

# **Pay and time off work for adoptive parents - Special cases**

From 6 April 2004

- An employer's further guide to
- Statutory Adoption Pay and Leave
  - Statutory Paternity Pay and Leave

## Help

If you need help with anything in this Help Book

### Phone

Monday to Friday 8am until 8pm **0845 7 143 143**  
Saturday and Sunday 8am until 5pm

### Hearing impaired employers

Textphone **0845 602 1380**

You can also contact a local Inland Revenue office – you'll find them in your phone book under Inland Revenue.

### Business Support Teams

We have a UK-wide network of Inland Revenue Business Advisers who can help you get started on Statutory Adoption Pay (SAP) and Statutory Paternity Pay (SPP). Workshops can be arranged for a morning or afternoon and will help you understand the payroll records to keep and the how and why of filling in forms and returns. A workshop would last two to three hours.

Our Business Advisers also offer

- a variety of payroll workshops, designed with busy employers in mind, and
- one-to-one visits at a place and time to suit you.

Call **0845 60 70 143**, or go to

[www.inlandrevenue.gov.uk/bst/index.htm](http://www.inlandrevenue.gov.uk/bst/index.htm)

### Help on screen

- Use the Employer's CD-ROM for this Help Book and the Employer's Help Book *Pay and time off work for adoptive parents, E16*.
- Go to [www.tiger.gov.uk](http://www.tiger.gov.uk) for interactive help on adoption and paternity leave.

## Payroll - advice and guidance

For help on other subjects

- go to [www.inlandrevenue.gov.uk/employers](http://www.inlandrevenue.gov.uk/employers)
- use the Employer's CD-ROM
- go to [www.tiger.gov.uk](http://www.tiger.gov.uk)

## Common terms in adoption

### Matched/matching

This means the adoption agency has decided that the person is suitable to adopt a particular child.

### Placed

This means the child starts living with the person permanently with a view to being formally adopted in the future. They may have stayed with them before this date.

### Adopter

This means the person, or persons, who are going to adopt the child. They may be going to adopt the child on their own, or they may be going to adopt the child with their partner. Only married couples can adopt a child together.

## When to use this Help Book

This Help Book does not cover all the law and details of SAP and SPP or adoption and paternity leave.

It only contains information on special cases.

You should use it if you have been referred here by the Employer's Help Book *Pay and time off work for adoptive parents, E16*, because one of the special cases referred to in that Help Book applies to your employee.

## Further guidance

### Employer's Help Books

In addition to those included in the Employer's Pack we have the following Employer's Help Books

- *Pay and time off work for parents, E15*
- *Pay and time off work for adoptive parents, E16*

The Help Books are for guidance only. They are not comprehensive and have no legal force.

We also have a number of other booklets that give further guidance, for example

- *Employer's Further Guide to PAYE & NICs, CWG2(2004)*
- *Class 1A NICs on benefits in kind, CWG5(2004)*
- *Expenses and Benefits – A tax guide, 480(2004)*

You can view the full range of these booklets, and other forms and guidance on

- the Internet – log on at [www.inlandrevenue.gov.uk/employers](http://www.inlandrevenue.gov.uk/employers)
- the Employer's CD-ROM\*

or you can

- download them from the Internet – log on at [www.inlandrevenue.gov.uk/employers](http://www.inlandrevenue.gov.uk/employers)
- print them from the CD-ROM
- get copies from the Employer's Orderline

Fax **0870 2 406 406**

Phone **0845 7 646 646**

Check the Order Form in your Employer's Pack for a full list of what is available and how to order.

### Forms and guidance in Braille, large print or audio

We have a range of services for people with disabilities, including leaflets in Braille, audio and large print.

For details, please ask at your local Inland Revenue office or Enquiry Centre.

### Yr Iaith Gymraeg/Welsh language

Ffoniwch **0845 302 1489** i dderbyn fersiynau Cymraeg o ffurflenni a chanllawiau.

*\*The CD-ROM contains new interactive features designed to help the newcomer to payroll. This simple on-line guide takes the reader through the calculation of tax and National Insurance.*

*Calculators have been built-in to help speed up your calculations of*

- *Pay Adjustment and PAYE*
- *NICs contracted-out and not contracted-out*
- *Car benefit and Car Fuel benefit.*

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## Using your own versions of the forms

You can produce your own computerised or paper versions of these forms. There is no formal approval process.

### *Why I cannot pay you SAP, form SAP1*

It **must** include

- your employee's name, address and National Insurance number
- the reason why you think you cannot pay Statutory Adoption Pay (SAP), or
- if you have made some payment, but don't think you should make any more
  - the total number of weeks you have paid or think you should pay
  - the date you think you should stop paying
  - the reason why you think you should stop paying.

It will help your employee if you also include information about

- what they should do if they disagree with your decision
- contacting their adoption agency to find out about other government help.

### *Statutory Adoption Pay record sheet, form SAP2*

It **must** include

- your employee's name and National Insurance number
- a record of the payment dates and the amount paid
- the date the SAP pay period began
- a record of any weeks in the 26 week period when SAP wasn't paid, with reasons.

You may also find it helpful to record

- the date your employee was told by the adoption agency that they had been matched with a child
- the date the child was expected to be placed
- the date the child was placed
- the date your employee told you they planned to start their adoption leave
- the date they planned to start their adoption leave
- if your employee changed their mind, when they told you the new date they wanted to start their leave, and the new date.

### *Becoming an adoptive parent, form SC4*

It **must** include your employee's name and National Insurance number and a declaration that they

- have chosen not to receive SAP and adoption leave if they are adopting the child together with their partner, **and**
- intend to support the adopter or care for the child, **and**
- have or expect to have responsibility for the

upbringing of the child, **and**

- are either
  - married to the adopter, **or**
  - living with the adopter in an enduring family relationship, but are not an immediate relative.

It **must** also include

- the date the adoption agency told the adopter that they had been matched with the child
- the date the child is expected to be placed, and the actual date the child is placed, if this is different
- the date from which the employee wants to be paid Statutory Paternity Pay (SPP)
- whether the employee wants to be paid one week or two.

### *Why I cannot pay you SPP, form SPP1*

It **must** include

- your employee's name, address and National Insurance number
- the reason why you think you cannot pay SPP, or
- if you have made some payment, but don't think you should make any more
  - the date you think you should stop paying, and
  - the reason why you think you should stop paying.

It will help your employee if you also include information about what they should do

- if they disagree with your decision
- to claim other government help.

### *Statutory Paternity Pay record sheet, form SPP2*

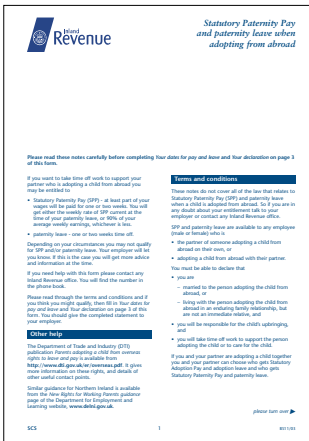
It **must** include

- your employee's name and National Insurance number
- a record of the payment dates and the amount paid
- the date the SPP pay period began
- a record of any unpaid SPP, with reasons.

You may also find it helpful to record

- the date the adopter was told by the adoption agency that they had been matched with a child
- the date the child was expected to be placed
- the date the child was placed
- the date your employee told you they planned to start their paternity leave
- the date they planned to start their paternity leave
- if your employee changed their mind, when they told you the new date they wanted to start their leave, and the new date.

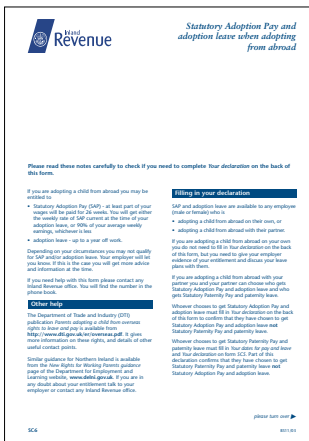
# Using your own versions of the forms *continued*



## Evidence of entitlement to *Statutory Paternity Pay when adopting from abroad - declaration of family commitment, form SC5*

This evidence must contain

- a declaration that they
  - have the prescribed relationship with the adopter and the child
  - intend to support the adopter or care for the child
- the employee's name
- the date the child is expected to enter Great Britain or Northern Ireland or the actual date of entry
- the date the adopter was sent the official notification
- the date from which the employee wants to be paid SPP
- whether the employee wants to be paid one week or two.



## Evidence of entitlement to *Statutory Adoption Pay and adoption leave when adopting from abroad - declaration of entitlement, form SC6*

It should include

- a declaration that they
  - and their partner, are adopting a child together
  - are not also claiming SPP
- the employee's name
- the date the child is expected to enter Great Britain or Northern Ireland or the actual date of entry
- the date the adopter was sent the official notification
- the date from which the employee wants to be paid SAP.

The employee should give you all the relevant information if they are adopting the child jointly with their partner to declare that they are not also claiming SPP. The employee should give it to your employer as part of the evidence required for SAP.

This form is only available electronically from the Inland Revenue website at [www.inlandrevenue.gov.uk/employers](http://www.inlandrevenue.gov.uk/employers). If you or your employee does not have access to the Internet print a copy of the form and the notes and send it to them.

## Who is an employee and who is an employer?

### General

#### Pay

An **employee** is a person whose earnings are liable for employer's Class 1 National Insurance contributions (NICs), or would be if they were high enough.

