

EMPLOYMENT ACT 2002

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part One: Statutory Leave and Pay

Chapter One: Paternity and adoption leave and pay

Adoption leave and Statutory Adoption Pay

Section 3: Adoption leave

25. This section contains provision for a new statutory right to ordinary adoption leave and additional adoption leave for an adoptive parent around the time of placement of a child for adoption. Regulations will determine the entitlement to, and details of, the leave. It is intended that adoption leave will be available whether the child is being adopted within the UK or from overseas. For practical reasons, there will be slight differences to some elements of the provisions for domestic and overseas adoptions. It is intended that ordinary adoption leave will be for a period of up to 26 weeks and additional adoption leave will be for a further period of up to 26 weeks, giving a total of up to one year's leave.
26. The new provisions are framed in a similar way to provisions in the Employment Rights Act 1996 (ERA) in relation to maternity leave, and section 3 inserts them into the ERA.
27. Regulations will be made making adoption leave available:
 - To an adoptive parent who is matched with a child by an approved adoption agency,
 - To employees who give their employer documentary evidence from an approved adoption agency to support their entitlement to leave, if requested to do so by their employer,
 - To both married couples and individuals who adopt,
 - For placements of children up to the age of 18.
28. In cases where a married couple adopts a child, it is planned that only one spouse will be entitled to take the leave. The other spouse will be entitled to two weeks' paternity leave if they meet the qualifying requirements in respect of such leave.
29. Regulations will provide that adoption leave will apply only where the child is newly placed with an adoptive parent - it will not apply to step-family adoptions or adoptions by a child's existing foster carers where there is no placement.
30. Regulations will also provide that adoption leave will be available to an employee who has completed a period of qualifying service. It is intended that the requirement will be continuous service with the same employer for at least 26 weeks by the week in which an approved match with the child is made (a match occurs when an approved adoption agency matches an adopter with a child).

*These notes refer to the Employment Act 2002
(c.22) which received Royal Assent on 8 July 2002*

31. An employee will have the right to return to a job following a period of adoption leave. It is intended that regulations will allow for:
- the right to return to the same job following absence on ordinary adoption leave in most cases,
 - the right to return to the same job, or if that is not reasonably practicable, an appropriate, alternative job, following absence on additional adoption leave, and
 - protection for employees from detriment and unfair dismissal in connection with adoption leave.