

# The Auriga Academy Trust

## Shared Parental Leave and Pay Policy

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## **1. Scope**

This policy applies to all staff employed by the Trust and its constituent schools who wish to share the care of their child during the first year of birth or adoption. It applies equally to surrogacy arrangements where a parental order has been obtained for the child.

The recognised trade unions have been consulted.

## **2. Purpose**

This policy provides an opportunity for parents to take advantage of additional flexibility in the way they choose to care for their child during the first year of birth or adoption.

This policy sets out the leave and pay entitlements and the relevant procedure for employees who wish to take Shared Parental Leave in cases of birth or adoption of a child.

Shared Parental Leave should not be confused with Ordinary Parental Leave for which there is a separate policy and procedure.

## **3. Statutory Shared Parental Leave**

Statutory Shared Parental Leave ("Shared Parental Leave") is a period of leave which is available to working parents following the birth/adoption of their child.

Shared Parental Leave can only be used by two parents sharing responsibility for a child. This will be:

- (i) The child's mother/primary adopter and
- (ii) The father of the child or
- (iii) The spouse/civil partner/partner of the child's mother/primary adopter who lives with the child's mother/primary adopter and the child in an enduring family relationship.

Shared Parental Leave will be created where the child's mother/primary adopter brings their maternity/adoption leave to an end early. This is called 'curtailing' leave. The untaken period of maternity/adoption leave can then be taken as shared parental leave with the eligible father/partner, up to a maximum of 50 weeks. This takes into account the first 2 weeks of Compulsory Leave which must be taken by the mother following the birth of the child or by the primary adopter after the first day of the adoption leave period.

Shared Parental Leave can be taken from the period when the child is born/placed for adoption to the day before the child's first birthday/before the first anniversary of the date on which the child was placed for adoption.

Any Shared Parental Leave not taken before the child's first birthday/within the first year of adoption will be lost.

Shared Parental Leave must be taken in complete weeks, with a minimum of one week. It can be taken in one continuous period or in a number of discontinuous blocks where the employee intends to return to work between periods of leave.

An employee can make up to 3 separate requests for Shared Parental Leave.

#### 4. Statutory Shared Parental Pay

Statutory Shared Parental Pay will be created where an eligible mother/primary adopter chooses to bring their maternity pay/maternity allowance/adoption pay to an end early. This is called reducing the maternity pay/maternity allowance/adoption pay period.

The untaken maternity pay/maternity allowance/adoption pay period will become available as Statutory Shared Parental Pay, up to a maximum of 37 weeks. This takes into account the 2 weeks statutory maternity/adoption pay paid to the mother/primary adopter to coincide with the period of Compulsory Leave.

Statutory Shared Parental Pay will be paid at:

- 90% of employee's average weekly earnings or
- Prevailing Statutory Shared Parental Pay rate (whichever is lower).

#### 5. Eligibility Criteria

An employee can check their eligibility for shared parental leave and statutory shared parental pay using the calculator available [on the GOV.UK website](#).

The right of one parent to take Shared Parental Leave is not only dependent on them satisfying their own eligibility criteria but is also dependant on their partner satisfying certain criteria.

##### 5.1 Mother's/Primary Adopter's eligibility (where the mother/primary adopter is the employee)

For the mother/primary adopter to be eligible **for shared parental leave** they must satisfy the following criteria:

- Have at least 26 weeks' continuous service by (i) the end of the 15<sup>th</sup> week before the expected week of childbirth or (ii) the week in which the adopter is notified of having been matched with a child and have remained in continuous employment up to the week before any shared parental leave is taken
- Have, at the time of birth/placement of the child, the main responsibility (apart from the partner) for the care of the child
- Be entitled to statutory maternity/adoption leave by reference to the birth/placement of the child
- Have ended their entitlement to statutory maternity/adoption leave by curtailing their leave or by returning to work before the end of the statutory maternity/adoption leave period
- Comply with the notice requirements to take shared parental leave, and provide evidence of birth/adoption, and a declaration of their own and their partner's eligibility.