Whoever is liable to pay the employer's Class 1 NICs is the **employer**. There does not have to be a written contract.

Employees include office holders, for example police officers, Members of Parliament, the judiciary, and some company directors.

People who are classed as employed earners for Class 1 NICs liability, for example, agency workers, are also employees.

If you are not sure who is an employee and who is an employer for pay, contact your local Inland Revenue office and ask for the Status Inspector.

#### Leave

An **employee** is someone working under a contract of employment. The **employer** is the person who is employing them under that contract.

Office holders, for example, police officers, Members of Parliament, the judiciary, and some company directors are not included as employees.

If you are not sure who is an employee and who is an employer for leave contact the Arbitration and Conciliation Advisory Service (Acas) (see [www.acas.org.uk](http://www.acas.org.uk) or or call **08457 47 47 47**) or seek independent legal advice.

### Agency workers

#### Pay

Agency workers can be treated as employees for PAYE tax and Class 1 NICs. If you have to deduct PAYE tax and Class 1 NICs from the agency worker's earnings then you will have to pay them Statutory Adoption Pay (SAP) or Statutory Paternity Pay (SPP) if they satisfy all the qualifying conditions. If you're not sure whether you have to deduct PAYE tax and Class 1 NICs from the agency worker's earnings contact your local Inland Revenue office and ask for the Status Inspector.

The rules on evidence for pay on page 12 of the Employer's Help Book *Pay and time off work for adoptive parents*, E16, apply to agency workers.

There are special rules for

- has your employee worked for you long enough? See page 12, and
- does your employee earn enough? If they are not paid on every payday, see page 18. If they are paid on every payday follow the guidance starting on page 15 of the Employer's Help Book, E16

- when should your employee give you dates for pay and leave? Where agency workers are not entitled to adoption or paternity leave they only have to give you 28 days notice of when they want to start being paid SAP or SPP.

There are no special rules on

- paying SAP or SPP, see page 22 of the Employer's Help Book, E16
- how much SAP or SPP you can get back, see page 23 of the Employer's Help Book, E16
- where does the money come from? See page 24 of the Employer's Help Book, E16
- keeping records, see page 25 of the Employer's Help Book, E16.

#### Leave

Agency workers who are not employees (that is, not employed under a contract of employment) are not entitled to adoption or paternity leave. If you're not sure whether a worker is employed under a contract of employment contact the Arbitration and Conciliation Advisory Service (Acas) (see [www.acas.org.uk](http://www.acas.org.uk) or call **08457 47 47 47**).

### Casual workers

#### General

A casual worker is usually someone who works for somebody as and when they are required, but

- they do not have to accept the work that is offered
- the person with the work does not have to offer it to them.

#### Pay

If you have to deduct PAYE tax and Class 1 NICs from the casual worker's earnings, then you will have to pay them SAP or SPP if they satisfy the qualifying conditions. If you're not sure whether you have to deduct PAYE tax and Class 1 NICs from the worker's earnings contact your local Inland Revenue office and ask for the Status Inspector.

The rules on evidence for pay on page 12 of the Employer's Help Book, E16, apply to casual workers.

There are special rules for

- has your employee worked for you long enough? See page 12, and
- does your employee earn enough? If they are not paid on every payday see page 17. If they are paid on every payday follow the guidance starting on page 15 of the Employer's Help Book, E16

## Who is an employee and who is an employer? *continued*

- when should your employee give you dates for pay and leave? If the casual worker is not entitled to leave they only have to give you 28 days notice of when they want to start being paid SAP or SPP. If the casual worker is an employee and entitled to leave, follow the rules on page 19 of the Employer's Help Book, *E16*.

There are no special rules on

- paying SAP or SPP, see page 22 of the Employer's Help Book, *E16*
- how much SAP or SPP you can get back, see page 23 of the Employer's Help Book, *E16*
- where does the money come from? See page 24 of the Employer's Help Book, *E16*
- keeping records, see page 25 of the Employer's Help Book, *E16*.

### Leave

Casual workers who are not employees (that is, who are not employed under a contract of employment) are not entitled to adoption or paternity leave. If you're not sure whether a worker is employed under a contract of service or not, contact the Arbitration and Conciliation Advisory Service (Acas) (see [www.acas.org.uk](http://www.acas.org.uk) or call **08457 47 47 47**).

## Mariners

### Pay

Mariners **cannot get** SAP or SPP if

- they are employed on a foreign-going ship, **or**
- you do not have a place of business in the UK.

Foreign-going mariners pay a special rate of National Insurance contributions under category letters: R, T, W, Q, N, O, H, K, V.

Mariners **can get** SAP or SPP if you have a place of business in the UK and they are on a home-trade ship. There are special rules on 'Has your employee worked for you long enough?' for employees who work outside the UK, see page 11. All the other rules in the Employer's Help Book, *E16*, apply.

If you're not sure which of the above applies contact your local Inland Revenue office.

### Leave

Mariners **can get** adoption or paternity leave if they

- are employed on board a ship registered in the register maintained under Section 8 of the Merchant Shipping Act 1995, specifying a port in Great Britain or Northern Ireland as the port to which the vessel belongs
- do not work wholly outside Great Britain or Northern Ireland, and
- are ordinarily resident in Great Britain or Northern Ireland.

Mariners **cannot get** adoption or paternity leave if they are the master, or a member of crew, of a fishing vessel where they are paid only by a share of the profits or gross earnings of the vessel.

If you are not sure whether the mariner can get leave or not contact the Arbitration and Conciliation Advisory Service (Acas) (see [www.acas.org.uk](http://www.acas.org.uk) or call **08457 47 47 47**) or seek independent legal advice.

## Employees adopting a child from abroad

Employees who adopt a child from abroad can get Statutory Adoption Pay and adoption leave and Statutory Paternity Pay and paternity leave if they follow the appropriate procedures.

### Statutory Adoption Pay (SAP) and adoption leave

#### Adopting a child from abroad

This is when an individual or couple who live and work in the United Kingdom

- adopts a child from another country, and
- the child enters Great Britain or Northern Ireland to live with the adoptive parents
- the adoption does not involve the placement of that child for adoption under United Kingdom law.

#### Different Terms and Forms

##### Official Notification

The procedures for adopting a child from abroad are different to domestic adoptions. The adopter is not matched with a child for adoption so there is no Certificate of Matching. Instead, if the relevant UK authority agree that the adopter is suitable to adopt a child from overseas, they send a Certificate of Eligibility to the overseas authority and send Official Notification of this to the adopter. The employee will need to keep this document so you should take a copy for your records.

##### Declaration of Entitlement – Form SC6

The employee must complete a declaration giving the date the child is expected to enter the UK and also declare that they are not also claiming SPP. Form SC6 is available for this purpose, or you may use your own form, see pages 4 and 5.

##### Evidence of Entry into UK

The employee will need to give you evidence that the child has actually entered the UK to live with them, such as plane tickets or copies of entry clearance documents.

##### The qualifying conditions

There are some differences in the qualifying conditions for Statutory Adoption Pay and adoption leave when an employee is adopting a child from abroad. Your employee must satisfy **all** the following:

- be adopting a child from abroad, not had a child placed with them under UK Law
- have stopped working for you or taken adoption leave
- have been continuously employed by you for at least 26 weeks continuing into the week in which they

received Official Notification, **or** by the time they want to start their Adoption Pay Period and/or adoption leave

- have average weekly earnings of not less than the lower earnings limit for NI purposes which applies at the end of the week in which they were sent Official Notification
- give you enough notice that they expect to be entitled to SAP and adoption leave.

#### The rules

##### Notification of adoption from abroad

As with domestic adoption pay and leave, notice does not have to be in writing unless you want it to be and may be given to you on your employees behalf. If posted, the notice is treated as given on the date it was posted.

There are three stages when your employee should give you notice, which are different from those for domestic adoption.

##### First stage

Your employee must tell you

- the date on which they received official notification, and
- the date the child is expected to enter the United Kingdom.

If they have already completed 26 weeks continuous employment when the official notification was received, they must tell you within 28 days of receiving official notification.

If they haven't already completed 26 weeks continuous employment when the official notification was received they must tell you within 28 days of the Sunday of the week when they complete 26 weeks continuous employment.

##### Second stage

Your employee should then tell you when they want their SAP and adoption leave to start at least 28 days beforehand. If your employee has a good reason for giving you less notice than this then you should accept it. Your employee can tell you when they want their adoption leave and SAP to start at the first stage if they know then.

Employees can change their mind about the date on which they want their SAP and adoption leave to start providing they tell you at least 28 days in advance of the new date, or as soon as is reasonably practicable.

##### Third stage

Your employee must tell you the date the child enters Great Britain or Northern Ireland within 28 days of that date.

## Employees adopting a child from abroad *continued*

### The Adoption Pay Period (APP) and adoption leave

#### The start date

Your employee can choose to start being paid and/or start their leave

- on the date the child enters Great Britain or Northern Ireland, or on the following day if your employee is at work that day, or
- on a predetermined date, chosen by your employee, no later than 28 days after the child enters Great Britain or Northern Ireland

- The Adoption Pay Period (APP) and adoption leave can start on any day of the week.

These two periods are aligned,

- SAP and adoption leave must be taken in a single period, it cannot be split and cannot be taken as odd days.
- The maximum length of the APP is 26 weeks. The maximum length of adoption leave is one year. A week is any period of 7 days.

