

# TOVIL PARISH COUNCIL



## 33. STAFF ATTENDANCE POLICY

AMENDED: 20.3.2023

MINUTE REF: 166/22

### PURPOSE

The purpose of this policy is to ensure that the operational efficiency of the organisation can be maintained whilst employees are absent from work for sickness, injury related reasons or other absence from the workplace. This policy applies to all employees of Tovil Parish Council.

By managing sickness and absence the Council will continue to provide a high quality service to members of the public.

### POLICY

This policy covers:

- Sickness absence
- Annual Leave
- Medical and dental appointments
- Maternity/Paternity/Adoption/Shared Parental Leave (Appendices A-D)
- Time Off For Dependants (Appendix E)
- Compassionate or Emergency Leave
- Other Periods of Absence
- Unauthorised Leave
- Time off in Lieu

### SICKNESS ABSENCE

Tovil Parish Council recognises that there will be periods of absence when staff are unable to work due to sickness. The Council provides a sickness pay scheme for its employees and the details of this are included in the employee's contract.

If an employee is unable to attend work due to sickness, they must inform their line manager, as soon as possible, but no later than 10am on the first working day on which the absence occurs. They should indicate the reason for the absence and, if possible, when they are expecting to return to work.

Regular contact must be maintained with their line manager during the periods of absence.

If the employee is absent for seven days or less, they are required to complete the self-certification document *as outlined in the Employment Rights Act 1996 – a copy of this can be obtained from the Council*. For all absences which exceed a seven day period a medical

certificate is required (known as a “Fit to Work” certificate). In addition to declaring a person is unfit for work a GP is now able to declare that a patient is:

- Fit for some work; or
- Fit for work taking account of changes that can be made to an employee’s role or workplace to facilitate a return to work.

If the note outlines changes to be made these could include:

- A phased return;
- Reduction of hours;
- Changes to the duties to be undertaken; or
- Workplace adaptations.

Where the incapacity to work is due to a voluntary action by the employee, eg cosmetic surgery or organ donation, the sickness absence and pay will be entirely at the Council’s discretion and employees are strongly advised to discuss such circumstances, in confidence, prior to any procedure.

The employee should keep their line manager informed of any changes to their circumstances that are preventing them from returning to work, their likely return to work date and any advice given by the GP and contact details.

### **Return to Work**

Following the return to work the Clerk, or Chairman, will arrange to meet with the employee to ensure that the employee is fit to work, any adaptations that are required, update on any developments and their current workload.

### **Long Term Absences**

In the case of long term ill-health, the Council will provide a supportive approach to employees who have been subject to long term sickness.

During the period of absence, the employee will be requested to attend meetings with the Clerk or a Member of the HR Committee for the purpose of providing information and facilitating an effective return to work. If the employee is very unwell or physically unable to leave their home the Council reserves the right to visit them at their home.

An employee returning to work following such a period will be supported on their return to work and the following options may be considered:

- Phased return to work
- Change of role or work pattern
- Provision of specialist equipment

## **Frequent Short Term Absence**

The Council reserves the right to ask the employee to attend a meeting if a large number of short term absences have occurred over a period of time:

- three absences in a twelve week period; or
- ten days intermittent absence over the last twelve months

Where this is the case, the Clerk/Chairman will normally discuss the absence levels with the employee, to discuss any concerns and to agree a way of improving the situation, if possible.

In both cases the Council will be sympathetic when an employee is ill, but the employee should appreciate that if they are persistently absent through ill health or long term injury or incapacity, it will not be possible to continue absent employment indefinitely. The Council will keep the employment open for up to one year, longer in some cases. However, it may be necessary to review or terminate the employment.

Termination will not take place without:

- Full consultation with the employee
- Medical investigation
- A consideration of alternative employment.

If an employee does not agree to the details outlined above for long term or frequent short term sickness, they may be dealt with under the procedure detailed below. Furthermore, the employee's contractual sick pay and statutory sick pay (SSP) may be withheld.

## **PROCEDURE FOR LONG TERM SICKNESS ABSENCE**

### **First Formal Meeting – Stage One**

A First Formal Meeting will be arranged where there is no clear date of return for long term sickness absence, or where there has been no improvement following the informal meeting in regard to frequent short term absence.

