

# Pay and time off work for adoptive parents – special cases

E16(Supplement)(2007)  
Employer Helpbook

To use for employees whose child is  
expected to be placed with them for  
adoption on or after 1 April 2007

*An employer guide to*

- Statutory Adoption Pay and Leave
- Statutory Paternity Pay and Leave

## Help and further guidance

Help and further guidance about tax and National Insurance contributions (NICs) is available from the following sources.

### The Internet

Go to [www.hmrc.gov.uk/employers](http://www.hmrc.gov.uk/employers)

#### Your Employer CD-ROM

Most of the forms and guidance you will need are available to view or print from your CD-ROM. There are also forms you can complete and save on-screen.

Your CD-ROM contains the following calculators

- P45 calculator to check the P45 details of new employees
- P11 calculator that works out the amount of tax and NICs due
- Car benefit and Car Fuel benefit calculator
- Collection of Student Loans calculator
- Statutory Payment calculators.

There is a Learning Zone to help you understand topics such as Statutory Payments and Student Loan deductions.

You will also find a Payroll Basics section designed to help new and less experienced employers understand what to do when employing someone for the first time.

#### Employer Helpbooks

Our Employer Helpbooks will help you understand and operate PAYE, NICs and other payroll related matters.

The Helpbooks are for guidance only, they are not comprehensive and have no legal force.

There are also other leaflets and booklets that give further guidance, for example:

- CWG2(2007), *Employer Further Guide to PAYE and NICs*
- CWG5(2007), *Class1A NICs on benefits in kind*
- 480(2007), *Expenses and Benefits - a tax guide*.

You can view, download and print the full range of Helpbooks, booklets and other forms and guidance from our website at [www.hmrc.gov.uk/employers](http://www.hmrc.gov.uk/employers) or your Employer CD-ROM.

Or you can order copies from the Employer Orderline

- from our website at [www.hmrc.gov.uk/employers/emp-form.htm](http://www.hmrc.gov.uk/employers/emp-form.htm)
- by fax **0870 240 6406**
- by phone **0845 764 6646**.

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

For details of employer forms and guidance in Braille, large print or audio call the Employer Orderline on **0845 764 6646** and ask to speak to the Customer Service Team.

#### Yr Iaith Gymraeg

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

### By phone - Employer Helplines

(We may record calls for quality and training purposes.)

New employers and employers with less than 3 years payroll experience

**New Employer Helpline**  
**0845 607 0143**

Monday to Friday 08:00 -20:00  
Saturday and Sunday  
08:00 - 17:00

Employers with more than 3 years payroll experience

**Employer Helpline**  
**0845 714 3143**

Monday to Friday 08:00 - 20:00  
Saturday and Sunday  
08:00 - 17:00

Employers who are deaf or hard of hearing

**Textphone 0845 602 1380**

(You must have specialised equipment such as Minicom to use this service).

A list of Helplines and opening hours is available

- on our website at [www.hmrc.gov.uk/contactus/helplines.htm](http://www.hmrc.gov.uk/contactus/helplines.htm)
- on your CD-ROM, and
- in your Employer Bulletin.

### Your HM Revenue & Customs office

Your own HM Revenue & Customs office can also help you. All our office contact details are on our website at [www.hmrc.gov.uk/local/employers/index.htm](http://www.hmrc.gov.uk/local/employers/index.htm)

When contacting us please tell us your Employer reference. You will find it on correspondence from your HM Revenue & Customs office.

### In Person

We can offer you education and support on all aspects of your payroll explaining

- what you need to do
- the deadlines you need to meet
- the forms you need to fill in
- the records you need to keep.

We also have a range of workshops which are free of charge on many payroll topics.

You can get further information about the workshops from our website at [www.hmrc.gov.uk/bst](http://www.hmrc.gov.uk/bst), or you can call the

- New Employer Helpline on **0845 607 0143**
- Employer Helpline on **0845 714 3143**

### Online Services

For enquiries about our online services

- go to [www.hmrc.gov.uk/efiling/help/mainhelp.htm](http://www.hmrc.gov.uk/efiling/help/mainhelp.htm)
- email [helpdesk@ir-efile.gov.uk](mailto:helpdesk@ir-efile.gov.uk)
- phone **0845 605 5999**  
open 7 days a week 08:00 -20:00.