#### Child doesn't enter Great Britain or Northern Ireland

Your employee cannot start their leave or pay until the child has entered Great Britain or Northern Ireland. They must tell you as soon as is reasonably practicable if they know that they will not be adopting the child after all.

#### Employment ends before the start of pay and leave

Whether you must pay SAP to your ex-employee will depend upon how long it is before the child enters the UK.

If your employee starts work for a new employer **before** they receive official notification, they must complete 26 weeks continuous employment and qualify for SAP and adoption leave with their new employer.

If your employee starts work for a new employer **after** they receive official notification and they haven't yet completed 26 weeks continuous employment with you, they need to satisfy the 26 week continuous employment test with their new employer before the child enters the UK to qualify for SAP and adoption leave from their new employer.

If the employment ends **after** your employee receives official notification and they had completed 26 weeks continuous employment with you, you remain liable to pay SAP if the Adoption Pay Period starts within 6 months of the date your employee left. The employee must still give you evidence and appropriate notice. However any new employer has no obligation to allow time off work, and the employee will not be entitled to

SAP in any week they work for the new employer. The employee must tell you if they work for the new employer. If you stop trading before your employee's SAP can start, the Inland Revenue will take over the liability to pay the SAP.

If the employment ends after your employee receives official notification and they had completed 26 weeks continuous employment with you, but the Adoption Pay Period **doesn't** start within 6 months of the date your employee left, liability transfers to the Inland Revenue. They must give the Inland Revenue evidence of entitlement.

If the adopter is now with a new employer and has completed 26 weeks continuous employment with the new employer to re-qualify for SAP and adoption leave, it is up to the new employer to pay SAP.

If the adopter has started work for a new employer but has not re-qualified for SAP, the new employer is not obliged to give them adoption leave and the employee must tell the Inland Revenue if they work for the new employer.

### Statutory Paternity Pay and paternity leave

#### The qualifying conditions

To qualify for Statutory Paternity Pay (SPP) and paternity leave your employee must satisfy **all** the following:

- have a prescribed relationship with the child and the adopter
- stop working for, or take leave from you for the purpose of caring for the child **or** supporting the adopter
- have been continuously employed with you for at least 26 weeks continuing into the week in which the adopter was sent official notification, **or** by the time they want to start their Paternity Pay Period and/or paternity leave, **and**
- remain continuously employed until the child enters Great Britain or Northern Ireland
- have average weekly earnings of not less than the lower earnings limit for National Insurance purposes which applies at the end of the week in which the adopter received official notification
- give you appropriate notice within the time limits
- If they are adopting the child with their partner, they must declare that they have chosen not to receive SAP.

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## Employees adopting a child from abroad *continued*

### The different rules

There are also some different rules for SPP and paternity leave which apply when adopting a child from abroad:

#### Notification

As with domestic adoption pay and leave, notice of SPP and paternity leave does **not** have to be in writing unless you want it to be and may be given on your employee's behalf. If posted, the notice is treated as given on the date it is posted.

There are 3 stages when the employee should give you notice:

#### First stage

Your employee must tell you

- the date on which the adopter received official notification, and
- the date the child is expected to enter the United Kingdom.

If they have already completed 26 weeks continuous employment with you when the official notification was received, they must tell you this within 28 days of receiving official notification.

If they haven't already completed 26 weeks continuous employment with you when the official notification was received, they must tell you this within 28 days of the Sunday of the week when they complete 26 weeks continuous employment.

#### Second stage

Your employee should then tell you when they want their SPP and paternity leave to start at least 28 days' beforehand. At this stage they should also tell you whether they want to take one or two weeks' SPP and paternity leave. If your employee has a good reason for giving you less notice than this you should accept it. Your employee can tell you when they want their SPP and paternity leave to start at the first stage if they know then.

Employees can change their mind about the date on which they want their SPP and paternity leave to start providing they tell you at least 28 days in advance of the new date, or as soon as is reasonably practicable.

#### Third stage

Your employee must tell you the date the child enters the United Kingdom within 28 days of the date.

#### Evidence of entitlement to SPP - a declaration of family commitment - Form SC5

Your employee must give you evidence of their entitlement to SPP in writing at least 28 calendar days before they want to start being paid, or as soon as possible if this is not reasonably practicable.

The evidence must contain:

- a declaration that they
  - have the prescribed relationship with the adopter and the child
  - intend to support the adopter or care for the child
- the employee's name
- the date the child is expected to enter Great Britain or Northern Ireland or the actual date of entry
- the date the adopter received the official notification
- the date from which the employee wants to be paid SPP
- whether the employee wants to be paid one week or two.

The Inland Revenue has produced form SC5 for employers and employees to use as evidence of entitlement to SPP, see page 5. The use of this form is not compulsory. You can use your own stationery if you want to as long as it contains all the required information.

#### The Paternity Pay Period (PPP) and paternity leave

##### The start date

Your employee can choose to start being paid and/or start their leave

- from the date the child enters Great Britain or Northern Ireland or on the following day if the employee is at work that day, or
- a pre-determined date after the child has entered Great Britain or Northern Ireland

The Paternity Pay Period (PPP) and paternity leave cannot

- start before the child enters Great Britain or Northern Ireland
- continue more than 56 days after the date the child enters Great Britain or Northern Ireland.

The Paternity Pay Period (PPP) and paternity leave can start on any day of the week. The two periods are aligned.

## Has your employee worked for you long enough?

### Employee leaves job after the adoption agency told the adopter that they had been matched with a child

#### Statutory Adoption Pay (SAP)

It doesn't matter why they left or that they aren't coming back - they are entitled to SAP as long as they don't start working for another employer, see page 27 of this Help Book.

They **must** still give you evidence of matching, see page 12 of the Employer's Help Book, *E16*, and tell you when they want their pay to start, see page 19 of the Employer's Help Book, *E16*.

#### Statutory Paternity Pay (SPP)

If your employee stops work before the child is placed with the adopter they are not entitled to SPP.

If they stop work after the child is placed with the adopter, it doesn't matter why they left or that they aren't coming back - they are entitled to SPP as long as they don't start working for another employer, see page 26 of this Help Book.

They must still give you the declaration of family commitment, see page 12 of the Employer's Help Book, *E16*, and tell you when they want their pay to start, see page 19 of the *E16*.

#### Leave

Your employee cannot get adoption or paternity leave if they have left their job before the child is placed.

### Employee works abroad

#### Statutory Adoption Pay (SAP)

Where your employee **works for you outside the UK** between

- the latest start date for employment with you, and
- the Sunday of the week when the adoption agency told them that they had been matched with a child

they **can get** SAP, if you were **liable to pay Class 1 National Insurance contributions (NICs)** on their earnings throughout the period.

They can still get SAP if you would have been liable to pay Class 1 NICs if their earnings had been higher.

Tables showing these dates are on page 14 of the Employer's Help Book, *E16*.

If you weren't liable to pay Class 1 NICs throughout the period and they worked for you in the European Economic Area they may still be able to get SAP, see the paragraph below.

Where they work for you within the **European Economic Area** between

- the latest start date for employment with you, and
- the Sunday of the week when the adoption agency told them that they had been matched with a child

they can get SAP if

- they worked for you in the week when the adoption agency told them that they had been matched with a child, and
- you were liable to pay Class 1 NICs on their earnings for that week.

They can still get SAP if you would have been liable to pay Class 1 NICs if their earnings had been higher.

Tables showing these dates are on page 14 of the Employer's Help Book, *E16*.

All the other rules in the Employer's Help Book *Pay and time off work for parents, E16*, apply.

#### Statutory Paternity Pay (SPP)

The length of time an employee must have worked for you to get SPP is split into two. All the other rules in the Employer's Help Book, *E16*, apply.

##### Step 1

Where they work for you **outside the UK** between

- the latest start date for employment with you, and
- the Sunday of the week when the adoption agency told the adopter that they had been matched with a child

they **can get** SPP, if you were **liable to pay Class 1 NICs** on their earnings throughout the period.

They can still get SPP if you would have been liable to pay Class 1 NICs if their earnings had been higher.

Tables showing these dates are on page 14 of the Employer's Help Book, *E16*.

If you weren't liable to pay Class 1 NICs throughout the period and they worked for you in the European Economic Area they may still be able to get SPP, see the paragraph below.

Where they work for you within the **European Economic Area** between

- the latest start date for employment with you, and
- the Sunday of the week when the adoption agency told the adopter that they had been matched with a child

they can get SPP if

- they worked for you in the UK in the week when the adoption agency told the adopter that they had been matched with a child, and
- you were liable to pay Class 1 NICs on their earnings for that week.

They can still get SPP if you would have been liable to pay Class 1 NICs if their earnings had been higher.

Tables showing these dates are on page 14 of the Employer's Help Book, *E16*.

continued over ►

List of European Economic Area countries - page 12 ►

## Has your employee worked for you long enough? *continued*

### Step 2

To get SPP your employee must continue to work for you from the week when the adoption agency told the adopter that they had been matched with a child right up until the child is placed. It does not matter where they work, or whether you are liable to pay Class 1 NICs.

### Leave

Employees who work outside the UK may be entitled to adoption or paternity leave under UK law. The law in this area is complex. For more information please contact the Arbitration and Conciliation Advisory Service (Acas) (see [www.acas.org.uk](http://www.acas.org.uk) or call **08457 47 47 47**) or seek independent legal advice. If there is a dispute an employment tribunal will need to decide the issue.