The Clerk/Chairman will notify the employee, in writing, of the meeting and will be advised of the concerns and that this is the first formal stage of the procedure. The employee will have the right to be accompanied by a colleague or trade union representative and will be given the opportunity to state their point of view.

Medical reports may normally be reviewed to assess whether there is an underlying health problem; written permission to access medical records must be sought from the employee before the Council makes any requests.

There will be a discussion on ways to assist the employee in returning to work with hours being agreed as appropriate.

Unless there is a clear date for a return the employee should be advised that employment cannot be held open indefinitely. They will also be advised that there would normally be

two further formal meetings after which the employee's contract, subject to medical reports, may need to be terminated on grounds of capability, unless there is a return to work in the meantime.

Notes of the meeting will be taken, recorded, and kept on file<sup>1</sup>. A date for a Second Formal Meeting should be set.

### **Second Formal Meeting – Stage Two**

The employee will be informed, in writing, of the Second Formal Meeting and that they may be accompanied by a colleague or trade union representative.

At the meeting the employee's sickness absence will be reviewed along with any medical reports received. An up to date medical report may be sought prior to the meeting and this will be discussed.

If the employee's absence is still a concern, they should be advised that there will be one further formal meeting, after which the employee's contract may need to be terminated on grounds of capacity, subject to further medical reports.

Notes of the meeting will be taken, recorded, and kept on file<sup>2</sup>. A format for a third, and final, formal meeting should be set.

### **Third Formal Meeting – Stage Three**

The employee will be informed, in writing, of this meeting and advised of their right to be accompanied by a colleague or trade union representative. The Chairman of the HR Committee will chair the meeting.

The letter will have advised the employee that it is possible that a termination of employment on the grounds of ill health may be an outcome of the meeting but that they will have the opportunity to state their point of view which will be fully considered.

Updated medical information will again have been received prior to the meeting and this will be reviewed. The employee's potential return to work should be discussed again.

If absence levels have not reduced at this stage and if the Hearing Chairman believes, on an assessment of medical information available and after a discussion with the employee, that there is no likelihood of improvement in the foreseeable future, the employee's contract will be terminated on the grounds of capability.

Before taking this step, the Clerk (the HR Committee when discussing adjustments with the Clerk) must consider again, and discuss with the employee, whether any reasonable adjustments could be made to enable the employee to return to work.

If a decision to terminate employment is taken, the employee will be provided with, as soon after the meeting as possible, a letter outlining the reasons for the termination of their

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<sup>1</sup> The Data Protection Act 2018 & Tovil Parish Council Document Retention Policy

<sup>2</sup> The Data Protection Act 2018 & Tovil Parish Council Document Retention Policy

contract. In the event of an appeal, the termination will be suspended until the outcome of the appeal hearing is known.

## **Appeal**

If the employee wishes to appeal against the decision to terminate their employment, they should write to the Clerk giving reasons for the appeal. The appeal must be made within ten working days of the date of the letter confirming termination of employment.

The employee will have the right to be accompanied to the hearing by a colleague or trade union representative.

The hearing will be held without unreasonable delay and the employee will be given the opportunity to state their point of view at the meeting.

The Council's decision is final.

## **ANNUAL LEAVE**

Annual leave entitlement is detailed in an employee's contract of employment, in order to book annual leave a form will need to be completed and submitted to their Clerk, the Clerk will submit leave requests to HR Committee.

An employee is required to give fourteen days' notice to take leave except in extenuating circumstances. Leave may be declined when the needs of the Council necessitate it, for example the time before an audit takes place. An employee is required to ensure that 25% of their leave is booked by 31<sup>st</sup> May every year.

An employee can carry over an equivalent of one weeks leave from the previous leave year, however the leave carried over must be taken within three months of the new leave year (by the end of June), if the leave is not taken then the amount carried over will be removed from the employee's entitlement.

## **TIME OFF IN LIEU (TOIL)**

On occasion the Council may require that staff work over their contracted hours, if the staff member agrees then they will be allowed to take TOIL.

An employee is required to give two weeks written notice to the Clerk/HR Committee except in extenuating circumstances. Failure to obtain the correct permission will result in the time off being noted as an unauthorised absence and could also result in disciplinary action.

Records of leave and TOIL are kept by the Clerk, an employee's own records do not form part of the Councils HR documentation.

## **MEDICAL AND DENTAL APPOINTMENTS**

Employees are expected to arrange medical and dental appointments outside normal working hours wherever possible.