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## Specific employments

### Agency workers

#### Pay

There are various types of agency workers who are regarded as employees for SAP/SPP purposes. If a worker is treated as an employee for National Insurance purposes, they will also be treated as an employee for SAP/SPP purposes. If you have to deduct PAYE tax and Class 1 NICs from the agency worker's earnings then you will have to pay them SAP/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 HM Revenue & Customs office.

The rules on evidence for pay on page 9 of the Employer Helpbook, E16, *Pay and time off work for adoptive parents*, apply to agency workers.

You must consider whether

- your employee has worked for you long enough. See page 6, and
- your employee earns enough. If they are not paid on every payday, see page 11. If they are paid on every payday follow the guidance starting on page 10 of the Employer Helpbook, E16
- when your employee should 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.

#### Leave

Agency workers who are not employees (that is, not employed under a contract of employment) are not entitled to statutory adoption or paternity leave but you can agree other time off with them. If you're not sure whether a worker is employed under a contract of employment contact the Advisory, Conciliation and Arbitration Service (Acas) (go to [www.acas.org.uk](http://www.acas.org.uk) or call **0845 7 47 47 47**) or in Northern Ireland contact the Labour Relations Agency (LRA) go to [www.lra.org.uk](http://www.lra.org.uk)

### 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 all 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 HM Revenue & Customs office.

The rules on evidence for pay on page 9 of the Employer Helpbook, E16, apply to casual workers.

There are special rules for

- has your employee worked for you long enough? See page 6, and
- does your employee earn enough? If they are not paid on every payday see page 11. If they are paid on every payday follow the guidance starting on page 9 of the Employer Helpbook, E16
- 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 15 of the Employer Helpbook, E16.

#### Leave

Casual workers who are not employees (that is, who are not employed under a contract of employment) are not entitled to statutory adoption or paternity leave but you can agree other time off with them. Casual workers who are employees could be eligible if they satisfy all the qualifying conditions. If you're not sure whether a worker is employed under a contract of service or not, contact Acas go to [www.acas.org.uk](http://www.acas.org.uk) or telephone **08457 47 47 47** or in Northern Ireland the LRA go to [www.lra.org.uk](http://www.lra.org.uk) or telephone **028 90321442**.

### 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 6. All the other rules in the Employer Helpbook, E16, apply.

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

#### Leave

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

- are employed on board a ship registered and 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 Acas or the LRA or seek independent legal advice.

# Employee 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, and
- the adoption does not involve the placement of that child for adoption under United Kingdom law.

## Statutory Adoption Pay (SAP) and adoption leave

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.

### 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 Matching Certificate. 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. They cannot receive Statutory Adoption Pay or adoption leave unless they have obtained official notification from the UK authority that they are eligible to adopt a child from overseas.

#### 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 page 6 of Employer Helpbook, E16.

#### 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** of the following:

- be adopting a child from abroad
- the child is not being placed for adoption 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 from the relevant UK authority, 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

from the relevant UK authority of their eligibility to adopt a child from overseas or the week they complete 26 weeks continuous service if this is later, and

- give you enough notice that they expect to be entitled to SAP and adoption leave.

They should tell you at least 28 days before they want to start their SAP and adoption leave.

If your employee does not satisfy all these qualifying conditions for SAP and adoption leave, give them form SAP1.

### The rules

#### Notifying you 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 from the relevant UK authority of their eligibility to adopt a child from overseas, 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 from the relevant UK authority 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 from the UK authority 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. Your employee can tell you when they want their adoption leave and SAP to start at the first stage if they know then.

## Employee adopting a child from abroad *continued*

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.

### Third stage

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

### 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 pre-determined 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.

- 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 39 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 they know that they will not be adopting the child after all.

#### New employee receives official notification of adoption before starting work for you

Where a new employee is adopting a child from abroad and they have already received official notification before they have started work for you, they can qualify for SAP provided they

- complete their 26 weeks continuous employment before they want their pay period to start, and
- satisfy all other criteria.

In this case, you can calculate their average earnings on an eight week period up to the point where they complete 26 weeks of continuous service.

#### 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 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, HM Revenue & Customs 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 APP doesn't start within 6 months of the date your employee left, liability then transfers to HM Revenue & Customs. They must give their local HM Revenue & Customs office 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.

## Statutory Paternity Pay (SPP) and paternity leave

### The qualifying conditions

To qualify for Statutory Paternity Pay (SPP) and paternity leave your employee must satisfy all of 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 from the relevant UK authority that they are eligible to adopt a child from overseas, or by the time they want to start their Paternity Pay Period and/or paternity leave, and
- remain continuously employed with you 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

## Employee adopting a child from abroad *continued*

- 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.