For the mother/primary adopter to be eligible for **statutory shared parental pay** they must satisfy the following criteria in addition to the above:

- Have earned not less than the lower earnings limit in the 8 weeks leading up to the end of the 15<sup>th</sup> week before the week in which the baby is due to be born/week in which the adoption match date is notified
- Intend to care for the child during each week in which shared parental pay is paid to them
- Be entitled to statutory maternity/adoption pay and have reduced their maternity/adoption pay period
- Be absent from work on shared parental leave during each week in which shared parental pay is paid to them (apart from in those situations where it is permissible for them to work e.g. Shared Parental Leave in Touch (SPLIT) days).

In addition, for the mother/primary adopter to qualify for shared parental leave and pay, their partner must:

- Have been employed or self-employed in at least 26 of the 66 weeks immediately before the expected week of childbirth/week in which the child was placed and
- Have average weekly earnings in any 13 weeks of the 66 weeks of at least £30
- Have, at the date of child's birth/placement of the child, the main responsibility (apart from the mother/primary adopter) for the care of the child.

## **5.2 Partner's eligibility (where the partner is the employee)**

For the partner to be eligible for **shared parental leave** they must satisfy the following criteria:

- Have at least 26 weeks' continuous service by (i) the end of the 15<sup>th</sup> week before the expected week of childbirth or (ii) the end of the week in which the child was placed and have remained in continuous employment up to the week before any shared parental leave is taken
- Have at the time of the child's birth/placement of the child, the main responsibility (apart from the mother/primary adopter) for the care of the child
- Satisfies the notice requirements to take shared parental leave, and evidence of birth/adoption, and a declaration of their own and the mother's/primary adopter's eligibility.

For the partner to be eligible for **statutory shared parental pay** they must satisfy the following criteria in addition to the above:

- Have earned not less than the lower earnings limit in the 8 weeks leading up to the end of the 15<sup>th</sup> week before the week in which the baby is due to be born/ the end of the week in which the child was placed
- Intend to care for the child during each week in which shared parental pay is paid to them
- Be absent from work on shared parental leave during each week in which shared parental pay is paid to them (apart from in those situations where it is permissible for them to work e.g. Shared Parental Leave in Touch (SPLIT) days).

In addition, for the partner to qualify for shared parental leave and pay, the mother/primary adopter must:

- Have been employed or self-employed in at least 26 of the 66 weeks immediately before the expected week of childbirth/week in which the adoption match date is notified and
- Have average weekly earnings in any 13 weeks of the 66 weeks of at least £30
- Have, at the date of the child's birth/placement of the child, the main responsibility (apart from the partner) for the care of the child
- Be entitled to statutory maternity/adoption leave, statutory maternity/adoption pay or maternity allowance in respect of the child; and
- Comply with the relevant leave or pay curtailment requirements (or have returned to work before the end of the statutory maternity/adoption leave period).

## **6. Notice Requirements**

Where an employee is the mother/primary adopter and intends to take shared parental leave, they must give the employer the following notices:

- Leave curtailment notice
- Notice of Entitlement and Intention to take Shared Parental Leave and the relevant Declarations
- (If applicable) Pay curtailment notice
- (Either at the same time or at a subsequently) Period of Leave Notice.

Where an employee is the partner and intends to take shared parental leave, they must give their employer the following notices:

- Notice of Entitlement and Intention to take Shared Parental Leave and the relevant Declarations
- (Either at the same time or subsequently) Period of Leave Notice.

The scheme works on the basis of these notices, which contain declarations from both parents about the amount of leave they are entitled to and the consent of the other parent to the taking of leave.

There is no requirement for the mother/primary adopter to provide these notices where they return to work early or gives notice to do so.

There is no requirement for the employer to contact their employee's partner's employer to verify their details, although the employee is required to provide their partner's employer's details if their employer requests them.

### **6.1 Leave Curtailment: Mother's/Primary Adopter's notice curtailing maternity/adoption leave**

The mother/primary adopter can curtail their maternity/adoption leave in two ways:

- (i) They can give 21 days' notice to return to work early from maternity/adoption leave **or**
- (ii) They can give their employer a leave curtailment notice. The maternity/adoption leave curtailment notice must be in writing and state the date on which maternity/adoption leave is to end. That date must be:
  - After the 2 week compulsory maternity leave period or for adoption at least 2 weeks after the first day of the ordinary adoption leave period
  - At least 8 weeks after the date on which the mother/primary adopter gave the maternity/adoption leave curtailment notice to their employer.