### The European Economic Area (EEA)

Countries within the EEA are

- Austria
- Belgium
- Denmark, excluding Faroe Islands
- Finland
- France, including Guadeloupe, Martinique, Guiana, Reunion, Corsica and Saint-Pierre et Miquelon
- Germany
- Gibraltar
- Greece, including Macedonia, Thrace, Epirus, Thessaly, Continental Greece, the Peloponese, the Dodecanese, the Cyclades, the Ionian Islands, the Aegean Islands and Crete
- Iceland
- Ireland, Republic of
- Italy, including Elba, Sicily, Trieste and Sardinia
- Liechtenstein
- Luxembourg
- Netherlands, the
- Norway
- Portugal, including the Azores and Madeira
- Spain, including the Balearic Islands - Majorca, Minorca, Ibiza and Formantara, the Canary Islands, Chute and Melissa
- Sweden
- Switzerland
- UK, including England, Wales, Scotland and Northern Ireland (but **not** the Channel Islands or the Isle of Man).

### Agency workers, supply teachers, seasonal workers or other sporadic employment

#### Pay - How long they must have worked for you

##### Statutory Adoption Pay (SAP)

###### Agency workers

Agency workers may not have been placed with clients in every week between

- the latest start date for employment with you, and
- the Sunday of the week when the adoption agency told them that they had been matched with a child.

A week means Sunday to Saturday. Count part weeks as full weeks. Tables showing these dates are on page 14 of the Employer's Help Book, *E16*.

If they were placed with clients by you in every week they can get SAP. If they were not placed with clients by you in every week, and particularly in the week when the adoption agency told them that they had been matched with a child, you need to check why not.

They can still get SAP if

- you did not have work to offer them
- they didn't work because they were on paid leave under the Working Time Regulations.

If you offered them work and they turned it down because they were sick they can still get SAP if they do some more work for a client through you within 26 weeks of their first day of sickness.

If they did not work in the week when the adoption agency told them that they had been matched with a child, then to get SAP they **must** do some more work for a client through you before starting their adoption absence.

###### Supply teachers, seasonal workers, or other sporadic employment

Supply teachers, seasonal workers, and other employees who work as and when you need them, may not have worked for you in every week between

- the latest start date for employment with you, and
- the Sunday of the week when the adoption agency told them that they had been matched with a child.

A week means Sunday to Saturday. Count part weeks as full weeks. Tables showing these dates are on page 14 of the Employer's Help Book, *E16*.

If they did work for you in every week they can get SAP. If they didn't work for you in every week you need to check why not.

## Has your employee worked for you long enough? *continued*

They can still get SAP if they didn't work because

- they were on paid leave under the Working Time Regulations, or
- you did not have work to offer them.

If you offered them work and they turned it down, they may still be able to get SAP - check the relevant paragraphs on pages 15 and 16, depending on why they turned the work down.

### Statutory Paternity Pay (SPP)

The length of time your employee must have worked to get SPP is split into two.

#### Step 1

They **must** work in every week between

- the latest start date for employment with you, and
- the Sunday of the week when the adoption agency told the adopter that they had been matched with a child.

#### Step 2

To get SPP the employee **must** continue to work in every week from the week when the adoption agency told the adopter that they had been matched with a child, right up until the child is placed.

A week means Sunday to Saturday. Count part weeks as full weeks. Tables showing these dates are on page 14 of the Employer's Help Book, *E16*.

#### Agency workers

You may not have placed agency workers with clients in every week.

If they were placed with clients by you in every week they can get SPP. If they were not placed with clients by you in every week, and particularly in the week when the adoption agency told the adopter that they had been matched with a child, you need to check why not.

If you did not have work to offer them, they can still get SPP.

If you offered them work and they turned it down, they may still be able to get SPP.

If they didn't work because they were on paid leave under the Working Time Regulations they can get SPP.

If they didn't work because they were sick, then to get SPP they **must** do some more work for a client through you within 26 weeks of their first day of sickness.

If they did not work in the week when the adoption agency told the adopter that they had been matched with a child, then to get SPP they **must** do some more work for a client through you before starting their paternity absence.

### Supply teachers, seasonal workers, or other sporadic employment

Supply teachers, seasonal workers, and other employees who work as and when you need them, may not have worked for you in every week.

If they did work for you in every week they can get SPP. If they didn't work for you in every week you need to check why not.

They can still get SPP if

- they didn't work because they were on paid leave under the Working Time Regulations.
- you did not have work to offer them.

If you offered them work and they turned it down, they may still be able to get SPP - check the relevant paragraphs on pages 15 and 16, depending on why they turned the work down.

### Leave - General

#### Agency workers

If there is no contract of employment then agency workers cannot usually get adoption or paternity leave, see page 6.

#### Supply teachers

Supply teachers who work under a contract of employment can get adoption and paternity leave. There are special rules on how long they must have worked for you, go to 'Leave - How long they must have worked for you' below.

#### Seasonal workers or other sporadic employment

Seasonal workers and other employees who work under a contract of employment, as and when you need them, usually get adoption or paternity leave, but there are special rules on how long they must have worked for you, go to 'Leave - How long they must have worked for you' below.

### Leave - How long they must have worked for you

#### Adoption leave

They may not have worked for you in every week between

- the latest start date for employment with you, and
- the Sunday of the week when the adoption agency told them they had been matched with a child.

A week means Sunday to Saturday. Count part weeks as full weeks. Tables showing these dates are on page 14 of the Employer's Help Book, *E16*.

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## Has your employee worked for you long enough? *continued*

If they did work for you in every week they can get adoption leave. If they didn't work for you in every week you need to check why not.

If they didn't work because they were sick, on maternity or parental leave, on a temporary lay-off or on holiday, they can get adoption leave if the contract continues.

If the contract does not continue, they can still get adoption leave if

- they are sick or injured and are then re-engaged within 26 weeks of the contract being terminated
- work ceases temporarily
- they are not working but their contract is regarded as continuing for some purposes, by arrangement or custom
- they are not working for some other reason specified on pages 15 and 16.

If you need more information about this please contact the Arbitration and Conciliation Advisory Service (Acas) (see [www.acas.org.uk](http://www.acas.org.uk) or call 0845 7 47 47 47) or seek independent legal advice.

### Paternal leave

The length of time your employee must have worked to get paternity leave is split into two.

#### Step 1

They may not have worked in every week between

- the latest start date for employment with you, and
- the Sunday of the week when the adoption agency told the adopter that they had been matched with a child.

#### Step 2

They may not have **continued to work** in every week from the week when the adoption agency told the adopter that they had been matched with a child right up until their leave starts.

A week means Sunday to Saturday. Count part weeks as full weeks. Tables showing these dates are on page 14 of the Employer's Help Book, *E16*.

If they did work for you in every week in Steps 1 and 2 they can get paternity leave. If they didn't work for you in every week you need to check why not.

If they didn't work because they were sick, on maternity or parental leave, on a temporary lay-off or on holiday, they can still get paternity leave if the contract continues.

If the contract does not continue, they can still get paternity leave if

- they are sick or injured and are then re-engaged within 26 weeks of the contract being terminated
- work ceases temporarily

- they are not working but their contract is regarded as continuing for some purposes, by arrangement or custom

- they are not working for some other reason specified on pages 15 and 16.

If you need more information about this please contact the Arbitration and Conciliation Advisory Service (Acas) (see [www.acas.org.uk](http://www.acas.org.uk) or call 0845 7 47 47 47) or seek independent legal advice.

### Reinstatement after unfair dismissal

If they did not work for you during the period you worked out using pages 13 and 14 of the Employer's Help Book, *E16*, because you dismissed them, and they are then reinstated because an employment tribunal decides that you dismissed them unfairly, they are entitled to SAP and adoption leave or SPP and paternity leave as if they had not been dismissed.

All the other rules in the Employer's Help Book, *E16*, apply.

### Reinstatement following service in the Armed Forces

If your employee did not work for you during the period you worked out using pages 13 and 14 of the Employer's Help Book, *E16*, because they were serving in the Armed Forces and they return to work for you within six months of the end of their service in the Forces under the Reserve Forces (Safeguard of Employment) Regulations, they may still be able to get SAP and adoption leave or SPP and paternity leave.

### SAP and adoption leave

To get SAP and adoption leave they **must** have worked for you for at least 26 weeks, including the Sunday of the week when the adoption agency told them that they had been matched with a child. Do not count the period they served in the Armed Forces as part of the 26 weeks.

A week means Sunday to Saturday. Count part weeks as full weeks.

All the other rules in the Employer's Help Book, *E16*, apply.

### SPP and paternity leave

The length of time your employee **must** have worked to get SPP and paternity leave is split into two.

#### Step 1

They **must** have worked for you for at least 26 weeks, including the week when the adoption agency told the adopter that they had been matched with a child.

A week means Sunday to Saturday. Count part weeks as full weeks. Do not count the period they served in the Armed Forces as part of the 26 weeks.

## Has your employee worked for you long enough? *continued*

### Step 2

They **must** continue to work for you right up until the child is placed.

All the other rules in the Employer's Help Book, *E16*, apply.

### Break in employment because of trade disputes or industrial action

If your employee did not work for you during the period you worked out using pages 13 and 14 of the Employer's Help Book, *E16*, because they were on strike, they may still be able to get SAP and adoption leave or SPP and paternity leave.

### SAP and adoption leave

To get SAP and adoption leave they must have worked for you for at least 26 weeks, including the week when the adoption agency told them that they had been matched with a child. Do not count the period they were on strike as part of the 26 weeks.

