

Deafblind Scotland vision – “A society in which deafblind people have the permanent support and recognition necessary to be equal citizens”



Policy on Right to Parental leave for fostering or adoption purposes.

1. Paternal and Paternity Policy

(Applies to births on or after 3rd April 2011)

This policy document applies to your employment at Deafblind Scotland (the organisation)

1. Policy Statement

1.1 The employer's policy is to comply with the law of Scotland regarding paternal and paternity rights. The aim of this policy is to set out the law applicable to the rights of employees with new children. The policy is not a contractual document.

1.2 In the event that this policy and the law conflict, the law shall take precedence. If employees are in any doubt as to what their rights are they should discuss this matter with employer. Should this policy change as a result of amendments in the law the changes will be notified to the employee within an agreed timescale.

1.3 This policy is intended to apply to all employees who wish to take leave to look after a child or who have become fathers, whether the child in question is born or adopted,

1.4 Any employee who is dissatisfied with any decision affecting their paternal and paternity rights should use Deafblind Scotland's formal grievance procedure.

2. Definitions

2.1 Paternal Leave : The right of the male or female employee who satisfy certain criteria to take unpaid leave of up to 13 weeks for a child born or adopted over whom they have or expect to have responsibility.

2.2 Paternity Leave: Applies to all employees in relation to the birth or adoption of a child where the employee is either the biological father or the intended father, or the mothers partner (including same sex or civil partners) and who have at least 26 weeks continuous service with the employer ending with the 15th week of the expected week of childbirth or the week in which an approved match with the child is made in the case of adoption, provided the employee satisfies certain criteria. The entitlement is to take paid leave of up to 2 weeks.

2.3 Statutory Paternity Pay (SSP) – Compulsory pay payable to all employees taking paternity leave, provided they satisfy certain criteria.

2.4 Remuneration: Wages or Salary

2.5 Paternal Responsibility Agreement: Contract entered into by the unmarried natural parents of a child which gives the parent without care certain rights over the education, health and welfare of that child. Paternal responsibility can also be granted to that parent by the court in the form of an order.

2.6 Expected week of Childbirth (EWC): This is the week in which the expected date of the baby's birth falls, beginning on a Sunday and ending the following Saturday.

2.7 Matching week: this is the week in which the adopter is notified of having been matched with the child. That matching week begins on a Sunday and ends on a Saturday.

3. Paternal Rights: Entitlement to Paternal Leave

3.1 Employees (male or female) with at least 1 year's continuous service with Deafblind Scotland are entitled to unpaid paternal leave in respect of children born or adopted on or after the 15th December 1994. The period of leave is 13 weeks for each child up to the child's 5th birthday. In the case of a child entitled to disability living allowance, the period of leave is 18 weeks.

3.2 For children born or adopted on or after 15th December 1999, the employees right to take paternal leave will last until the child's fifth birthday, or if the child is adopted; until five years following placement for adoption. In these cases the employee must have completed one year's continuous service with the employer.

3.3 Employees with disabled children can take up to 18 weeks paternal leave for each disabled child entitled to disability living allowance, up until their child's 18th birthday, regardless of when the child is born.

3.6 The following applies with regard to how the 13 – week leave may taken:

The leave may only be taken in blocks or multiples of one week
(except in the case of a disabled child)

The employee must agree the period and time for taking the leave with the employer and must give the employer 21 day's notice before taking paternal leave. The notice from the employee must state the start and end date of the proposed paternal leave period. (The employer reserves the right to postpone an employee's paternal leave for up to six month's where the employer's business would otherwise be unable to cope)

However, paternal leave cannot be postponed when an employee gives notice to take leave immediately after a child is born or is placed with the family for adoption.

Employees with disabled children can take paternal leave one day at a time for longer periods, if required.

The employee may only take a maximum of 4 weeks leave in any 12-month period for each relevant child.

The employee's period of leave taken with a previous employer will be taken into account when calculating their total entitlement.

The Human Resources section may request from the employee proof of their responsibility for the relevant child together with a copy of the child's birth certificate, proof of adoption, or the child's entitlement to disability living allowance as the case may be.

