Any investigation would be carried out in accordance with the appropriate process and without acting in a discriminatory manner in relation to any of the protected characteristics defined in the Equality Act 2010.

## ***Booking ShPL***

10.17 In addition to notifying the employer of the intention to take ShPL, the employee must also give notice to take the leave. In many cases, this will be done at the same time. The correct notification must be given at least eight weeks before the date on which they wish to start the leave and (if applicable) receive ShPP.

10.18 Employees have the right to submit no more than three notifications specifying leave periods they are intending to take. Each notification may contain either:

- A single period of weeks of leave or
- Two or more weeks of discontinuous leave, where the employee intends to return to work between periods of leave.

10.19 ShPL can only be taken in complete weeks, but it may begin on any day of the week.

10.20 A written response will be provided to the employee no later than the 14th day after the leave request was made.

### ***Continuous leave notifications***

10.21 A notification can be for a period of continuous leave which means a notification of a number of weeks taken in an unbroken period of leave e.g. six weeks in a row. Employees can take a continuous block of leave so long as it does not exceed the total number of weeks of ShPL available to them and the correct notice period has been given.

### ***Discontinuous leave notifications***

10.22 A single notification may contain a request for two or more periods of discontinuous leave, which means asking for a set number of weeks over a period, with breaks in between, e.g. employee takes six weeks of ShPL, and then works every other week for a period of three months.

10.23 It is not a statutory right to have periods of discontinuous leave. All requests will be carefully considered, weighing up the potential benefits to the employee and to the organisation against any adverse effects to the service.

10.24 If a notification request for discontinuous leave is refused, the employee can either withdraw it within 15 days of giving it, or can take the leave in a single continuous block. If the option of a single continuous block is taken, the employee has until the 19th day from the original date of notification to choose when they want the leave period to begin. The leave cannot start sooner than eight weeks from the date the original notification was submitted. If the employee does not choose a leave date the leave will begin on the date specified in the original notification.

### ***Commencing ShPL***

10.25 ShPL will generally commence on the employee's chosen start date. However, if the baby arrives early the leave can start and notice be given as soon as practically possible. It must end no later than one year after the birth/placement of the child. Any ShPL not taken by this point will be lost.

### ***Varying ShPL***

10.26 Employees are permitted to vary or cancel an agreed and booked period of ShPL provided that they advise their line manager in writing at least eight weeks before the start of any variation. Any new start date cannot be sooner than eight weeks from the date of the variation request.

10.27 Variation/cancellation notifications will usually count as a new notification, thus reducing the employee's right to book/vary leave by one. Exceptions to this will be changes due to early births, or as a result of the organisation requesting the change and it being agreed by the employee. Any variation will be confirmed in writing by the school.

### ***Return to work following ShPL***

- 10.28 The school will have confirmed the return date in writing to the employee and the employee will be expected to return to work on the next working day after this date, unless they notify the school otherwise.
- 10.29 If the employee has been off for no more than 26 weeks they will be eligible to return to the same job. If the employee has been on leave for more than 26 weeks they will return to the same job unless this is not possible, then the employee will be entitled to return to a role which is suitable and has no less favourable terms and conditions.
- 10.30 If the employee also takes a period of unpaid parental leave of four weeks or less, this will have no effect on their right to return to the same job as they occupied before taking the last period of leave if the aggregated weeks of maternity/ paternity/ adoption and ShPL do not exceed 26 weeks.
- 10.31 If the employee takes a period of unpaid parental leave of 5 weeks, even if the aggregate weeks of maternity/paternity/adoption and ShPL do not exceed 26 weeks, the employee will be entitled to return to the same job, unless this is not possible. In such cases, the employee will be entitled to return to a role which is suitable and has no less favourable terms and conditions.

### ***ShPL in touch days (SPLiT days)***

- 10.32 Each parent will be entitled to up to 20 keep in touch days, plus the mother will also have her entitlement of 10 maternity leave keep in touch days. This work will be paid at the employee's hourly contractual rate.

## **11. Shared parental pay (ShPP)**

- 11.1 Eligible employees may be entitled to take up to 37 weeks Shared Parental Pay (ShPP) while taking ShPL. The amount available will depend on the amount by which the mother/adopter reduces their maternity/adoption pay period or maternity allowance period.
- 11.2 In addition to meeting the eligibility requirements for ShPL, an employee seeking to claim ShPP must further satisfy each of the following criteria:
- Mother/adopter must be/have been entitled to statutory maternity/adoption pay/maternity allowance, and must have reduced their maternity/adoption pay/maternity allowance pay period.
  - The employee must intend to care for the child during the week in which ShPP is payable.
  - The employee must have average weekly earnings for the period of eight weeks leading up to and including the 15th week before the due date/matching date that are not less than the lower earnings limit in force for national insurance contributions.