A week means Sunday to Saturday. Count part weeks as full weeks.

All the other rules in the Employer's Help Book, *E16*, apply.

### SPP and paternity leave

The length of time your employee must have worked to get SPP and paternity leave is split into two.

### Step 1

They **must** have worked for you for at least 26 weeks, including the week when the adoption agency told the adopter that they had been matched with a child.

Do not count the period they were on strike as part of the 26 weeks.

A week means Sunday to Saturday. Count part weeks as full weeks.

### Step 2

They **must** continue to work for you right up until the child is placed.

All the other rules in the Employer's Help Book, *E16*, apply.

### Break in employment because of temporary cessation of work

If your employee did not work for you during the period you worked out using pages 13 and 14 of the Employer's Help Book, *E16*, because you did not have work to offer them, they can get SAP and adoption leave or SPP and paternity leave.

All the other rules in the Employer's Help Book, *E16*, apply.

### Break in employment because of public holidays

If your employee did not work for you during the period you worked out using pages 13 and 14 of the Employer's Help Book, *E16*, because of public holidays, they can get SAP and adoption leave or SPP and paternity leave.

All the other rules in the Employer's Help Book, *E16*, apply.

### Break in employment because of sickness or injury

If your employee did not work for you for 26 weeks or less during the period you worked out using pages 13 or 14 of the Employer's Help Book, *E16*, because they were sick or injured, they can get SAP and adoption leave or SPP and paternity leave.

All the other rules in the Employer's Help Book, *E16*, apply.

### Break in employment because of maternity leave

If your employee did not work for you during the period you worked out using pages 13 and 14 of the Employer's Help Book, *E16*, because

- she was on maternity leave, and she worked for you before and after the break, or
- she was not working because of the birth, and she worked for you before and after the break, and the break is not more than 26 weeks

she can get SAP and adoption leave or, where she is in a same sex relationship, SSP and paternity leave.

All the other rules in the Employer's Help Book, *E16*, apply.

See the Employers Help Book *Pay and time off work for parents*, *E15*, for more information about maternity leave.

### Break in employment because of adoption leave

If your employee did not work for you during the period you worked out using pages 13 and 14 of the Employer's Help Book, *E16*

- because they were on adoption leave, and
- they worked for you before and after the break

they can get SAP and adoption leave or SPP and paternity leave.

All the other rules in the Employer's Help Book, *E16*, apply.

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## Has your employee worked for you long enough? *continued*

### Break in employment because of paternity leave

If your employee did not work for you during the period you worked out using pages 13 and 14 of the Employer's Help Book, *E16*

- because they took paternity leave when they were adopting a child or when a baby was born, and
- they worked for you before and after the break

they can get SAP and adoption leave or SPP and paternity leave.

All the other rules in the Employer's Help Book, *E16*, apply.

### Break in employment because of parental leave

If your employee did not work for you during the period you worked out using pages 13 and 14 of the Employer's Help Book, *E16*

- because they took parental leave, and
- they worked for you before and after the break

they can get SAP and adoption leave or SPP and paternity leave.

For more information on parental leave see DTI publication *Parental leave - a guide for employers and employees*, available from **0870 1502 500** or [www.dti.gov.uk/er](http://www.dti.gov.uk/er)

All the other rules in the Employer's Help Book, *E16*, apply.

### Change of employer

If you take over a business and the Transfer of Undertakings (Protection of Employment) Regulations 1981 apply, then continuity of employment is not broken. The Transfer of Undertakings (Protection of Employment) Regulations 1981 are often referred to as the TUPE regulations.

Usually the regulations apply when you take over the business as a going concern, with no interruption to trading, and take over the contracts of employment of all those employed in the business immediately before the transfer.

If you are not sure if the Transfer of Undertakings (Protection of Employment) Regulations 1981 apply contact the Arbitration and Conciliation Advisory Service (Acas) (see [www.acas.org.uk](http://www.acas.org.uk) or call **08457 47 47 47**).

If the regulations don't apply continuity of employment may not be broken.

Continuity of employment is also not broken when

- one corporate body takes over from another as the employer by or under an Act of Parliament
- the employer dies and their personal representative or trustees keep the employee on
- there is a change in the partners, personal representatives or trustees
- the employee moves from one employer to another and at the time of the move the two employers are associated, for example
  - one is controlled by the other either directly or indirectly, or
  - both companies are controlled by a third party, either directly or indirectly
- a teacher in a school maintained by a local education authority moves to another school maintained by the same authority, including maintained schools where the governors of the school, rather than the local education authority, are the teacher's employer
- an employee of a health service employer moves to another health service while undergoing training.

**If continuity of employment is not broken**, the employee can also get SAP and adoption leave or SPP and paternity leave, as long as they work for you and the previous employer during the period you worked out using pages 13 and 14 of the Employer's Help Book, *E16*.

**If continuity of employment is broken and**

- you take on the business after the end of the week when the adoption agency told the adopter that they had been matched with a child, the previous employer must pay SAP to the employee
- you take on the business before the end of the week when the adoption agency told the adopter that they had been matched with a child, the employee cannot get SAP or adoption leave. Their employment with you would not have been long enough for them to qualify.
- you take on the business after the child is placed, the previous employer must pay SPP to the employee
- you take on the business before the child is placed, the employee cannot get SPP or paternity leave.

## Does your employee earn enough?

The following paragraphs explain how to work out your employee's average weekly earnings in the set period for the various special cases. All the other guidance on what counts as earnings and how much your employee needs to earn applies. See pages 15 to 18 of the Employer's Help Book, *E16*.

### Weekly paid employee gets regular payment earlier or later than normal

This usually happens when you pay holiday pay in advance.

Follow Steps 1 to 6 of the weekly check sheet on page 17 of the Employer's Help Book, *E16*. At Step 7 divide the figure in Step 6 by the number of weeks' wages in the payment.

### Employee paid at irregular intervals

If you pay your employee at irregular intervals because they don't work for you during every pay period, see 'Agency workers, supply teachers, seasonal workers, or other sporadic employment' below.

If you do not pay your employees in a regular pay pattern use the check sheet on page 18 of this Help Book to work out their average weekly earnings.

### Weekly paid employee without whole number of weeks in the set earnings period

This usually happens when you have to bring your employee's normal payday forward because of Bank Holidays at Easter or Christmas.

Follow Steps 1 to 6 of the weekly check sheet on page 17 of the Employer's Help Book, *E16*. At Step 7 divide the figure in Step 6 by the number of weeks wages in the payment.

### Agency workers, supply teachers, seasonal workers, or other sporadic employment

#### Employees paid in multiples of a week

Use the weekly check sheet on page 17 of the Employer's Help Book, *E16*. At Step 7 you **must** still divide the figure in Step 6 by the number of whole weeks in the set period, even if your employee was not paid for some of the weeks.

#### Employees paid calendar monthly

Use the check sheet on page 19 of this Help Book to work out their average weekly earnings.

### Change of employer in the set earnings period

If you

- take over a business between the dates in Steps 5 and 3 (inclusive) of the check sheets on pages 17 and 18 of the Employer's Help Book, *E16*, and
- have worked out that the employee has worked for you and the previous employer long enough to get Statutory Adoption Pay (SAP) or Statutory Paternity Pay (SPP), see 'Change of employer' on page 16

you **must** still add together all their earnings in between the dates in Steps 5 and 3 (inclusive) even where some of them were paid by the previous employer.

### Directors

If the director is contractually paid a regular salary calculate their average weekly earnings like any other employee; see pages 15 to 18 of the Employer's Help Book, *E16*. The director may also be paid a bonus or fees by a formal vote. If so, only include this if it is paid in the set period.

If the director is paid by a formal vote calculate their average weekly earnings using the check sheet on page 20 of this Help Book. A formal vote usually takes place at the company's Annual General Meeting and is agreed in the company minutes. A director who is paid by a formal vote may draw money from the business on a regular basis.

Do not include this money when working out the director's average weekly earnings.

### Employees with more than one job

Your employee could have more than one job with you or work for you and another employer.

If all the employee's earnings have to be added together to work out Class 1 National Insurance contributions (NICs) they have to be added together to work out the employee's average weekly earnings, and the employee can only get one lot of SAP or SPP.

If Class 1 NICs are worked out separately on the employee's earnings, then you **must** work out their average weekly earnings separately, and the employee can get more than one lot of SAP or SPP. See page 28 for more information about paying SAP/SPP in these circumstances.

For more information on how to work out Class 1 NICs for employee's with more than one job see the booklet *Employer's Further Guide to PAYE and NICs, CWG2(2004)*.

## Does your employee earn enough? *continued*

**To work out average weekly earnings if you do not pay your employees in a regular pay pattern**

- Enter the date when the adoption agency told the adopter that they had been matched with a child.
- Find the first Saturday on or after the date in 1. (Use the table on page 14 of the Employer's Help Book, *E16*).
- Find the date of the last payday on or before that Saturday.  
**This is the last day of the set period.** If you use the *Deductions Working Sheet*, form *P11*, to record your employee's earnings you may find the tables on page 16 of the Employer's Help Book, *E16*, useful as they show how pay dates relate to the tax weeks and months on form *P11*, (or form *P12* if you operate the Simplified Deduction Scheme).
- Count back eight weeks from the date in 3 and come forward one day, for example, if eight weeks back is 22nd June, enter 23rd.
- Find the date of the payday before the date in 4 and come forward one day, for example, 15 May becomes 16 May. **This is the first day of the set period.**
- Add together the earnings paid between the dates in 5 and 3 (inclusive).
- Work out the number of days between the dates in 5 and 3 (inclusive).
- Divide the figure in 6 by the number of days in 7.
- Multiply the figure in 8 by 7.  
 (To be fair to your employee **don't round up or down** to whole pence here, you'll do this when you come to 'The amounts to pay' see page 22 of the Employer's Help Book, *E16*).