3.7 The employee will remain employed whilst on paternal leave and certain terms of employment will remain in force as follows:

- (i) Implied obligation of trust and confidence.
- (ii) Notice of termination
- (iii) Disciplinary and grievance procedures.
- (iv) Non-disclosure of confidential information.
- (v) The acceptance of gifts or other benefits.
- (vi) Non-participation in any other business.
- (vii) Compensation in the event of redundancy

3.8 An employee who takes paternal leave for a period of 4 weeks or less, (and where such leave did not include any period of additional maternity or adoption leave) may return from leave to the job in which he or she was employed before taking leave. This will entitle the employee to the same terms and conditions of employment previously enjoyed.

3.9 It is the employer's intention that employees who take paternal leave for more than 4 weeks, (or paternal leave of less than 4 weeks, which includes a period of additional maternity leave or additional maternity leave) shall also return to the same job. However, if this is not reasonable practicable the employee will be fully

consulted and offered any suitable alternative employment. The new position will be one, which is both suitable for the employee and appropriate for him/her to do in all the circumstances.

3.10 In the event that after paternal leave an employee will be required to work in a position their manager/supervisor/head of department will arrange a meeting prior to return to discuss the change in position and any administrative details.

3.11 In the unlikely event of the employee's job not being available due to redundancy, the employee will be fully consulted and offered any available suitable employment.

4. Paternity Leave: Entitlement to Paternity Leave in the case of child birth

4.1 An employee who has been continuously employed for a period not less than 26 weeks ending with the 15th week before the expected week of the childbirth will be entitled to statutory paternity leave if:

- (a) The employee is either the father of the child, and has or expects to have the responsibility for upbringing of the child, or
- (b) Married to, or is a partner of, the child's mother, but is not the child's father, and has the main responsibility for the upbringing of the child, in both cases, or is
- (c) Either one of two parents jointly adopting a child or the partner of someone adopting a child individually and is not taking statutory adoption leave and pay and will be taking time off work to support the adopter and/or care for the child, and
- (d) Complies with the notification requirements under clause 5.

4.2 If the child is born earlier than the 15th week before the week in which its birth is expected and the employee has not been continuously employed for 26 weeks but would otherwise have been, he will still qualify for paternity leave as long as the other conditions are satisfied.

4.3 An employee will also be treated as satisfying the qualification requirement relating to length of employment if he has not satisfied those requirements, but would have done so, but for the fact that the child's mother has died.

4.4 An employee will also be treated as satisfying the qualification requirement relating to length of employment if he has not satisfied those requirements, but would have done so, but for the fact that the child was still born after 24 weeks of pregnancy or has died.

4.5 The entitlement to paternity leave is either one or two consecutive weeks paid ordinary paternity leave or additional paternity leave of a maximum of 26 weeks leave. Ordinary paternity leave is to be taken on or after the expected week of childbirth, but in any event must be taken within 56 days after the actual birth if this is earlier than the expected week of childbirth. To receive additional paternity pay the employee must meet the criteria set out in clause 9.

4.6 The additional paternity leave can be taken at any time within the period beginning 20 weeks after the child is born and will end 12 months after that date. It must be taken within the mother or adopter's leave and pay entitlement period, but after the mother or adopter has returned to work.

4.7 An employee's entitlement to leave under paragraph 4.5 will not increase simply by virtue of the fact that more than one child is born in respect of the same pregnancy.

4.8 If the employee chooses to take the leave after the first day of the expected week of the child's birth, he must serve a written notice on the employer of his intention to take such leave by serving a written notice on the employee.

4.9 Alternatively, the employer may specify the dates to be taken by the employee in respect of paternity leave by serving a written notice on the employee.

4.10 If the employee has chosen to begin his period of leave on the date on which the child is born and he is at work on that date then the employee's period of leave begins on the day after that date.

5 Notification Requirements for Births

5.1 The employee must give the employer notice in writing of his intention to take paternity leave in respect of a child. The notice must specify:

- (a) The expected week of child birth.
- (b) The length of the period of leave, which the employee has chosen to take.
- (c) The date the employee has chosen for his chosen for his period of leave to begin.
- (d) A signed declaration that the employee satisfies the conditions of entitlement and the purpose of the absence from work is to care for a newborn child or to support the child's mother.