The mother/primary adopter must provide their maternity/adoption leave curtailment notice at the same time they give their notice of entitlement and intention to take Shared Parental Leave or the Declarations.

#### **6.1.1 Revoking notice curtailing maternity/adoption leave**

The circumstances in which the mother/primary adopter may change their mind about ending maternity/adoption leave are very limited. They can give their employer a Revocation Notice (which must be provided before the leave curtailment date) if:

- (i) It is discovered, in the 8 weeks following the notice, that neither the mother/primary adopter or the partner are entitled to shared parental leave or shared parental pay
- (ii) In the event of the death of the partner
- (iii) The leave curtailment notice was given before the birth and the mother revokes her maternity leave curtailment in the 6 weeks following the birth.

If the mother/primary adopter revokes their notice in the first two circumstances, there is no further opportunity to opt into shared parental leave at a later date for the same child.

In respect of (iii) above, the mother will be able to opt into shared parental leave at a later date with the same partner either by returning to work and then giving notice of entitlement to shared parental leave, or by giving another notice to curtail her maternity leave.

If the mother/primary adopter revokes their notice to end maternity/adoption leave, they remain on maternity/adoption leave. Their entitlement to maternity/adoption leave is restored to a total of 52 weeks, even if their partner has taken shared parental leave prior to them revoking their leave curtailment notice.

Where the partner has already started taking shared parental leave or agreed a period of shared parental leave which is due to start within the 8 weeks following the revocation, their employer may require them to be absent from work on unpaid leave for some or all of the period. This protects an employer who has put cover in place for when the employee is on shared parental leave. The employer will not have to accept the employee back into the workplace with no notice.

## **6.2 Pay Curtailment: Mother's/Primary Adopter's notice curtailing maternity/adoption pay**

Where the mother/primary adopter is entitled to statutory maternity/adoption pay they can give 8 weeks' notice to curtail their entitlement to pay to allow the unused amount to become statutory shared parental pay.

A pay curtailment notice is also required where the mother/primary adopter has already ended their maternity/adoption leave by returning to work. This is due to the fact that the maternity/adoption pay period continues to run (albeit lying dormant when the mother/primary adopter is at work) throughout the 39 week period.

The mother/primary adopter must give their employer a notice to end their maternity/adoption pay period at least 9 weeks before the expiry of the 39 week period.

The maternity/adoption pay period will end on the last day of the pay week in which the notice is given.

### **6.2.1 Revoking notice curtailing maternity/adoption pay**

The mother/primary adopter can revoke their notice to curtail their maternity/adoption pay if their partner dies and curtailment occurs a reasonable period after this.

In addition, in the 6 weeks following birth, a mother can revoke notice to end maternity pay where the notice was given before the birth.

## **6.3 Mother's/Primary Adopter's Notice of Entitlement and Intention to take SPL (where the mother/primary adopter is the employee)**

To create an entitlement to Shared Parental Leave, the mother/primary adopter must, not less than 8 weeks before the start of the first period of Shared Parental Leave to be taken, give their employer a Notice of Entitlement and intention. The written notice must include the following:

- Their name
- Their partner's name
- The start and end dates of their maternity/adoption leave
- The total amount of shared parental leave available (52 weeks minus any maternity/adoption leave taken/to be taken) and the total number of weeks shared parental pay available
- The expected week of the birth of the baby (or the actual date of birth if the child has already been born)
- (For cases of adoption) The date they are notified of having been matched for adoption and the expected date of placement
- The number of weeks' shared parental leave and pay the mother/primary adopter and their partner each intend to take and an indication of the start and end dates of the periods of shared parental leave the. This indication is not binding.

The mother/primary adopter also needs to give their employer:

- a) A signed declaration confirming that:
  - They have been working with the employer for 26 weeks by the end of the 15<sup>th</sup> week before the baby's due date/week in which the adoption match date is notified

- They will have the main caring responsibility for the baby (along with the partner), and will inform their employer immediately if this changes
  - They are entitled to statutory maternity/adoption leave and pay
  - They have returned to work before maternity /adoption leave has ended or is committing to ending their maternity/adoption leave early
  - The information they have given is accurate.
- b) A signed declaration from the partner which must:
- Give their name and address, and national insurance number (or they must declare that they do not have a national insurance number)
  - Confirm they have worked for 26 weeks out of the 66 weeks leading up to the expected week of childbirth/ week in which the child was placed and has earned at least £30 in 13 of those weeks
  - Confirm they are the child's father, or the mother's/primary adopter's partner, civil partner or spouse
  - Confirm they will have the main caring responsibility for the baby (along with the mother/primary adopter)
  - Confirm they consent to the mother/primary adopter taking the amount of leave set out in the notice that the mother/primary adopter has given to their employer
  - Confirm they consent to the mother's/primary adopter's employer processing the information about them included in the declaration.