The Council recognises that this is not always possible and where it is necessary to make an appointment during working hours, employees are encouraged to make the appointments at either the start or end of the day, if possible, to minimise disruption to the work of the Council.

In-patient appointments or procedures taking the whole day will be treated as sick leave in accordance with the procedures above.

### **MATERNITY/PATERNITY/ADOPTION/SHARED PARENTAL LEAVE / TIME OFF FOR DEPENDANTS**

Attached at:

Maternity Leave – Appendix A

Paternity Leave – Appendix B

Adoption Leave – Appendix C

Shared Parental Leave – Appendix D

Time Off for Dependents – Appendix E

### **COMPASSIONATE or EMERGENCY LEAVE**

This is at the discretion of the Council and although the Council recognises that each individual's request is different, compassionate leave will be granted in the following circumstances:

- The diagnosis of, or final stages of care for, a serious (life threatening) illness affecting a close family relative
- The employee falling victim to a serious crime.
- Fire/flood/burglary at the employee's home
- Road traffic collisions or other distressing accidents/incidents involving the employee or a close family member.

However, the employee is encouraged to speak to the Clerk/Chairman if their reason for compassionate leave is not included and these will be considered on an individual basis.

### **OTHER PERIODS OF ABSENCE**

Other periods of absence/time off include:

**Trades Union Official duties and activities:** Should an employee be a Trades Union Official the Council must allow them to take reasonable time off during working hours to carry out their duties as an official which are concerned with collective bargaining on behalf of employees or to undergo training relevant to carry out collective bargaining.

The Council must also allow an employee who is a member of an independent trades union, recognised by the Council, to take reasonable time off (as per ACAS guidelines) to take part in certain activities during working hours.

The Council may grant an employee, who is a trades union member, reasonable time off before any industrial action begins in order to deal with certain issues, such as allowing members to vote in an approved ballot, or for the member to discuss ways of avoiding the industrial action.

However, there is no right to payment to such time off in these circumstances.

**Public Duties:** There is an obligation upon the Council to allow an employee who is a Justice of the Peace or a member of the local authority to take reasonable time off to perform their duties. This may include attending a meeting of the body or its committees. However, the maximum number of hours which the Council is permitted to allow an employee time off is two hundred and eight hours of paid time off in any one financial year.

**Safety Representatives:** Safety representatives are permitted time off, with pay, for their performance of their duties as a safety representative.

**Jury Service:** The Council must allow a member of staff to attend jury service unless there is a genuine reason for not permitting attendance and this should be minuted and put in writing for the employee to submit to the Ministry of Justice.

If an employee attends, they should complete a “loss of earnings” form for the time that they are on jury service and inform the Council how many days they were on duty. Tovil Parish Council will still pay for PAYE, National Insurance and Pension Contributions.

Salaries will be paid as normal. However, on receipt of the “loss of earnings” payment the employee should pay this amount, via bank transfer, into the Parish Council’s bank account at the earliest convenience, or at the latest within one month of payment.

**Reserve Armed Forces:** The Council does not have to allow time off for training but may choose to do so. Training for reservists is usually made up of one evening a week/several weekend(s) throughout the year / 15-day training course each year. If reservists are called for full-time service (mobilisation) they will get twenty eight days’ notice and further advice will be obtained from the .gov.uk website if this occurs.

## **UNAUTHORISED LEAVE**

Unauthorised absence occurs when an employee fails to attend work and has not made any arrangements with the Clerk or HR Committee. Examples of unauthorised absence (this list is not exhaustive);

- Failing to notify the Clerk/HR Committee of absence due to sickness.
- Failing to obtain permission to work from home.
- Failing to attend work when annual leave has been declined.
- Failing to attend work when time off in lieu has been declined.

Where an employee returns to work following an unauthorised absence, they will be required to attend a meeting with the Clerk/HR Committee to explain their absence. The employee will be expected to take any unauthorised leave from their annual leave entitlement, or if no entitlement remains, pay will be deducted for the period of unauthorised absence.

Unauthorised leave may result in formal disciplinary action in accordance with the Council's Disciplinary Policy.

There may be occasions when it is unavoidable to be late for work. If this occurs the employee should contact the Chairman, to explain the reasons for any delay. The employee will be expected to make up any time lost at work due to lateness. Persistent lateness may result in formal disciplinary action in accordance with the Council's Disciplinary Policy.