5.2 The notice must be given by the employee to the employer

during or before the 15th week before the expected week of the child's birth. If it was not reasonably practicable for the employee to give notice within this period, then notice should be given as soon as reasonably possible.

5.3 If an employee wishes to vary the date he has chosen for taking paternity leave he must give notice in writing to the employer of this variation either:

- (i) 28 days before the first day of the expected week of the child's birth, or
- (ii) 28 days before the elected number of days after the date on which the child is born or,
- (iii) 28 days before the predetermined date for taking the leave as previously notified to the employer by the employee.

5.31 If it is not practicable to give notice of variation within this time period, the employee should give notice as soon as reasonably practicable.

5.4 The employee must give his employer a further notice in writing as soon as is reasonably practicable after the child's birth, of the date on which the child was born.

6 Entitlement to Paternity Leave in the case of Adoption

6.1 An employee is entitled to paternity leave in the case of a child placed for adoption if he has been continuously employed for a period of at least 26 weeks ending with the week in which the child's adopter is notified of having been matched with the child, and:

- (a) Is either married to or is the partner of the child's adopter and,
- (b) Has, or expects to have, the main responsibility for the upbringing of the child.
- (c) Complies with certain notification requirements.

6.2 An employee will also be treated as satisfying the qualification requirements relating to length of employment if he has not satisfied those requirements, but would have done so, but for the fact that the child's adopter died during the child's placement.

6.3 An employee will also be treated as satisfying the qualification requirements relating to the length of employment if he has not satisfied those requirements, but would have done so, but for the fact that the child's placement with the adopter has ended.

6.4 The entitlement to paternity leave is either one or two

consecutive weeks ordinary paid paternity leave or 26 weeks additional paternity leave. Ordinary paternity leave is to be taken during the 56 days beginning with the date on which the child is placed with the adopter.

6.5 The additional paternity leave can be taken at any time within the period beginning 20 weeks after the child is placed for adoption and will end 12 months after that date. To receive additional paternity pay the employee must meet the criteria set out in clause 9.

6.6 In the case of ordinary paternity leave the employee may choose whether to begin the leave either on the date on which the child is placed with the adopter (or enters the UK in the case of overseas adoptions) or elect a certain number of days after the days after the date on which the child is placed with the adopter or select a predetermined date which is after the date on which the child is placed with the adopter or select a predetermined date which is after the date on which the child is placed with the adopter or select a predetermined date which is after the date on which the child is expected to be placed with the adopter (or enters the UK in the case of overseas adoptions).

6.7 If the employee has chosen to begin his period on the date on which the child is placed and he is at work on that date, then the employee's period of leave begins on the day after that date.

7 Notification Requirements for UK Adoptions

7.1 The employee must give the employer notice in writing of his intention to take paternity leave in respect of an adopted child under clause 6. The notice must specify:

- (a) The date on which the adopter was notified of having been matched with the child.
- (b) The date on which the child is expected to be placed with the adopter.
- (c) The length of the period of leave which the employee has chosen to take.
- (d) The date the employee has chosen for his period of leave to begin.
- (e) A signed declaration that the employee satisfies the conditions of entitlement and the purpose of the absence from work is to care for a child or support the child's adopter.

7.2 The notice must be given in writing to the employer no more

than 7 days after the date on which the adopter is notified of having been matched with the child or if it is not reasonably practicable to give notice within that time, then as soon as is reasonably practicable.

7.3 If an employee wishes to vary the date he has chosen for taking paternity leave he must give notice in writing to the employer of his variation

(i) Where the period of leave was to begin before the date on which the child is placed with the adopter, then at least 28 days before the date given in his notice under paragraph 7.1, or

(ii) Where the period of leave was an elected number of days after the date on which the child is placed with the adopter then 28 days before the date given in his notice under paragraph 7.1 or

(iii) Where the period of leave was a predetermined date for taking the leave, then 28 days before the date given in this notice under paragraph 7.1

7.4 The employee must be give his employer further notice in writing of the date in which the child was placed and this should be done as soon as is reasonably practicable after the child's placement.