#### **6.4 Partner's Notice of Entitlement and intention to take SPL (where the partner is the employee)**

The partner must, not less than 8 weeks before the start of the first period of Shared Parental Leave to be taken, give their employer a written notice of entitlement which must include the following:

- Their name
- The name of their partner (mother/primary adopter of child)
- The start and end date of the mother's/primary adopter's maternity/adoption leave or, if the mother/primary adopter is not entitled to maternity/adoption leave, the amount of statutory maternity/adoption pay or maternity allowance received or to be received
- The total amount of shared parental leave available (52 weeks minus any maternity/adoption leave taken/to be taken, or where the mother is not entitled to maternity leave, 39 weeks minus any statutory maternity pay or maternity allowance received or to be received)
- The total number of weeks shared parental pay available
- The expected date of birth of the baby (or the actual date of birth if the child has already been born) or (in cases of adoption), the expected date of placement
- How they think they will split and take their shared parental leave.

The partner also needs to give:

- a) A signed declaration confirming that:
- They have been working with the same employer for 26 weeks by the end of the 15<sup>th</sup> week before the expected week of childbirth / the end of the week in which the child was placed
  - They will have the main caring responsibility for the baby (along with the mother/primary adopter), and will inform their employer immediately if this changes
  - They are the father of the child or spouse/civil partner/partner of the child's mother/primary adopter
  - They will inform their employer if (i) they cease to care for the child or (ii) if the mother/ primary adopter informs them that they have revoked their curtailment notice
  - The information given in the notice is accurate.

- b) A signed declaration from the mother/primary adopter which:
- Gives their name and address, and national insurance number (or a declaration that they do not have a national insurance number)
  - Confirms they have worked for 26 weeks out of the 66 weeks leading up to the expected due date/ match notification date and have earned at least £30 in 13 of those weeks
  - Confirms they are entitled to statutory maternity/adoption leave, statutory maternity/adoption pay or maternity allowance
  - Confirms they will have the main caring responsibility for the baby (along with their partner)
  - Confirms they have ended their maternity/adoption leave by returning to work or curtailing that leave and/or curtailed their statutory maternity/adoption pay or maternity allowance
  - Confirms they will inform their partner immediately if they revoke curtailment of leave and pay or allowance
  - Confirms they consent to their partner taking the amount of leave set out in the partner's notice to their employer
  - Confirms they consent to their partner's employer processing the information about them included in the declaration.

#### **6.5 Declaration of Consent and Entitlement for partner to take SPL**

If the mother/primary adopter does not wish to take shared parental leave themselves and gives no notice of entitlement but wishes for their partner to take Shared Parental Leave then they must give to their employer a declaration of consent and entitlement for their partner to take leave.

It is a written declaration signed by the mother/primary adopter stating that their partner has given notice of entitlement and intention to take leave and the mother/primary adopter has consented to the amount of leave that their partner intends to take.

#### **6.6 Following Notice of Entitlement and Intention to take SPL**

In the two weeks following the mother/primary adopter and their partner giving notice of their entitlement to and intention to take shared parental leave, the employer may request:

- (For birth) A copy of the birth certificate
- The name and address of the mother's/partner's employer
- (For adoption) Evidence, in the form of one or more of the following documents issued by the Adoption Agency, of:
  - The name and address of the adoption agency
  - The date that the primary adopter was notified of having been matched with child for adoption
  - The expected placement date.
- Name and address of the primary adopter's and their partner's employer.

The mother/primary adopter and their partner will have 14 days to respond.

If the child has already been born at the time their employer makes the request, the mother/partner must give their employer either a copy of the birth certificate or, if the birth certificate has not yet been issued, a signed declaration stating the date and location of the birth and stating that a birth certificate has not yet been issued.