**ALTERATIONS AND AMENDMENTS TO THIS POLICY**

This Policy does not form part of the employee's contractual rights. The Council reserves the right to revise the contents of this Policy from time to time or withdraw it at its absolute discretion, in accordance with the needs of the Council and Employment Law.

**REVIEW**

This policy will be reviewed at the Annual Parish Council Meeting, legislation is constantly monitored by the Clerk, the Clerk will recommend any changes to the Council as they are needed.

Scheduled date of Review; May 2023

**CHAIRMAN**.....

**DATE**.....



## **MATERNITY LEAVE**

### **Maternity Leave**

All employees expecting a baby are entitled to Statutory Maternity Leave (SML). There is no minimum length of service required to take SML and an employee is entitled to up to fifty two weeks SML.

The fifty two week maternity leave period is divided into Ordinary Maternity Leave (OML) and Additional Maternity Leave (ADL), and details are as follows:

OML lasts for up to twenty six weeks and can start at any time from eleven weeks before the week the baby is due.

AML lasts for up to twenty six weeks and begins the day after the last day of the employee's OML.

An employee must take at least two weeks' compulsory maternity leave starting with the day on which the baby is born.

### **Maternity Pay**

An employee may also be entitled to be paid Statutory Maternity Pay (SMP), provided that they have twenty six weeks' continuous service before the fifteenth week before the baby is due. If an employee does not have twenty six weeks' continuous service before the fifteenth week before the baby is due, the employee may be entitled to receive Statutory Maternity Allowance (MA) and should approach the Job Centre Plus for more information.

If an employee is entitled to SMP the details are listed in the table below. After thirty nine weeks the employee can continue to take the remaining thirteen weeks' maternity leave, but this will be unpaid.

<b>Length of Service</b>	<b>Week of Maternity Leave</b>	<b>Entitlement to Pay</b>
Less than one year's service by 11 <sup>th</sup> week before Expected Week of Childbirth (EWC)	Weeks 1 – 6	SMP or MA if not qualified for SMP
	Weeks 7 – 39	SMP or MA if not qualified for SMP
	Weeks 40 – 52	No pay

One year's service or more by 11 <sup>th</sup> week before EWC	Weeks 1 – 6	90% of a week's pay
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	Weeks 7 - 18 if employee has declared her intention to return to work after maternity leave	50% of a week's pay on top of her SMP
	Weeks 7 - 18 if employee is not intending to return to work	SMP only
	Weeks 19 – 39	SMP only
	Weeks 40 – 52	No Pay

### **Notice of Maternity Leave**

For an employee to be able to take maternity leave, they must give notice to Tovil Parish Council (TPC) before the fifteenth week that the baby is due. This usually in the form of a MATB1 form from the midwife and has to say the following things:

- That she is pregnant;
- The week that her baby is due; and
- The week she plans to start her OML.

### **Starting Maternity Leave**

Once an employee has given notice of her intended date to start her maternity leave, she can change her mind as long as she gives twenty eight days' notice of the change. If the employee is unable to give twenty eight days' notice of the change in the start date, she should give notice as soon as it is reasonably practicable.

### **Premature Babies and Still Births**

If the baby is born early, then OML starts immediately upon the birth of the baby.

If the employee loses her baby after twenty four or more weeks of pregnancy, or if the baby is stillborn, then the employee is still entitled to maternity leave. An employee should tell TPC of such a situation as soon as reasonably practicable.

If an employee is ill during the last four weeks of her pregnancy and the illness is pregnancy related, then her maternity leave will commence automatically, and she should inform TPC of the reasons for her absence and that it is pregnancy related.

## **Rights during OML and AML**

An employee is entitled to the same benefits during OML and AML.

TPC must:

Continue to provide all contractual and discretionary benefits during maternity leave apart from remuneration. Remuneration includes overtime or shift pay.

Provided an employee was entitled to receive the following benefits prior to maternity leave she will continue to be entitled to receive them during her maternity leave:

- Continuing membership of a professional body (SLCC);

## **Pension Contributions during Maternity Leave**

Pension payments do not need to be continued during a period of AML which is unpaid (unless the employee's contract of employment states otherwise). However, during any period of paid maternity leave MPC will continue to make contributions based upon the employee's normal pay as if she had been at work. The employee's contributions should be based upon the pay she is actually receiving during paid maternity leave.