### The different rules

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

### Notifying you

As with domestic paternity 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 from the relevant UK authority of their eligibility to adopt a child from overseas, and
- the child is expected to enter the United Kingdom.

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

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

Where a new employee is adopting a child from abroad and they have already received official notification from the relevant UK authority before they have started work for you, they can qualify for SPP provided they

- complete their 26 weeks continuous employment before they want their pay period to start, and
- satisfy all other criteria.

In this case only, you can calculate their average earnings on an eight week period up to the point where they complete 26 weeks of continuous service.

#### 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.

#### 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.

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 from the UK authority
- the date from which the employee wants to be paid SPP
- whether the employee wants to be paid one week or two consecutive weeks.

HM Revenue & Customs has produced form SC5 for employers and employees to use as evidence of entitlement to SPP, see page 6 Employer Helpbook, E16. The use of this form is not compulsory. You can use your own form 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 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 20 of this Helpbook.

They **must** still give you evidence of matching, see page 9 of the Employer Helpbook, E16, and tell you when they want their pay to start, see page 15 of the Employer Helpbook, 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 20 of this Helpbook.

They must still give you the declaration of family commitment, see page 9 of the Employer Helpbook, E16, and tell you when they want their pay to start, see page 15 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** but within the European Economic Area (EEA) 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.

Tables showing these dates are on page 24 of the Employer Helpbook, E16.

They **can get** SAP, if you were **liable to pay Class 1 National Insurance contributions (NICs)** on their earnings throughout the period. There is a list of European Economic Area countries on page 24 of this Helpbook.

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

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

Where they work for you outside the UK but within the EEA 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**.

Tables showing these dates are on page 24 of the Employer Helpbook, E16.

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

All the other rules in the Employer Helpbook, E16, *Pay and time off work for adoptive parents*, 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 Helpbook, E16, apply.

##### Step 1

Where they work for you **outside the UK** but within the EEA 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 24 of the Employer Helpbook, E16.

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

Where they work for you outside the UK but within the EEA 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 24 of the Employer Helpbook, E16.

## 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 but within the European Economic Area may be entitled to adoption or paternity leave under UK law. For more information please contact Acas or in Northern Ireland contact the LRA or seek independent legal advice.

## 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 24 of the Employer Helpbook, 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 for SAP/SPP purposes in this instance means

Sunday to Saturday. Count part weeks as full weeks. Tables showing these dates are on page 24 of the Employer Helpbook, 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.

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 9 and 10, 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 in this instance means Sunday to Saturday. Count part weeks as full weeks. Tables showing these dates are on page 24 of the Employer Helpbook, 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. For more information on Working Time Regulations, see *Your guide to the Working Time Regulations*, go to [www.dti.gov.uk/employment/employment.legislation/worktime.regs/index.html](http://www.dti.gov.uk/employment/employment.legislation/worktime.regs/index.html)

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

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 9 and 10, 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 2.

#### 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 in this instance means Sunday to Saturday. Count part weeks as full weeks. Tables showing these dates are on page 24 of the Employer Helpbook, E16.

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, paternity, adoption 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 9 and 10.

If you need more information about this please contact Acas or the LRA or seek independent legal advice.

### Paternity 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 in this instance means Sunday to Saturday. Count part weeks as full weeks. Tables showing these dates are on page 24 of the Employer Helpbook, 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, paternity, adoption 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 9 and 10.

If you need more information about this please contact Acas or in Northern Ireland contact the LRA or seek independent legal advice.

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

### Reinstatement after dismissal

If they did not work for you during the whole period you worked out using pages 10 and 24 of the Employer Helpbook, E16

- because you dismissed them, and
- they are then reinstated because an employment tribunal decides that you dismissed them unfairly, or
- if you reinstate them as a result of a statutory grievance procedure

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 Helpbook, E16, apply.

### Reinstatement following service in the Armed Forces

If your employee did not work for you during the whole period you worked out using pages 10 and 24 of the Employer Helpbook, 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 Helpbook, 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.

##### Step 2

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

All the other rules in the Employer Helpbook, E16, apply.

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

If your employee did not work for you during the whole period you worked out using pages 10 and 24 of the

Employer Helpbook, 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 Helpbook, 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 Helpbook, E16, apply.