If the child has not yet been born at the time of their employer's request, the mother/partner must provide a copy of the birth certificate within 14 days of the birth, or if the birth certificate has not yet been issued, a signed declaration stating the date and location of the birth and stating that a birth certificate has not yet been issued.



### **6.7 Variation of notice of intention to take SPL**

The mother/primary adopter and their partner can also give a variation notice to their employer to vary how much shared parental leave each of them intends to take or the periods during which they intend to take it.

The notice must contain:

- An indication of when the mother/primary adopter/partner intend to take the leave and pay, including the start and end dates of each period of leave
- The number of weeks shared parental pay that have already been taken
- Details of the leave that the mother/primary adopter/partner has provided a period of leave notice for (or shared parental pay where leave is not to be taken)
- A declaration signed by the mother/primary adopter/partner that they agree to the variation.

The indication is not binding. There is also no limit on the number of times an employee can give a variation notice (unlike a period of leave notice, or variation of period of leave notice, where there is a limit of three).

### **6.8 Period of Leave Notice**

Once an employee has notified the employer of their entitlement to take shared parental leave, they will also have to submit a period of leave notice to 'book' a period of leave. This notice must be given at least 8 weeks before leave can be taken. In many cases, this notice will be submitted at the same time as the notice of entitlement and intention is submitted.

The notice must set out the start and end dates of each period of Shared Parental Leave requested in that notice.

The employee can only give 3 notices to book leave (including any notice to vary a previously agreed pattern of leave). The employer can choose to allow their employee more than 3 notices to book leave.

Each of the 3 booking notices may:

- (i) Notify a single continuous block of leave, or
- (ii) Request discontinuous periods of leave.

The employee can request a pattern of discontinuous leave (e.g. 2 weeks in June, 3 weeks in September, and all of November and December) in the same notification. An employer does not have to agree to this pattern of leave. There is a 2 week discussion period beginning with the date the employer received the notice during which the employer can discuss the pattern of leave requested by the employee and propose alternatives, or to refuse the pattern.

An employer cannot stop their employee from taking the amount of leave requested in the notice, but an employer can change how and when it is taken. In the event that the employer refuses the pattern proposed and does not agree any other pattern with the employee, the weeks of leave in the notice may be taken in a single continuous block starting on a date specified by the employee (not less than 8 weeks from the date the original notice was given to the employer).

The employee has 5 days after the end of the 2 week discussion period in which to specify the date they will start their leave. If no date is specified, the leave will begin on the start date of the first period of discontinuous leave that the employee originally applied for.

If the employee has given a booking notice to book discontinuous weeks of leave, they can withdraw their booking notice in the 2 weeks after it has been given (on or before the 15<sup>th</sup> day), unless the employer

has agreed the pattern in the notice or has already reached an agreement with the employee in that period.

It is strongly recommended that the **Headteacher** and the employee discuss the employee's proposals for taking the shared parental leave at the point of notifying entitlement when a non-binding indication of how they expect to take the leave must be submitted. Such a conversation will enable the employee and **Headteacher** to understand what is most likely to work for both sides. **Trust HR should be consulted if support is required by either party.**

### **6.9 Variation to period of leave notice**

Leave arrangements that have been notified to the employer can be changed by means of a notice to vary the agreed leave. An employee can give notice to end a period of leave earlier or later than previously notified, or to aggregate a number of discontinuous weeks into a single block using a variation notice.

A notice to vary agreed leave counts towards the cap of 3 notifications to book leave.

To change ('vary') or cancel the dates of any Shared Parental Leave booked, the employee must give their employer 8 weeks' notice.

### **6.10 Forms**

Forms and templates for eligible parents to take Shared Parental Leave (SPL) are available on [the Acas website](https://www.acas.org.uk/shared-parental-leave-form-templates). Please see <https://www.acas.org.uk/shared-parental-leave-form-templates>. The forms listed cover the scenarios listed above and include:

- **Maternity:** Shared parental leave forms for when the mother or birth parent has maternity entitlement.
- **Adoption:** Shared parental leave forms for parents with adoption entitlement.
- **Surrogacy:** Shared parental leave forms for parents intending to apply for and be given a parental order for surrogacy.
- **Booking Leave:** Template letter for an employee to book a block of shared parental leave or shared parental pay.
- **Cancelling or Changing Leave:** Template letter for an employee to give notice to change or cancel a shared parental leave booking.