## **Keeping In Touch (KIT) Days**

Employees are entitled to work up to ten days (KIT days) during maternity leave without maternity leave coming to an end.

The main purpose of KIT days is to keep contact between TPC and the employee and useful ways of an employee using KIT days include attending training courses. If she is working rather than simply attending the workplace to maintain contact with colleagues and TPC then she should be paid at her normal rate. If she is paid for her KIT days and these are used when the employee is being paid SMP, the SMP may be offset against any contractual pay which the employee receives.

## **Holiday Entitlement during Maternity Leave**

An employee on maternity leave accrues annual leave during both OML and AML. To avoid an employee having a full year's annual leave entitlement when they return from maternity leave, TPC will agree with the employee how this annual leave will be taken. If an employee has a large amount of untaken annual leave accrued before they go on maternity leave, they will be encouraged to take all of this prior to starting OML.

Although an employee cannot take annual leave whilst on maternity leave, one option is for the employee to take paid annual leave in place of the remaining unpaid maternity leave.

## **Pay and Conditions of Service**

TPC abides by the National Agreement on Pay and Conditions of Service (known as "The Green Book") and if the employee has declared her intention to return to work after her maternity leave, then for the twelve weeks which follow the six weeks in which she is

entitled to 90% of a week's pay the employee is entitled to half a week's pay on top of her SMP (unless her combined contractual entitlement and

SMP exceeds full pay – in which case the contractual element is reduced pro rata).

Payments made by TPC during maternity leave are made on the understanding that the employee will return to work for TPC for a period of at least three months. In the event of the employee not doing so, she is required by the terms of the Agreement to refund the monies paid (or such part thereof, if any, as TPC may decide). Payments made to the employee by way of SMP are not refundable.

For employees not intending to return to work for the twelve weeks, the employee is entitled only to SMP.

### **Return to Work After Maternity Leave**

An employee is entitled to return to work after taking maternity leave. If the employee returns after taking only OML, then she is entitled to return to the job in which she was employed before she went on maternity leave.

If the employee takes the full fifty two weeks maternity leave entitlement, she is entitled to return to the job in which she was employed before she went on maternity leave.

## **PATERNITY LEAVE**

Tovil Parish Council (TPC) employees are entitled to paternity leave and pay provided they meet the minimum requirements.

### **Ordinary Paternity Leave (OPL)**

OPL is for a maximum of two weeks. This can be taken in two consecutive weeks, or the employee may choose to take only one week. An employee cannot take individual days or two separate weeks. OPL must be taken within fifty six days (eight weeks) of the baby being born.

In order to be able to receive OPL an employee must meet a number of the following requirements:

- Have or expect to have responsibility for the child's upbringing;
- Be the child's adopter;
- Be the biological father of the child or the mother's husband or partner;
- Have continuously worked for TPC for at least twenty six weeks ending with the fifteenth week before the baby is due.

### **Payment**

An employee is not entitled to receive their normal salary during OPL but, provided they have average weekly earnings of not less than £109, is entitled to be paid Statutory Paternity Pay (SPP) at the current rate, or 90% of their average earnings, if this is less than the current rate of SPP.

### **Notice of Taking OPL**

If an employee wishes to take paternity leave, he must give notice to TPC which includes the expected week of the child's birth, the length of leave he wishes to take (one or two weeks) and the date on which the employee has chosen to start his leave. This notice needs to be given before the fifteenth week before the expected week of the baby's birth.

The employee is not required to give TPC medical evidence of the pregnancy, but TPC can request a declaration from the employee that the reason for the leave is to take care of a child or support the child's mother.

### **Terms and Conditions during Paternity Leave**

An employee on OPL is entitled to the benefits of all terms and conditions of employment that would have applied if he had not been absent from work (excluding pay).

## **National Agreement on Pay and Conditions of Service**

TPC abides by the National Agreement on Pay and Conditions of Service (known as “The Green Book”) therefore the child’s father or partner or the nominated carer of the expectant mother is entitled to maternity support leave of five days with pay.

## **Additional Parental Leave (APL)**

A parent may also be able to take up to twenty six weeks’ APL. In order to be able to take APL an employee must meet a number of the following requirements:

- Be the father of the child; or
- Have been notified that they are matched with a child for adoption; and
- Remain in continuous employment until the week before the first week of APL.