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

If your employee did not work for you during the whole period you worked out using pages 10 and 24 of the Employer Helpbook, 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 Helpbook, E16, apply.

### Break in employment because of public holidays

If your employee did not work for you during the whole period you worked out using pages 10 and 24 of the Employer Helpbook, E16, because of public holidays, they can get SAP and adoption leave or SPP and paternity leave.

All the other rules in the Employer Helpbook, E16, apply.

### Break in employment because of sickness or injury

If your employee did not work for you during the whole period you worked out using pages 10 or 24 of the Employer Helpbook, E16, because they were sick or injured, they can get SAP and adoption leave or SPP and paternity leave, if the total period of incapacity is 26 weeks or less.

All the other rules in the Employer Helpbook, E16, apply. 9

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

### Break in employment because of maternity leave

If your employee did not work for you during the whole period you worked out using pages 10 and 24 of the Employer Helpbook, 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 either SAP and adoption leave or SPP and paternity leave.

All the other rules in the Employer Helpbook, E16, apply.

See the Employers Helpbook, E15(2007), *Pay and time off work for parents* for more information about maternity leave.

### Break in employment because of adoption leave

If your employee did not work for you during the whole period you worked out using pages 10 and 24 of the Employer Helpbook, 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 Helpbook, E16, apply.

### Break in employment because of paternity leave

If your employee did not work for you during the whole period you worked out using pages 10 and 24 of the Employer Helpbook, 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 Helpbook, E16, apply.

### Break in employment because of parental leave

If your employee did not work for you during the whole period you worked out using pages 10 and 24 of the Employer Helpbook, 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 [www.dti.gov.uk/er](http://www.dti.gov.uk/er)

All the other rules in the Employer Helpbook, E16, apply.

### Change of employer

If you take over a business and the Transfer of Undertakings (Protection of Employment) Regulations 2006 apply, then continuity of employment is not broken. The Transfer of Undertakings (Protection of Employment) Regulations 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 TUPE applies contact Acas, or in Northern Ireland the LRA.

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

Where an employee of a health service employer moves to another health service while undergoing training, the continuity of training may be broken. If you need further advice contact the Employer Helpline on **0845 7 143 143**.

**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 whole period you worked out using pages 10 and 24 of the Employer Helpbook, 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 if they qualify
- 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 if they qualify
- 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 11 to 14 of the Employer Helpbook, 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 5 of the weekly check sheet on page 13 of the Employer Helpbook, E16. At Step 6 divide the figure in Step 5 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.

Use the check sheet on page 12 of this Helpbook 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 5 of the weekly check sheet on page 13 of the Employer Helpbook, E16. At Step 6 divide the figure in Step 5 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 13 of the Employer Helpbook, E16. At Step 6 you must still divide the figure in Step 5 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 14 of this Helpbook 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 4 and 3 (inclusive) of the check sheets on pages 13 and 14 of the Employer Helpbook, 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 10

you **must** still add together all their earnings in between the dates in Steps 4 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 11 to 14 of the Employer Helpbook, 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 14 of this Helpbook. 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 21 for more information about paying SAP/SPP in these circumstances.

For more information on how to work out Class 1 NICs for employees with more than one job see the booklet CWG2(2007), *Employer Further Guide to PAYE and NICs*. See 'Employer Helpbooks' inside cover, for details of how you can obtain one.

## Does your employee earn enough? *continued*

### Check sheet for employees paid at irregular intervals

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

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 24 of the Employer Helpbook, E16.)

	/		/	
--	---	--	---	--

3. Find the date of the last payday on or before that Saturday.  
**This is the last day of the set period.**

	/		/	
--	---	--	---	--

4. Count back eight paydays from the date in 3 and come forward one day, for example, if eight pay days back is 22 June, enter 23 June.  
**This is the first day of the set period.**

	/		/	
--	---	--	---	--

5. Add together the earnings paid in between the dates in 4 and 3 (inclusive).

£		
---	--	--

6. Work out the number of days between the dates in 4 and 3 (inclusive).

--

7. Divide the figure in 5 by the number of days in 6.

£		
---	--	--

8. Multiply the figure in 7 by 7.  
**(Don't round up or down to whole pence here, use the unrounded amount to decide if your employee's earnings are high enough.)**

£		
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## 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 24 of the Employer Helpbook, E16.)
  