Check sheet for monthly paid agency workers, supply teachers, seasonal workers, etc. - page 19 ►  
 Check sheet for directors paid by a formal vote - page 20 ►  
 Does your employee earn enough? (*continued*) - page 21 ►

## Does your employee earn enough? *continued*

### Check sheet for monthly paid agency workers, supply teachers, seasonal workers, or other sporadic employment

#### To work out average weekly earnings for employees paid calendar monthly

1. Enter the date when the adoption agency told the adopter that they had been matched with a child.

2. Find the first Saturday on or after the date in 1. (Use the table on page 14 of the Employer's Help Book, E16).

3. Find the date of the last normal payday on or before that Saturday.  
**This is the last day of the set period.** If you use the *Deductions Working Sheet*, form P11, to record your employees earnings you may find the table on page 16 of the Employer's Help Book, E16, useful as it shows how monthly pay dates relate to the tax months on form P11, (or form P12 if you operate the Simplified Deduction Scheme).

4. Count back eight weeks from the date in 3 and come forward one day, for example, if eight weeks back is 22nd June, use 23rd.

5. Find the date of the payday before the date in 4 and come forward one day, for example, 25 May becomes 26 May. **This is the first day of the set period.**

6. Add together the earnings paid between the dates in 5 and 3 (inclusive).

|   |  |
|---|--|
| £ |  |
|---|--|

7. Work out how many whole months there are between the dates in 5 and 3 (inclusive). For example, if the dates were 1 October and 31 December there are three whole months. If there aren't a whole number of months see 'Working out the number of rounded months when there aren't a whole number of months in the set period' on page 23.

8. Divide the figure in 6 by the number of whole months in 7.

|   |  |
|---|--|
| £ |  |
|---|--|

9. Multiply the figure in 8 by 12.

|   |  |
|---|--|
| £ |  |
|---|--|

10. Divide the figure in 9 by 52.

|   |  |
|---|--|
| £ |  |
|---|--|

(To be fair to your employee **don't round up or down** to whole pence here, you'll do this when you come to 'The amounts to pay' see page 22 of the Employer's Help Book, E16.)

## Does your employee earn enough? *continued*

### Check sheet for directors paid by a formal vote

#### To work out average weekly earnings for directors paid by a formal vote

1. Enter the date when the adoption agency told the adopter that they had been matched with a child.
2. Find the first Saturday on or after the date in 1. (Use the table on page 14 of the Employer's Help Book, E16).
3. Find the date of the last vote on or before that Saturday.  
**This is the last day of the set period.**
4. Count back eight weeks from the date in 3 and come forward one day, for example, if eight weeks back is 22nd June, use 23rd.
5. Find the date of the vote before the date in 4 and come forward one day, for example, 15th May becomes 16th May. **This is the first day of the set period.**
6. Add together the money voted between the dates in 5 and 3 (inclusive).  
(Do not include any money drawn in anticipation of the vote.)
7. Work out how many whole months there are between the dates in 5 and 3 (inclusive). For example, if the dates were 1 January 2004 and 31 December 2004 there are 12 whole months. If there aren't a whole number of months see 'Working out the number of rounded months when there aren't a whole number of months in the set period' on page 23.
8. Divide the figure in 6 by the number of whole months in 7.
9. Multiply the figure in 8 by 12.
10. Divide the figure in 9 by 52.  
(To be fair to your employee **don't round up or down** to whole pence here, you'll do this when you come to 'The amounts to pay' see page 22 of the Employer's Help Book, E16.)

## Does your employee earn enough? *continued*

### Earnings in set period covered in a back-dated pay rise

#### Statutory Adoption Pay (SAP) and Statutory Paternity Pay (SPP)

If the employee gets a back-dated pay rise which increases the amount of earnings already paid in the set period for working out their average weekly earnings and their average weekly earnings are less than £114 you must

- recalculate their average weekly earnings
- pay the extra SAP or SPP due.

### NHS employees

NHS employees whose contracts are split between Health Authorities (now known as Strategic Health Authorities) and/or NHS Trusts as a result of NHS re-organisation, can choose to have all their earnings added together for working out average weekly earnings for SAP and SPP purposes.

This means that employees with low earnings from their individual contracts won't lose out on SAP and SPP just because of NHS re-organisation.

If the employee wants to have all their earnings added together for working out their average weekly earnings they must tell all their employers about this at least 28 days before they expect their entitlement to SAP or SPP to begin.

Within 28 days of telling their employers that they want to have all their earnings added together for working out their average weekly earnings, they must tell each employer

- the name and address of each employer
- the date of commencement of employment with each employer
- details of earnings from each employer during the set period.

If they can't tell their employers within 28 days they **must** tell them as soon as they can.

Their choice only applies to the current adoption.

### Earnings in the set period include correction of an over/underpayment of wages

If you have adjusted an employee's wages to correct an over or underpayment in an earlier pay period, the actual amount of gross earnings paid within the set period will be those that have taken this adjustment into account.

For example, the employee was overpaid £50 in their June pay. To correct the error, this amount was then deducted from their August pay which fell within the set period between 1 August and 30 September.

The average weekly earnings in the set period were therefore £50 less than those earnings which would normally have been used.

### Employee doesn't qualify and some of their earnings are included in a PAYE Settlement Agreement

If your employee has average weekly earnings of less than

- £77 gross and the adoption agency told the adopter that they had been matched with a child between 6 April 2003 and 3 April 2004
- £79 gross and the adoption agency told the adopter that they had been matched with a child between 4 April 2004 and 2 April 2005

and they got any expense payments or benefits in kind in the set period, which were included in a PAYE Settlement Agreement you may need to re-calculate their average weekly earnings.

If any of these expense payments and benefits in kind would have been liable for Class 1 NICs if they had not been included in the PAYE Settlement Agreement, **you must re-calculate** your employee's average weekly earnings including these expense payments and benefits in kind.

PAYE Settlement Agreements are a more flexible way of dealing with some expense payments and benefits in kind. Earnings included in a PAYE Settlement Agreement are liable for Class 1B NICs.

For more information on PAYE Settlement Agreements and whether something is liable for Class 1 NICs, see the booklet *Employer's Further Guide to PAYE and NICs, CWG2(2004)*.

### Some of employee's earnings are included in a PAYE Settlement Agreement and earnings in set period are covered in a back-dated pay rise

#### SAP and SPP

If you had to re-calculate your employee's earnings because they didn't qualify and

- some of their earnings were included in a PAYE Settlement Agreement, and
  - they then get a back-dated pay rise which increases the amount of earnings already paid in the set period for working out their average weekly earnings, and
  - their average weekly earnings are less than £114
- you **must** re-calculate their average weekly earnings, as shown on page 22.

## Does your employee earn enough? *continued*

### Re-calculating your employee's average weekly earnings

#### Step 1

Re-calculate their average earnings using the earnings paid in the set period as increased by the back-dated pay rise. Do not include any expense payments and benefits in kind at this stage.

If the new average weekly earnings amount is at least

- £77 gross and the adoption agency told the adopter that they had been matched with a child between 6 April 2003 and 3 April 2004
- £79 gross and the adoption agency told the adopter that they had been matched with a child between 4 April 2004 and 2 April 2005

your employee's earnings are high enough to get SAP/SPP. So

- work out the total amount of SAP/SPP they are now entitled to
- take away any SAP/SPP you have already paid them
- pay any extra SAP/SPP due.

If they are not entitled to any extra SAP/SPP because their average weekly earnings with the back-dated pay rise are less than their average weekly earnings including the expense payments and benefits in kind in the PAYE Settlement Agreement do nothing.

If the new average weekly earnings are less than the Lower Earnings Limit (LEL) shown above go to Step 2.

#### Step 2

Re-calculate their average earnings using the earnings paid in the set period as increased by the back-dated pay rise including the expense payments and benefits in kind.

If the new average weekly earnings amount is at least

- £77 gross and the adoption agency told the adopter that they had been matched with a child between 6 April 2003 and 3 April 2004
- £79 gross and the adoption agency told the adopter that they had been matched with a child between 4 April 2004 and 2 April 2005

your employee's earnings are high enough to get SAP/SPP. So

- work out the total amount of SAP/SPP they are now entitled to
- take away any SAP/SPP you have already paid them
- pay any extra SAP/SPP due.

If the new average weekly earnings are less than the LEL shown in the left hand column they cannot get SAP/SPP.

- **If they asked for SAP** - give them *Why I cannot pay you SAP*, form *SAP1*. Take a copy of the evidence they got from the adoption agency and give the original back to them.
- **If they asked for SPP** - give them *Why I cannot pay you SPP*, form *SPP1*. Take a copy of the declaration on *Becoming an adoptive parent*, form *SC4* and give the original back to them.

## Does your employee earn enough? *continued*

### Employees paid calendar monthly with more or less than two payments in the period

If your employee is paid calendar monthly and there are more or less than two payments in the period at Step 6 of the check sheet on page 18 of the Employer's Help Book, E16, use Steps 7 to 10 below.