In addition:

- The child’s mother or adopter must have been entitled to either Statutory Maternity Leave (SML) or Statutory Adoption Leave (SAL);
- The child’s mother or adopter must have returned to work without taking all of her leave.

Leave can be taken between twenty weeks and twelve months after the child is born or placed for adoption. If the employee takes an APL, they may be entitled to Additional Statutory Paternity Pay (ASPP) at the current rate, provided they have average weekly earnings which are not less than the current rate.

The employee will only receive ASPP during the time their partner would have been receiving Statutory Maternity Pay (SMP) or Statutory Adoption Plan (SAP), or Maternity Allowance (MA).

Eight weeks before they wish their APL to start, the employee must provide TPC with:

- Notice of when they wish their leave to start;
- A declaration stating that they are taking the leave to care for the child;
- A declaration from the mother, or other adoptive parent, stating her name, address and National Insurance number; that she was entitled to MA or SMP; that she has given her employer notice that she is returning to work; the date of return; that, to her knowledge, the employee is the only applicant for ASPP in respect of the child; and that she consents to TPC processing the information she has provided.

## **ADOPTION LEAVE**

Tovil Parish Council (TPC) employees who are newly matched with a child for adoption have the statutory right to Adoption Leave (AL) and Statutory Adoption Pay (SAP) provided they meet certain criteria. As in the case of Statutory Maternity Leave, AL is made up of Ordinary Adoption Leave (OAL) and Additional Adoption Leave (AAL).

Such employees have a right to:

- Fifty two weeks SAP (comprising twenty six weeks OAL and twenty six weeks AAL); and
- Thirty nine weeks SAP.

Leave can begin either on the date the child starts living with the employee; or up to fourteen days before the date the employee expects the child to begin living with them; or, for overseas adoption, when the child first arrives in the UK or within twenty eight days of this date.

If the employee changes their mind about the date, they want to start their leave the employee must give TPC at least twenty eight days written notice of this intention.

### **Ordinary Adoption Leave (OAL)**

OAL will begin on the date chosen by the employee and last for twenty six weeks. However, it cannot start any more than fourteen days before the expected placement date and no later than the date of the placement.

### **Additional Adoption Leave (AAL)**

As long as the employee took OAL and the OAL did not end prematurely (eg as it would if the employee was dismissed or resigned during OAL) then the employee will also be entitled to AAL.

### **Qualifying for Adoption Leave**

In order to qualify for AL an employee must meet the following requirements:

Be an employee (workers who are not employees cannot qualify for SAL);

Be newly matched with a child by an adoption agency;

Have worked continuously for TPC for at least twenty six weeks before the beginning of the week when they are matched with a child (ie the adoption agency has given the employee details of the child they think is suitable for the employee to adopt);

If there are two employees working for TPC who choose to adopt a child, then only one person is entitled to AL and AP. The other partner may be entitled to take Paternity Leave and Pay (please see separate item regarding this).

### **Notification Requirements**

Notice of the intention to take AL should be given in writing to TPC within 7 days of being matched with a child or as soon as reasonably practicable after that date. Notice should include:

- That the employee intends to take AL;
- The date the employee wishes the AL to start; and
- The expected date of the placement.
- Evidence of ability to take AL in the form of a matching certificate should be provided with this letter of notification.

### **Payment**

SAP will only be payable if the adopter has given the employee notice as detailed above.

An employee is not entitled to receive their normal salary during AL but is entitled to be paid SAP at the current rate or 90% of their average earnings, whichever is the most. This is payable for thirty nine weeks.

Employees are entitled to work up to ten days (KIT days) during maternity leave without maternity leave coming to an end.

### **Keeping In Touch (KIT) Days**

Employees are entitled to work up to ten days (KIT days) during AL without AL coming to an end.

The main purpose of KIT days is to keep contact between TPC and the employee and useful ways of an employee using KIT days include attending training courses. If the employee is working rather than simply attending the workplace to maintain contact with colleagues and TPC then they should be paid at their normal rate. If they are paid for their KIT days and these are used when the employee is being paid SAP, the SAP may be offset against any contractual pay which the employee receives.

### **Rights during OAL and AAL**

An employee at OAL and AAL is entitled to the benefit of all the terms and conditions of employment that would have applied if he or she was not on AL (apart from remuneration). However, TPC may consider that the employee may be entitled to enhanced adoption pay.