3. Find the date of the last normal payday on or before that Saturday.  
**This is the last day of the set period.**
  
4. Count back eight paydays from the date at 3 and come forward one day, for example, if eight paydays back is 22 June, use 23 June.  
**This is the first day of the set period.**
  
5. Add together the earnings paid in between the dates in 4 and 3 (inclusive).
  
6. Work out how many whole months there are between the dates in 4 and 3 (inclusive). For example, if the dates were 1 October and 31 December there are three whole months. If there isn'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 18.
  
7. Divide the figure at 5 by the number of whole months in 6.
  
8. Multiply the figure at 7 by 12.
  
9. Divide the figure in 8 by 52.  
**(Don't round up or down to whole pence here, use the unrounded amount to decide if your employee's earnings are high enough.)**

## 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 24 of the Employer Helpbook, 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 at least eight weeks from the date at 3 and come forward one day, for example, if eight paydays back is 22 June, use 23 June.  
**This is the first day of the set period.**
5. Add together money voted between the dates in 4 and 3 (inclusive).  
(Do not include any money drawn in anticipation of the vote)
6. Work out how many whole months there are between the dates at 4 and 3 (inclusive). For example, if the dates were 1 January and 31 December 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 18.
7. Divide the figure at 5 by the number of whole months in 6.
8. Multiply the figure at 7 by 12.
9. Divide the figure in 8 by 52.  
(Don't round up or down to whole pence here, use the unrounded amount to decide if your employee's earnings are high enough.)

## Does your employee earn enough? *continued*

### Earnings in set period affected by a backdated pay rise

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

If the employee gets a backdated pay rise paid after the set period which increases the amount of earnings already paid in the set period for working out their average weekly earnings and their average weekly earnings were less than £87.00 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.

Under re-organisation of NHS and Trusts, where the employee has a number of contracts that are merged under one Trust or HA, and they are in receipt of more than one payment of SAP/SPP at that time, they will continue to receive the same number of payments until entitlement to those payments cease, for whatever reason, for example, they return to work.

### Earnings in the set period include correction of an overpayment/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 £50.00 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 £50.00 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

- £87.00 gross and the adoption agency told the adopter that they had been matched with a child between 1 April 2007 to 5 April 2008
- £84.00 gross and the adoption agency told the adopter that they had been matched with a child between 2 April 2006 and 31 March 2007

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 CWG2(2007), *Employer Further Guide to PAYE and NICs*.

### Some of the employee's earnings are included in a PAYE Settlement Agreement and earnings in set period are covered in a backdated 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 backdated 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 £87.00

you **must** re-calculate their average weekly earnings, as shown on page 17.

## 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 backdated pay rise. Do not include any PAYE Settlement Agreement earnings, expense payments and benefits in kind at this stage.

If the new average weekly earnings amount is at least

- £87.00 gross and the adoption agency told the adopter that they had been matched with a child between 1 April 2007 and 5 April 2008
- £84.00 gross and the adoption agency told the adopter that they had been matched with a child between 2 April 2006 and 31 March 2007

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.

They may not be entitled to any extra SAP/SPP because their average weekly earnings with the backdated pay rise, excluding the PAYE Settlement Agreement earnings, are less than their original average weekly earnings. You can now include the PAYE Settlement Agreement earnings to see if they may be entitled to any extra SAP/SPP.

If the re-calculated earnings are still less than their original average weekly earnings, 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 weekly earnings using the earnings paid in the set period as increased by the backdated pay rise including the expense payments and benefits in kind.

If the new average weekly earnings amount is at least

- £84.00 gross and the adoption agency told the adopter that they had been matched with a child between 2 April 2006 and 31 March 2007
- £87.00 gross and the adoption agency told the adopter that they had been matched with a child between 1 April 2007 and 5 April 2008

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 form SAP1, *Why I cannot pay you SAP*. 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 form SPP1, *Why I cannot pay you SPP*. Take a copy of the declaration on form SC4, *Becoming an adoptive parent*, and give the original back to them.

### SAP/SPP entitlement where overpayment/underpayment of wages is made in the set period

Calculation of average weekly earnings (AWE) is always based on all earnings actually paid within the set period, regardless of any overpayment or underpayment of wages made in the set period.

So where an overpayment or underpayment of wages was made within the set period, it is this over or underpaid amount that must be included in the AWE calculation for deciding if SAP or SPP is due.