2. Notification Requirements of Overseas Adoption

The employee must be give the employer notice in writing of his intention to take paternity leave in respect of a child adopted from overseas: The notice must be given in 3 stages and contain the following information:

(i) The date on which the other or main adopter received official notification from the relevant authority that the adoption would be allowed to take place. In the case of employees who have the relevant qualifying service, (26 continuous weeks employment) by the date of the official notification then they must give the employer notice within the 28 days of receiving the official notification. Where the employee does not have the relevant qualifying service they must give the notice to the employer within 28 days of completing their qualifying service of 26 weeks.

(ii) The date the employee has chosen for their leave to begin. Statutory paternity leave cannot commence before the child has entered the UK.

(iii) The date the child entered the UK. This notification must be given to the employer within 28 days of the adopted child's date of entry into the UK. The employee must inform the employer as soon as is reasonably practicable if they discover the child is not entering the UK.

3. Entitlement to Statutory Paternity Pay

- 9.1 An employee will qualify for statutory ordinary pay of 2 weeks if they have at least 26 weeks continuous service with the employer by the expected week of childbirth, or the week in which the adopter is notified of having been matched with the child, and has average weekly earnings at or above the lower earnings limit for National Insurance Contributions.
- 9.2 The employee must have self-certified their eligibility for statutory paternity pay by giving the employer a completed Form SC3 (in the case of births) and Form SC4 (in the case of UK adoptions) and Form SC5 (in the case of overseas adoptions), (all available from the HRMC) – at least 28 days before the date the statutory paternity pay is to begin.
- 9.3 The employee may qualify for statutory additional paternity pay for up to 26 weeks if the employee is taking time off to care for the child. The child's mother or adopter must be entitled to claim Statutory Maternity, Leave and Pay, Maternity Allowance or Statutory Adoption Leave and Pay, (but have returned to work before the end of her entitlement period and is no longer receiving such pay, and there must be at least 2 weeks of pay unexpired).
- 9.4 The employee should complete Form SC7 at least 8 weeks before the date the additional paternity leave is to begin. Any leave taken after the mother or adopter's maternity or adoption pay period ends will be unpaid.

4. Contractual Rights during Paternity Leave

An employee who takes paternity leave will be entitled during the period of leave to the benefit of all terms and conditions of employment, which would have applied if he had not been absent, except remuneration. The employee will also be bound by any obligations arising under the their terms and conditions, including:

- (i) Implied obligation of trust and confidence.
- (ii) Notice of termination
- (iii) Disciplinary and grievance procedures
- (iv) Non-disclosure of confidential information
- (v) The acceptance of gifts or other benefits.
- (vi) Non-participation in any other business
- (vii) Compensation in the event of redundancy

5. Right to return to work following Paternity Leave

11.1 An employee who returns to work after a period of paternity leave which was the last of two or more consecutive periods of statutory leave or an isolated

period of leave is entitled to return from leave to the job in which he was employed before his absence.

11.2 A return to the same job will entitle the employee to the same terms and conditions of his contract of employment, with entitlement to resume the same seniority levels of his job and entitlement to the same pension rights and other benefits, which were in existence prior to paternity leave.

11.3 If any employee returns to work after a period of paternity leave which also includes any period of paternal leave of more than 4 weeks or additional adoption leave, then they are entitled to return to the job in which they were employed, unless it is not reasonably practical for the employer to permit the employee to return to that job. In those circumstances the employer will offer the employee an alternative job, which is both suitable and appropriate for him to do in all circumstances.

6. Flexible Working

An employee returning to work from paternity leave may request a right to work flexibly in accordance with the employer's Flexible Working Policy.

7. Contractual Rights to Paternity and Adoption Leave

An employee cannot take both paternity leave and adoption leave. The employee must choose which right to exercise and this choice can be based on which right would be more favourable to the employee.

8. Date of Implementation

This policy is effective from Tuesday 29th January 2013 and shall not apply to any actions that occurred prior to this date.

9. Questions

If you have any questions regarding this policy document and how it applies to you please consult your Line Manager

10. Alteration of this policy

This policy will be subject to review, revision, change updating, alteration and replacement in order to introduce new policies from time to time to reflect the changing needs of the business and to comply with legislation. Any alterations will be communicated to you by your line manager.