### **Return to Work after Adoption Leave**

An employee who returns to work after OAL is entitled to return to exactly the same job he or she left, unless the OAL follows on from a period of Additional Maternity Leave or AAL, or a period of parental leave of more than 4 weeks, and it is not reasonably practicable for a reason other than redundancy for the employee to return to the same job.

An employee who returns after a period of AAL is entitled to return to the job in which he or she was employed before the absence, except when it is not reasonably practicable for a reason other than redundancy for TPC to allow this.

## **SHARED PARENTAL LEAVE**

### **Definition**

Shared Parental Leave (SPL) is when the mother, or primary adopter, gives up part of her maternity, or adoption leave, and those weeks are then shared by the couple taking leave from their respective employments either simultaneously or consecutively.

A couple may be husband or wife, or mother and the child's father, or mother and her civil partner, or mother and her partner. A partner is someone who lives with the mother in an enduring family relationship who (in essence) is not a close relative. The legislation refers to the couple as M and P. M is the mother, or primary adopter, and P is her (or his) partner. *(For the sake of simplicity in this policy M is eligible for Maternity Leave).*

### **Qualification to take SPL – TPC is the employer of M.**

TPC is the employer of M who wants to take SPL. To qualify she must:

- Be an employee who has been employed by TPC for twenty six weeks at the end of the fifteenth week before the Expected Week of Childbirth (EWC) (i.e., by the EWC, she will have been with TPC for forty weeks);
- Be entitled to Maternity Leave
- Bring her maternity leave to an end either by returning to work or by giving a "curtailment notice" at least eight weeks before she wants her maternity leave to end;
- Give a "notice of entitlement and intention to take SPL";
- Give a "period of leave notice";
- If requested, give a copy of the child's birth certificate and the name and address of P's employer.

At the same time, for M to be able to take SPL, TPC has to be clear that P:

- Satisfies the employment and earnings test, ie has been an employee or self-employed earner in at least twenty six of the sixty six weeks immediately preceding the EWC and has average weekly earnings of not less than £10000 in thirteen of the sixty six weeks;
- Shares the main responsibility for the child's care with M.

### **Qualification to take SPL – TPC is the employer of P.**

TPC is the employer of P who wants to take SPL. To qualify they must:

- Be an employee who has been employed by TPC for twenty six weeks at the end of the fifteenth week before the Expected Week of Childbirth (EWC) (ie by the EWC, he/she will have been with TPC for forty weeks);

- Give a “notice of entitlement and intention to take SPL”;
- Give a “period of leave notice”;
- If requested, give a copy of the child’s birth certificate and the name and address of M’s employer.

At the same time, for P to be able to take SPL, TPC has to be clear that M:

- Satisfies the employment and earnings test, ie has been an employee or self-employed earner in at least twenty six of the sixty six weeks immediately preceding the EWC and has average weekly earnings of not less than £10000 in thirteen of the sixty six weeks;
- Shares the main responsibility for the child’s care with P;
- Is entitled to maternity leave and/or SMP or maternity allowance;
- If she is entitled to maternity leave, has brought her maternity leave to an end either by going back to work or by giving her employer a “curtailment notice” at least eight weeks before she wants her maternity leave to end;
- If she is not entitled to maternity leave, has brought her SMP or maternity allowance (MA) entitlement to an end either by going back to work or by giving her employer (or the Department of Works and Pensions in the case of MA) a “curtailment notice” at least eight weeks in advance of the date she wants to end her entitlement.

### **SPL “Toolkit”**

TPC’s SPL Toolkit contain three notice forms:

“Notice of Entitlement and Intention to take SPL” – this form provides all the required information from both M and P in order to show their intention and entitlement to take SPL. It contains formal declarations which must be completed by both M and P.

“Curtailment Notice” – This will be served by M at the same time as the “Notice of Entitlement” form.

“Period of Leave Notice” – This is the formal notice provided by M and P setting out the dates they wish to take SPL.

### **Shared Parental Pay**

Provided that the employee’s normal weekly earnings are at least the lower earnings limit (LEL) for National Insurance Contributions then if someone is eligible for SPL, they are also eligible to receive Shared Parental Pay (SPP). If M qualifies for SMP or SAP, they will also qualify for SPP.