7. Work out how many whole months there are between the dates in 5 and 3 (inclusive). For example, if the dates were 1 January 2004 and 31 December 2004 there are 12 whole months. If there aren't a whole number of months see 'Working out the number of rounded months when there aren't a whole number of months in the set period' below.

8. Divide the figure in 6 by the number of months in 7.

|   |  |
|---|--|
| £ |  |
|---|--|

9. Multiply the figure in 8 by 12.

|   |  |
|---|--|
| £ |  |
|---|--|

10. Divide the figure in 9 by 52.

(To be fair to your employee **don't round up or down** to whole pence here, you'll do this when you come to 'The amounts to pay' see page 22 of the Employer's Help Book, E16.)

|   |  |
|---|--|
| £ |  |
|---|--|

### Working out the number of rounded months when there aren't a whole number of months in the set period

To calculate average weekly earnings for employees paid calendar monthly, when there aren't a whole number of months between the dates in 5 and 3, when you get to Step 7 of the check sheets, work out the number of rounded months as follows.

Count the number of whole months

For example, if the date at 3 is 19 December, and the date at 5 is 1 October there are two whole months (1 October to 31 October and 1 November to 30 November)

|   |  |
|---|--|
| A |  |
|---|--|

Count the number of odd days

For example, if the date at 3 is 19 December, and the date at 5 is 1 October, there are 19 odd days (1 December to 19 December)

|   |  |
|---|--|
| B |  |
|---|--|

Round the number of odd days up or down as shown in 'Rounding rules' below

|   |  |
|---|--|
| C |  |
|---|--|

Work out the number of rounded months by adding the number at box A to the number at box C.

|   |  |
|---|--|
| D |  |
|---|--|

#### Rounding rules

If the date at 3 is in

- February - round 14 days or less down and 15 days or more up
- any month except February - round 15 days or less down and 16 days or more up.

Then use the number of rounded months at Step 7 and follow the rest of the steps in the relevant check sheet.

## When should your employee give you dates for pay and leave?

### Adoption leave

You must write to your employee within 28 days of the date they told you when they want to take their adoption leave to confirm

- the date they intend to stop work
- the date you expect them to return to work.

You might find this sample letter useful if you only provide the statutory levels of pay and leave. Use 'Text A' if your employee is entitled to Statutory Adoption Pay (SAP) and 'Text B' if your employee is not entitled to SAP.

Date

Dear *[name of employee]*,

Congratulations and thank you for telling me that you will be adopting a child. I am writing to you about your adoption leave and pay.

As we have discussed, you are eligible for **52 weeks' adoption leave/ you are not eligible for adoption leave\*** *[delete as appropriate]*.

Given your chosen start date of *[insert date]*, your adoption leave will end on *[insert date]*. If you want to change the date your leave starts you must give me the correct notice, if at all possible. Please contact me if you wish to discuss this.

If you decide to return to work before *[insert date leave ends]*, you must give me at least 28 days notice.

Insert 'Text A' from page 25, if your employee is entitled to SAP,

or

'Text B' from page 25, if your employee is not entitled to SAP.

Yours sincerely

*[Your name]*

continued over ►

## When should your employee give you dates for pay and leave? *continued*

### Text A

As we discussed you are eligible for **26 weeks' Statutory Adoption Pay (SAP)**.  
Your adoption pay will be £[insert amount] from [insert date] to [insert date].  
If you decide not to return to work, you must still give me proper notice.  
Your decision will not affect your entitlement to SAP.

If you have any questions about any aspect of your adoption entitlements please do not hesitate to get in touch with me.

### Text B

As we discussed you are **not eligible for Statutory Adoption Pay (SAP)**.

The form SAP1 (enclosed) explains why you do not qualify for SAP. You should contact your adoption agency to find out if you can get any other help.

If you decide not to return to work, you must still give me proper notice.

If you have any questions about any aspect of your adoption entitlements please do not hesitate to get in touch with me.

### Employee leaves job after the date the adoption agency tells the adopter that they have been matched with a child

#### SAP

Your employee should still give you 28 days' notice of when they want to start to be paid if they can.

If they don't want to start being paid before the child is placed they **must** tell you when the child is placed so you know when to start paying them. Do not start paying on the assumption that the child was placed on the expected date.

#### SPP

Your employee **must** remain employed by you until the child is placed to get SPP.

If your employee can get SPP they should still give you 28 days' notice of when they want to start to be paid if they can.

They **must** tell you when the child is placed so you know when to start paying them. Do not start paying them on the assumption that the child was placed on the expected date.

## Paying Statutory Adoption Pay (SAP)/Statutory Paternity Pay (SPP)

### General

SAP and SPP pay weeks can start on any day, see page 22 of the Employers Help Book, E16.

### Employee leaves job after the date the adoption agency tells the adopter that they have been matched with a child

#### SAP

Your employee **must** have told you when they wanted to start to be paid - stick to these arrangements.

If they don't want to start being paid before the child is placed they must tell you when the child is placed so you know when to start paying them. Do not start paying on the assumption that the child was placed on the expected date.

#### SPP

Your employee **must** remain employed by you until the child is placed to get SPP. The SPP pay period starts the day after the last day your employee worked. Your employee **must** have told you whether they wanted one or two weeks' pay - stick to these arrangements.

### Tax and NICs on SAP/SPP paid after the employee has left work

For more information about deducting tax and National Insurance contributions and when to issue form P45, see booklet, *Employers Further Guide to PAYE and NICs, CWG2(2004)*.

### Employee starts working for another employer

See the next column to see if you can stop paying.

### Child is placed after the expected date

#### SAP

If you have already started to pay your employee you should continue. The SAP pay period is not extended.

If your employee didn't want to start being paid before the child was placed they must tell you when the child is placed so you know when to start paying them. Do not start paying on the assumption that the child was placed on the expected date.

#### SPP

Your employee cannot be paid until the child is placed. They **must** tell you when the child is placed so you know when to start paying them. Do not start paying on the assumption that the child was placed on the expected date.

### Employee works for you during the pay period

You cannot pay SAP/SPP for any SAP or SPP pay week in which your employee works for you. Even if your employee only works for you for half a day they will still lose a whole weeks' SAP/SPP.

### Employee works for another employer during the pay period

If your employee works for another employer during the SAP or SPP pay period, you need to check whether they worked for that employer during the week when the adoption agency told the adopter that they had been matched with a child.

It is up to your employee to tell you that they are working for another employer.

If your employee is working for someone they worked for during the week when the adoption agency told the adopter that they had been matched with a child you should continue to pay them SAP/SPP as normal.

If your employee is working for someone they did not work for during the week when the adoption agency told the adopter that they had been matched with a child you **must** stop paying SAP/SPP from the start of the SAP or SPP pay week they work for that employer.

- **If they asked for SAP** - give them *Why I cannot pay you SAP*, form SAP1. Take a copy of the evidence they got from the adoption agency and give the original back to them.
- **If they asked for SPP** - give them *Why I cannot pay you SPP*, form SPP1. Take a copy of the declaration on *Becoming an adoptive parent*, form SC4 and give the original back to them.

### Employee is taken into legal custody during the pay period

You cannot pay SAP/SPP for any SAP or SPP pay week your employee is in legal custody or for any week in the pay period after that.

- **If they asked for SAP** - give them *Why I cannot pay you SAP*, form SAP1. Take a copy of the evidence they got from the adoption agency and give the original back to them.
- **If they asked for SPP** - give them *Why I cannot pay you SPP*, form SPP1. Take a copy of the declaration on *Becoming a parent*, form SC4 and give the original back to them.

It is your employee's responsibility to tell you if they are taken into legal custody.

continued over ►

## Paying Statutory Adoption Pay (SAP)/Statutory Paternity Pay (SPP) *continued*

Your employee is in legal custody if they are detained. Usually this means they are arrested or in prison.

They are not in legal custody if they are

- voluntarily helping police with their enquiries
- out on bail
- serving a suspended sentence.

Your employee should contact their local Inland Revenue office about their SAP when they are released.

### Employee is sick during the pay period

If your employee tells you that they are incapable of work during the SAP or SPP pay period you must check whether they are entitled to Statutory Sick Pay (SSP) or not, see the Employer's Help Book, *What to do if your employee is sick*, E14.

You cannot pay them SAP or SPP for any SAP or SPP pay week in which they are entitled to be paid SSP.

- **If they asked for SAP** - give them *Why I cannot pay you SAP*, form *SAP1*. Take a copy of the evidence they got from the adoption agency and give the original back to them.
- **If they asked for SPP** - give them *Why I cannot pay you SPP*, form *SPP1*. Take a copy of the declaration on *Becoming an adoptive parent*, form *SC4* and give the original back to them.

Bear in mind that

- SAP/SPP pay weeks can start on any day of the week
- your employee won't normally be entitled to be paid SSP from the very first day they are incapable of work.

### Employee dies during the pay period

If your employee dies during the SAP or SPP pay period, you should pay SAP/SPP for the SAP or SPP pay week in which they die, but not for any week in the pay period after that.

### The child dies during the pay period

#### SAP

If the child dies during the SAP pay period, the pay period and leave will end **eight** weeks after the end of the SAP pay week in which the child dies if it was not due to end earlier.

#### SPP

If the child dies during the SPP pay period, payment should continue as normal.