- The employee must remain in continuous employment until the first week of ShPP has begun.
  - The employee must give proper notification in accordance with the rules set out below.
- 11.3 Where an employee is entitled to receive ShPP they must, at least eight weeks before receiving any ShPP, give their line manager written notice advising of their entitlement to ShPP. If possible this should be included as part of the notice of entitlement to take ShPL.
- 11.4 In addition, any notice that advises of entitlement for ShPP must include:
- The start and end dates of any maternity/adoption pay or maternity allowance.
  - The total amount of ShPP available, the amount of ShPP the employee and their partner each intend to claim, and a non-binding indication of when the employee expects to claim ShPP.
  - A signed declaration from the employee confirming that the information they have given is accurate, that they will meet or will meet the criteria for ShPP and that they will immediately inform the organisation should they cease to be eligible.
- 11.5 ShPP is paid at is paid at the statutory rate set by government per week or 90% of an employee's average weekly earnings, whichever is lower (the rate of pay will be set by the Government for each relevant tax year).

## **12. Unpaid Parental Leave**

- 12.1 Eligible employees can take unpaid parental leave to look after their child's welfare, for example to:
- Spend more time with their children
  - Look at new schools
  - Settle children into new childcare arrangements
  - Spend more time with family, such as visiting grandparents
- 12.2 The entitlement is for 18 weeks unpaid leave per child, up to the child's 18<sup>th</sup> birthday.
- 12.3 Leave should be taken in blocks or multiples of one week (except for parents of children in receipt of disability living allowance, where leave can be taken in periods of one day or more), with a maximum four weeks leave in any year. A year is based on the birth date of the child. Employees should give 21 days' notice of their request to take leave.
- 12.4 Managers can postpone when this leave is taken up to a maximum six months for business reasons, except for requests to take leave immediately after a child is born or placed for adoption.

- 12.5 Where qualifying employees wish to take leave to begin on the date on which the child is born or adopted, a minimum of 28 days' notice is required before the beginning of the expected week of childbirth and should specify the duration of the period of leave to be taken.
- 12.6 If the leave is not to be taken immediately after the birth or adoption of a child then the employer may postpone it if they consider that the 'operation of its business would be unduly disrupted' if the employee took leave during that period. The employer must agree with the employee to allow the same length of leave to begin no later than six months after the commencement of the postponed period.
- 12.7 Any period of unpaid parental leave, not exceeding four weeks that is taken within a period of shared parental leave, will not count towards the 26-week period, which is the time at which employees are entitled to return to the same job that they left.

### **13. Surrogacy**

- 13.1 Surrogates are the legal mother of any child they carry, unless they sign a parental order after they give birth transferring their rights to the intended parents. The woman who gives birth is always treated as the legal mother and has the right to keep the child - even if they're not genetically related. Surrogacy contracts aren't enforced by UK law, even if a contract has been signed with the intended parents and they've paid for any expenses. The child's legal father or 'second parent' is the surrogate's husband or civil partner unless legal rights are transferred to someone else or the surrogate's husband/civil partner didn't give permission to their wife/partner.
- 13.2 Every pregnant employee has the right to 52 weeks maternity leave and to return to their job after this. What a birth mother does after the child is born has no impact on her right to maternity leave.
- 13.3 Surrogacy laws are very complicated – to find out more, visit the [Human Fertilisation and Embryology Authority website](#) or talk to a legal advisor.

### **14. Special Guardianships**

- 14.1 The Leave Policy allows for unpaid dependant's leave so this could be considered alongside any annual leave and/or flexi leave entitlements.

### **15. Pension implications of unpaid leave**

- 15.1 During any periods of paid leave covered by this policy and procedure (including both occupation and statutory payments) employees will pay pension contributions calculated on the actual pay they receive. During unpaid leave pension contributions will not be made.

### ***Support staff who are members of the Local Government Pension Scheme***

- 15.2 If there is a right to return to work support staff employees also have the option of buying back any pension lost during the period of unpaid leave. If employees decide to buy back pension 'lost' due to periods of unpaid leave within 30 days of returning to work after the period of leave, then the cost of this would be shared, with the employer paying two thirds of the cost and the employee paying one third. To find out how much it would cost to buy back pension, employees should contact their payroll provider. For further pension information and to access online pension records employees should visit <https://www.nypf.org.uk/>.

### ***Teaching staff***

- 15.3 The Teachers' Pension Scheme does not allow members to buy back service for periods of unpaid leave, including maternity. Further information regarding the provisions of the scheme are available on the Teachers' Pensions website.

Appleton Wiske Community Primary School

Parental Leave Policy and Guidance

Name	Position	Signature	Date
Neil Clark	Head Teacher		
	Co-Chair of Governors		