This may mean that an employee is eligible for SAP or SPP even if their AWE would otherwise have been below the LEL, or they may not qualify for SAP or SPP where an underpayment of wages means their AWE fall below the LEL.

Any overpayment or underpayment of wages should be adjusted in the normal way and your wage records noted accordingly.

## Does your employee earn enough? *continued*

### Check sheet for employees paid calendar monthly where there is more or less than two payments in the set period

To work out average weekly earnings you must

- convert monthly paid into an average weekly amount
- always use the set period - worked out using the check sheet
- only include earnings from the set period.

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.	<input type="text" value="/ /"/>
2. Find the date of the Saturday on or after the date in 1.	<input type="text" value="/ /"/>
3. Find the date of the last normal payday on or before that Saturday. <b>This is the last day of the set period.</b>	<input type="text" value="/ /"/>
4. Count back to the payday at least eight weeks from the date at 3 and come forward one day, for example, if eight paydays back is 22 June, use 23 June. <b>This is the first day of the set period.</b>	<input type="text" value="/ /"/>
5. Add together the earnings paid between the dates in 4 and 3 (inclusive). If there are more or less than two payments in the period - see steps 8 to 11 below.	£ <input type="text"/> <input type="text"/>
6. Multiply the figure at 5 by 6.	£ <input type="text"/> <input type="text"/>
7. Divide the figure at 6 by 52. <b>(You don't round up or down to whole pence here, use the unrounded amounts to decide if your employees' earnings are high enough.)</b> <b>If your employee is paid calendar monthly and there are more or less than two payments in the set period at Step 5 above, use steps 8 to 11 below.</b>	£ <input type="text"/> <input type="text"/>
8. Work out how many whole months there are between the dates at 4 and 3 (inclusive). For example, if the dates were 1 January 2007 and 31 December 2007 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 18.	<input type="text"/>
9. Divide the figure at 5 by the number of months at 8.	£ <input type="text"/> <input type="text"/>
10. Multiply the figure at 9 by 12 (months).	£ <input type="text"/> <input type="text"/>
11. Divide the figure in 10 by 52 (weeks). <b>(Don't round up or down to whole pence here, use the unrounded amount to decide if your employee's earnings are high enough.)</b>	£ <input type="text"/> <input type="text"/>

### Employee earns enough

If the amount in 7

- is at least £87.00 gross a week and the adoption agency told the adopter that they had been matched with a child between 1 April 2007 and 5 April 2008
- is at least £84.00 gross a week and the adoption agency told the adopter that they had been matched with a child between 2 April 2006 and 31 March 2007

go to page 15 of the E16 for 'When should your employee give you dates for pay and leave?'

### Employee doesn't earn enough

If the amount in 7 is less than £87.00 they don't earn enough

- if they've asked for **SAP** give them form SAP1, *Why I cannot pay you SAP*. Take a copy of the evidence they got from the adoption agency and give the original back to them
- if they've asked for **SPP** give them form SPP1, *Why I cannot pay you SPP*.

Take a copy of the declaration on form SC4, *Becoming an adoptive parent*, and give the original back to them.

## Does your employee earn enough? *continued*

### 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 4 and 3, when you get to Step 5 of the check sheet on page 14 of E16, 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 4 is 1 October there are two whole months (1 October to 31 October and 1 November to 30 November).

Count the number of odd days.

For example, if the date at 3 is 19 December, and the date at 4 is 1 October, there are 19 odd days (1 December to 19 December).

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

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

#### **Rounding rules**

If the date at 3 is in

- February - round 14 days or less down and 15 days or more up
- for the other months - round 15 days or less down and 16 days or more up.

Then use the number of rounded months at Step 6 and follow the rest of the steps in the relevant check sheet.

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

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

#### **SAP**

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

You can start paying your employee SAP up to 14 days before the day the child is placed, but no later than the day the child is placed or the day after if the employee is at work that day.

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 17 of the E16, Employer Helpbook.

## Employee works for you during the pay period

If you and your employee agree, an employee can work for you under their contract of service and during their SAP pay period for up to 10 days without losing their SAP for the weeks in which that work is done. These 10 days are called 'Keeping in Touch' (KIT) days and enable your employee to undertake the odd days training or do some work for you on occasion to keep in touch during their adoption leave without losing their SAP or ending their adoption leave.

The KIT days may be used consecutively, singly or in blocks, it is for you and your employee to agree how they should be used if your employee wishes to do some work. But any work on any day (even as little as an hour) will count as a whole KIT day.