ShPP is payable for each week of SPL up to a maximum, in practice, of thirty nine weeks shared between M and P. In cases of birth, the maximum period of SPP is thirty seven weeks after taking into consideration the two weeks which M MUST take as a minimum maternity leave period.

ShPP is paid at the prescribed statutory rate or 90% of weekly earnings, which is the lower. It is paid for a maximum of thirty nine weeks minus weeks of SMP/MA, or adoption pay,

received by M, and must be used up by the baby's first birthday or anniversary of the adoption placement.

Someone can be entitled to SPP because they are an employed earner but not entitled to SPL because they are not an employee.

TPC remains liable to pay SPP where their employee had been employed for at least eight weeks and they brought the employee's contract to an end wholly or mainly so as to avoid paying ShPP.

***Do Cllrs want the following in detail or "refer to SLCC guidelines"? (Full details available at HR meeting)***

***Calculating How Much SPL the Employee is Entitled To***

***Continuous and Discontinuous Periods of Leave***

***Deciding on how much leave will be taken and when.***

***Changing of Decision***

**Rights during SPL**

As with maternity, paternity and adoption leave, M and P are entitled to the benefit of all their terms and conditions when absent from SPL, with the exception of terms relating to pay.

M and P can each do up to twenty days of work for MPC without bringing their leave to an end. These so-called SPLIT days are in addition to the KIT (keeping in touch) days that M may have during maternity or adoption leave. Neither TPC nor the employees can insist on a SPLIT day; this is a matter of agreement between the two parties. Neither SPLIT days nor KIT days extend the period of leave.

If a redundancy occurs during a period of SPL that affects either M or P, they have the right to be offered any suitable alternative employment that is available, in priority to any other employee. This is the same right that applies to female employees on maternity leave.

**Rights on Return to Work**

M and P have a right to return to their old jobs if their total leave (SPL plus maternity, paternity, adoption or parental as the case may be) is twenty six weeks or less. Otherwise, if it is not reasonably practicable for them to return to their old job, they must be given a suitable alternative job.

**Detriment and Dismissal**

M and P can bring tribunal claims if they are subjected to any detriment, or dismissed because they took, or TPC believed they were likely to take SPL, or worked or refused to work a SPLIT day. Likewise, if they were selected for redundancy for those reasons.

## **TIME OFF FOR DEPENDANTS POLICY**

### **Legislation**

The Employment Rights Act 1996 implements European Legislation, setting out an employee's right to take time off work for dependents.

All employees have the right to reasonable amounts of unpaid time off to deal with certain issues affecting dependents. A "dependent" is the employee's spouse or civil partner, child, parent or a person who lives in the same household as the employee but who is not his or her employee, tenant, lodger or boarder. Government guidance states that an elderly aunt/uncle or grandparent who lives in the employee's household would be a qualifying dependent.

### **Circumstances In Which Time Off May Be Taken**

An employee is entitled to take a reasonable amount of time off in the following circumstances:

- To provide assistance on an occasion where a dependant falls ill, gives birth, or is injured or assaulted;
- To make arrangements for the provision of care for a dependant who is ill or injured;
- In consequence of the death of a dependant;
- Because of the unexpected disruption or termination of arrangements for the care of a dependant, or
- To deal with an incident involving a child of the employee which occurs unexpectedly in a period during which an educational establishment is responsible for the child.

*In relation to the first two circumstances, "dependent" also includes those who reasonably rely on the employee for such assistance or arrangements.*

In general, the time off is to make arrangements for care, etc. It is not a right to time off to provide continuing care; case law suggests that no more than a few hours or, at most, one or possibly two days should be sufficient to deal with the immediate crisis.

TPC will grant eight days paid every year (between April and March) in order to provide care to a dependent, in this case the employee must attempt to give as much notice as possible. Salary for further dependents leave will be decided by the HR Committee.

### **Notice Requirements**

An employee should tell TPC of the reason for his or her absence as soon as reasonably practicable and how long they expect to be absent. This notice does not need to be in writing.

## **Potential Issues**

There may be instances where TPC suspects that an employee is abusing time off for dependents. While an employee does not need to provide evidence of the reason for dependent leave or their relationship to the person affected, if TPC believes that the employee is abusing the system, normal disciplinary procedures should be followed. Careful investigation is required, and advice will be sought before disciplining an employee in these cases.