### The child stops living with the adopter

#### SAP

If the child stops living with the adopter during the SAP pay period, the pay period and leave will end **eight** weeks after the end of the week in which the child stopped living with them if it was not due to end earlier.

#### SPP

If the child stops living with the adopter during the SPP pay period, payment should continue as normal.

### The child isn't placed after all

#### SAP

If you have already started to pay your employee but the child is not placed with them after all, the SAP pay period and leave will end **eight** weeks after the end of the week in which your employee is told that the child will not be placed. It is your employee's responsibility to tell you that the child will not be placed.

If your employee didn't want to start being paid before the child was placed then do not start to pay them. Do not start paying on the assumption that the child was placed on the expected date. It is your employee's responsibility to tell you when the child is placed.

#### SPP

Your employee cannot be paid until the child is placed. They **must** tell you when the child is placed so you know when to start paying them. Do not start paying on the assumption that the child was placed on the expected date.

### You become insolvent during the pay period

If you become insolvent during the SAP or SPP pay period the Inland Revenue will pay your employee's SAP/SPP from the date of the insolvency.

You should tell your employees to contact their local Inland Revenue office.

It will help if you or the liquidator can let us know which of your employees are affected so we can pay them as soon as possible.

### Paying through an agent

You can arrange for the SAP/SPP to be paid through an insurance company, friendly society, payroll service or other third party. However, bear in mind that you, as the employer, are responsible for making sure that it is paid according to the rules.

## Paying Statutory Adoption Pay (SAP)/Statutory Paternity Pay (SPP) *continued*

### Non-cash payments

You may normally pay some or all of your employee's earnings as a non-cash payment, for example providing board and lodging or giving them goods or services.

However, you must pay any SAP/SPP in full, in cash.

Your employee's contract should state whether they can continue to get non-cash benefits, like a company car or mobile phone while they are on adoption or paternity leave. For more information please contact the Arbitration and Conciliation Advisory Service (Acas) (see [www.acas.org.uk](http://www.acas.org.uk) or or call 08457 47 47 47 ) or seek independent legal advice.

### Employee has more than one employer

If your employee has more than one employer they can get SAP/SPP from each employer if they satisfy all the terms and conditions.

They can choose to take different time off from each employer.

### Employee has more than one job with you

If your employee has more than one job with you, you should have worked out whether they can get more than one lot of SAP/SPP from you, when you were looking at whether their earnings were high enough in each employment, see page 17.

If they can only get one lot of the SAP/SPP from you, they should take the same time off from each job otherwise they will lose some of their SAP/SPP because they are working for you.

If they can get more than one lot of SAP/SPP from you they can choose to take different time off from each job.

### Lump sums

You can pay your employee their SAP/SPP in a lump sum, but we don't recommend it in case something changes during their SAP/SPP pay period.

If you do decide to pay the SAP/SPP as a lump sum, you and your employee could pay more National Insurance contributions (NICs) than if you paid it on their normal payday. See Employer's Help Book *Day-to-day payroll*, E13, for more information on working out NICs.

### I pay adoption or paternity pay under an employee's contract of employment

If you pay adoption or paternity pay under an employee's contract of employment and they can also get SAP/SPP you need to consider what you must pay your employee for each week in the pay period.

### For Statutory Adoption Pay

You must pay your employee at least the SAP they are entitled to for any week in the pay period.

Whatever you pay your employee, you must still work out how much SAP your employee was entitled to and keep the relevant records, see page 25 of the Employer's Help Book, E16.

If your employee is also entitled to adoption pay under their contract and this is

- the same as or more than the SAP for any week in the pay period, then you **must** pay at least the adoption pay under their contract. The SAP they are entitled to is offset against the adoption pay under their contract
- less than the SAP for any week in the pay period, then you must pay at least the SAP. The adoption pay they are entitled to under their contract is offset against the SAP.

If you have set up a scheme to pay your employees adoption pay and your employees pay all the contributions into that scheme, you must pay them the SAP on top of the adoption pay they can get under the scheme.

If you have set up a scheme to pay your employees adoption pay and you and your employees share paying the contributions into that scheme, you must

- make sure that the proportion of the adoption pay they can get under the scheme which is based on your contributions is more than the SAP, or
- pay them money on top of the adoption pay they can get under the scheme, so that the extra money and the proportion of the adoption pay they can get under the scheme which is based on your contributions is at least the same as the SAP.

### For Statutory Paternity Pay

If you pay paternity pay under an employee's contract of employment and they can also get SPP you need to consider what you must pay your employee during the one or two week SPP pay period.

You must pay your employee at least the SPP they are entitled to. The maximum amount is £205.60.

Whatever you pay your employee, you must still work out how much SPP your employee was entitled to and keep the relevant records.

If your employee is also entitled to paternity pay under their contract you must pay at least the paternity pay they are entitled to under their contract, if

- your employee has chosen or can only get one weeks SPP, and
- the paternity pay under their contract is for one week or less, and

## **Paying Statutory Adoption Pay (SAP)/Statutory Paternity Pay (SPP) *continued***

- it is the same as or more than the SPP, **or**
- your employee has chosen to get two weeks SPP, and
- the paternity pay under their contract is for two weeks or less, and
- it is the same as or more than the SPP.

You must pay at least the SPP they are entitled to if

- your employer has chosen or can only get one weeks SPP, and
- the paternity pay under their contract is for one week or less, and
- it is less than the SPP, **or**
- your employee has chosen to get two weeks SPP, and
- the paternity pay under their contract is for two weeks or less, and
- it is less than the SPP.

The SPP they are entitled to and paternity pay they are entitled to under their contract are offset against each other.

### **NHS employees**

#### **NHS re-organisation during the pay period**

If there is an NHS re-organisation while an employee is getting SAP or SPP, payment should continue as normal.

#### **Who pays if the employee chooses to have all their earnings added together to work out their average weekly earnings?**

If part of the employee's contract is still with the Health Authority, (now known as a Strategic Health Authority), then that Authority must pay all the SAP/SPP.

If all the employee's contracts were transferred to an NHS Trust, then the first Trust to which their contract was transferred must pay all the SAP/SPP.

## How much do I get back?

### General

The amount you get back depends on your **total** gross, employers' plus employees', Class 1 National Insurance liability. See Employer's Help Book, *E16* for general recovery procedures.

### I wasn't an employer for the whole of 2002-03 and 2003-04

Check which tax year you need to look at depending on the date the adoption agency told the adopter that they were matched with a child

- the adoption agency told the adopter that they have been matched with a child between 6 April 2003 and 10 April 2004 check your liability for 2002-03
- the adoption agency told the adopter that they have been matched with a child between 11 April 2004 and 2 April 2005 check your liability for 2003-04.

If you were an employer for the whole of that tax year and your annual liability for Class 1 National Insurance contributions (NICs) is £45,000 or less you are entitled to

- 100% of the Statutory Adoption Pay (SAP)/Statutory Paternity Pay (SPP), and
- 4.5% as compensation for the NICs you pay on the SAP/SPP.

If you were an employer for the whole of that tax year and your annual liability for Class 1 NICs is more than £45,000 you

- are entitled to 92% of the SAP/SPP and
- have to fund 8% yourself.

If you weren't an employer for the whole of that tax year then follow the steps below

1. Add together your liability for Class 1 NICs for the tax months in that year.

|   |  |
|---|--|
| £ |  |
|---|--|

2. Work out the number of tax months you were an employer in that year. Count part months as whole months and remember that tax months run from the 6th of one month to the 5th of the following month.

|  |
|--|
|  |
|--|

3. Divide the figure in 1 by the figure in 2

|   |  |
|---|--|
| £ |  |
|---|--|

4. Multiply the figure in 3 by 12

|   |  |
|---|--|
| £ |  |
|---|--|

If the figure in 4 is £45,000 or less you are entitled to

- 100% of the SAP/SPP and
- 4.5% as compensation for the NICs you pay on the SAP/SPP.

If the figure in 4 is more than £45,000 you

- are entitled to 92% of the SAP/SPP and
- have to fund 8% yourself.

## How much do I get back? *continued*

If you weren't an employer at all in that tax year then follow the steps below

1. Enter the date the adoption agency told the adopter that they had been matched with a child.

2. Find the date of the first Sunday on or before the date in 1.  
(Use the table on page 14 of the Employer's Help Book, E16).

3. Identify the tax year in which this Sunday falls.

4. Identify the tax month before this Sunday. Remember that tax months run from the 6th of one month to the 5th of the following month.

5. Add together your liability for Class 1 NICs between the start of the tax year you identified at 3, or the first tax month for which you were liable for Class 1 NICs, and the tax month you identified at 4, inclusively.

6. Work out the number of tax months between the start of the tax year you identified at 3, or the first month for which you were liable for Class 1 NICs, and the tax month you identified at 4, inclusive.

7. Divide the figure in 5 by the figure in 6.

8. Multiply the figure in 7 by 12.

If the figure in 8 is £45,000 or less you are entitled to

- 100% of the SAP/SPP and
- 4.5% as compensation for the NICs you pay on the SAP/SPP.

If the figure in 8 is more than £45,000 you

- are entitled to 92% of the SAP/SPP and
- have to fund 8% yourself.

### I pay adoption or paternity pay under an employee's contract of employment

If you pay adoption or paternity pay under an employee's contract of employment you are only entitled to get back a percentage of the SAP/SPP paid, **not a percentage of any extra** adoption or paternity pay you paid under the employee's contract of employment.

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