The amount of pay they receive for work done is something for you to agree with your employee but the minimum you must pay is the SAP rate the employee is entitled to.

If your employee does more than 10 days work for you in their SAP pay period you cannot pay SAP to them for any week in which they do such work. To be clear, if a week in the SAP pay period contains only KIT days, SAP should be paid.

If a week in the SAP pay period contains the last of the KIT days and also another day or days of work for you, or they have used up all their KIT days, you must stop SAP for each week in which such work is done.

## 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 form SAP1, *Why I cannot pay you SAP*. 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 form SPP1, *Why I cannot pay you SPP*. Take a copy of the declaration on form SC4, *Becoming an adoptive parent*, 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 form SAP1, *Why I cannot pay you SAP*. 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 form SPP1, *Why I cannot pay you SPP*. Take a copy of the declaration on form SC4, *Becoming an adoptive parent*, and give the original back to them.

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

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 HM Revenue & Customs 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 Helpbook, E14, *What to do if your employee is sick*.

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 form SAP1, *Why I cannot pay you SAP*. 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 form SPP1, *Why I cannot pay you SPP*. Take a copy of the declaration on form SC4, *Becoming an adoptive parent*, 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 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.

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

### 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.

### Child ceases to live with adopter

#### SAP

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

#### SPP

If the child ceases to live with the adopter during the SPP pay period, payment should continue as normal.

### You become insolvent during the pay period

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

You should tell your employees to contact their local HM Revenue & Customs 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.

### 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 is still entitled to non-cash benefits, like a company car or mobile phone while they are on adoption or paternity leave, but not while they are on additional adoption leave. For more information please contact Acas or, in Northern Ireland the LRA 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 11.

If they can only get one lot of 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 this exceeds the maximum 10 KIT days allowed.

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 Helpbook E13, *Day-to-day payroll*, 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.

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

### 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 22 of the Employer Helpbook, 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.

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
- 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 employee 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.

## 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 - keep to what has been arranged.

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

### 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 CWG2(2007), *Employers Further Guide to PAYE and NICs*.

### 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.

You can start paying your employee up to 14 days before the date the child is expected to be placed with them, and no later than the date the child is placed, or the day after if they are at work that day.

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.

### More than one child is placed with the adopter under separate arrangements

More than one child may be placed with the adopter under different arrangements within the 39 weeks of entitlement to SAP for the first child. This can happen where two or more siblings are adopted from the same family.

The employee will only be entitled to a further period of SAP and adoption leave where each child has been placed under separate adoption arrangements.

Entitlement of up to a further 39 weeks of SAP and adoption leave will commence from the date the second child is placed with the adopter.

Where the periods of SAP and adoption leave overlap, payment of the first period of SAP will continue regardless of the commencement of the second period of payment. This means that where the two periods of SAP overlap, two payments of SAP may be payable for the same week.

However, for the purposes of adoption leave, the first period of leave will cease from the date the second period of leave commences.

There is no entitlement to two separate periods of SAP and adoption leave if more than one child is adopted under the same arrangement.

### 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.

### Penalties

Employers failing or refusing to operate the SAP/SPP schemes correctly can incur civil penalties, similar to those in place for unpaid PAYE and NICs.

For failure to produce records, documents or to provide information, the maximum penalty is £300.00 with a £60.00 daily penalty for continuance of the failure.

For refusal, failure or repeated failures to

- keep records
- make payments of SAP/SPP to an employee who has entitlement the maximum penalty is £300.00.

For fraud or negligence in respect of incorrect statements, declarations, records, documents and payment of

- SAP, the maximum penalty is £3,000.00
- SPP, the maximum penalty is £300.00.

## A list of EEA countries

### The European Economic Area (EEA)

Countries within the EEA are

- Austria
- Belgium
- Bulgaria
- Cyprus
- Czech Republic
- Denmark, excluding Faroe Islands
- Estonia
- 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
- Hungary
- Iceland
- Ireland, Republic of
- Italy, including Elba, Sicily, Trieste and Sardinia
- Latvia
- Liechtenstein
- Lithuania
- Luxembourg
- Malta
- Netherlands
- Norway
- Poland
- Portugal, including the Azores and Madeira
- Romania
- Slovakia
- Slovenia
- Spain, including the Balearic Islands - Majorca, Minorca, Ibiza and Formentera, 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).