## **7. Early Births and Still Births**

### **7.1 Early birth**

If the child is born more than 8 weeks before the expected week of childbirth, the requirements in relation to the notice of entitlement and intention and period of leave notice (see section 6 above) are amended if they have not already been provided.

If leave is to be taken within 8 weeks of the child's birth, these notices must be provided as soon as reasonably practicable after the child's birth.

Where the employee wishes to amend the start date of the leave to take account of the early birth so that the leave will start the same length of time following the birth, as it would have done following the expected week of childbirth, the requirement is to provide notice to vary the leave as soon as is reasonably practicable after the child's birth.

The requirement to give 8 weeks' notice to vary a period of leave does not apply if the employee is to take leave within 8 weeks of the birth of the child and the child is born before the expected week of childbirth.

The evidence requirements set out above do not apply in these circumstances.

## **7.2 Still births/death of baby after birth**

If the parents had given notice to take Shared Parental Leave before the birth of the baby and the baby is stillborn after 24 weeks of pregnancy, they will still be entitled to take the leave that has already been booked.

To cancel any shared parental leave that has already been booked, the parents should give at least 8 weeks' notice. However, it is possible for them to come to an agreement with their employer that they take less Shared Parental Leave than planned.

If the parents had not given notice to take Shared Parental Leave before the birth and the baby dies, then unfortunately any further entitlement to Shared Parental Leave will be lost, as notice to book shared parental leave after the baby has died cannot be given.

In these circumstances, the parents may be entitled to take bereavement leave under the [Parental Bereavement Leave Policy](#).

## **8. Shared Parental Leave in Touch (SPLIT) Days**

If the employer and employee agree, each employee can work for up to 20 days, either continuously or on odd days, during the period in which shared parental leave can be taken i.e. in the year up to the day before the child's first birthday/before the first anniversary of the date on which the child was placed for adoption.

These SPLIT days are in addition to the 10 KIT days that are available to employees who are on maternity or adoption leave.

Any work carried out on a day or part of a day shall constitute a day's work for these purposes.

Any employee taking a SPLIT day will receive full pay for any hours worked in that day. If a SPLIT day occurs during a week when the employee is receiving shared parental pay, this will be effectively 'topped up' so that the individual receives full pay for the day in question.

## **9. Return to Work after Shared Parental Leave**

The employee will have been formally advised in writing by the employer of the date shared parental leave will end. The employee is expected to return to work on the next working day after this date.

### **9.1 Returning to work before 26 weeks:**

Employees are entitled to return to the same job on the same terms and conditions of employment as if they had not been absent unless this is not reasonably practicable due to a restructuring/redundancy situation.

### **9.2 Returning to work after 26 weeks:**

Employee are entitled to return to the same job on the same terms and conditions of employment as if they had not been absent. However, where a restructuring/redundancy situation has occurred or there is some other reason why it is not reasonably practicable for the employee to return to the same job, they are entitled to return to another job that is both suitable and appropriate for them to do in the circumstances. This must be on terms and conditions that are no less favourable that would have applied had they not been absent.

### **9.3 Flexible working upon a return to work:**

If the employee wishes to change their work pattern upon their return to work from shared parental leave, they should refer to the Trust's [Flexible Working Policy](#).

## **10. Rights During Shared Parental Leave**

Shared parental leave is regarded as continuous service and does not constitute a break in service. All contractual terms and conditions (except for normal remuneration) should continue throughout a period of shared parental leave. During this period, the employee will continue to be bound by the terms of their contract of employment including the implied term of trust and confidence and any terms as to notice of termination by them.

## **11. Protection from Detriment or Dismissal**

An employee has the right not to be subjected to detrimental treatment or be dismissed because they are exercising their rights under this policy in taking or seeking to take shared parental leave.

## **12. Frequently Asked Questions**

Frequently Asked Questions regarding Shared Parental Leave and Pay are detailed in the (then) Department for Business, Energy & Industrial Strategy's "Shared Parental Leave and Pay: Employers' Technical Guide to Share Parental Leave and Pay" document that can be accessed [on GOV.UK](#).