

NORTHERN IRELAND COLLEGE EMPLOYERS' FORUM

CIRCULAR NO: CEF 2011/09

September 2011

To: Joint Secretaries, Lecturers' Negotiating Committee
Directors/Principals and Chairpersons of Governing Bodies of Colleges of
Further Education
HR Managers of Colleges of Further Education
Department for Employment and Learning
UCU
NASUWT

FURTHER EDUCATION LECTURERS' NEGOTIATING COMMITTEE

Paternity Leave Scheme for Employees in Colleges of Further Education

In accordance with the provisions of Article 11, Schedule 3, paragraph 10.3 of the Further Education (Northern Ireland) Order 1997, the Constitution for Negotiating the Terms, Conditions of Service and Remuneration of Lecturers' Employed in Colleges of Further Education, it has been determined that the Paternity Leave Scheme for Employees in Colleges of Further Education has been agreed at the Lecturers' Negotiating Committee on 24 August 2011 and will be effective immediately.



Bertie Faulkner
Chairman
College Employers' Forum

**PATERNITY LEAVE SCHEME
FOR EMPLOYEES IN INSTITUTIONS
OF FURTHER EDUCATION**

August 2011

1. Paternity Leave Scheme

- 1.1 This scheme applies to staff whose Conditions of Service are negotiated through the Lecturers' Negotiating Committee.

2. Further Advice

- 2.1 Further information on paternity rights is available from the Employment Rights page of the Department for Employment and Learning's (DEL) website www.delni.gov.uk

3. Enquiries

- 3.1 Any enquiries regarding this Scheme should be made to the College's Human Resources/Personnel Department.

PATERNITY LEAVE SCHEME FOR EMPLOYEES IN INSTITUTIONS OF FURTHER EDUCATION

4. Introduction

- 4.1 Following the birth of a child or the placement of a child for adoption, employees who are eligible under section 5 have the right to take either one or two weeks paid Ordinary Paternity Leave (OPL) to care for the child or support the mother or, in the case of adoption, the adopter or other adopter.
- 4.2 From 3 April 2011 employees who are eligible under section 9 also have the right to take Additional Paternity Leave (APL); a minimum of two weeks and a maximum of twenty six weeks may be taken.

5. Eligibility for Ordinary Paternity Leave (OPL)

- 5.1 Employees must satisfy certain conditions in order to qualify for OPL. They must:
- have or expect to have responsibility for the child's upbringing;
 - have completed 26 weeks continuous service as an employee of the College by the end of the fifteenth week before the expected week of childbirth (EWC) or child's placement (or official notification in the case of an overseas adoption);
 - be taking the time off to support the mother or adopter and/or care for the child;
 - be working for the College from the qualifying week up to the date of birth, child's placement or up to the point the child enters the UK in the case of an overseas adoption;
 - have notified the College of their intention to take OPL.
- 5.2 For births, employees must also be the biological father of the baby and/or the mother's husband or partner¹ (including same-sex partner or civil partner).
- 5.3 For adoptions, employees must not be taking statutory adoption leave and pay.
- 5.4 The College may ask employees to provide written evidence that they meet the eligibility conditions.

¹ A partner is someone who lives with the mother of the baby in an enduring family relationship but is not an immediate relative.

6. Length of Ordinary Paternity Leave (OPL)

- 6.1 Eligible employees may take their OPL in blocks of either one week or two consecutive weeks, but not odd days.
- 6.2 Under the existing arrangements employees may apply for up to five days of OPL as fully paid paternity leave (discretionary leave).
- 6.3 It is not possible to avail of the statutory and discretionary leave and pay provisions separately.
- 6.4 Subject to paragraph 5.1, employees can choose to start their leave:
- from the actual date of the child's birth or from the date of the child's placement, if adopted (whether this is earlier or later than expected); or
 - from a chosen number of days or weeks after the date of the child's birth or date of the child's placement (whether this is earlier or later than expected); or
 - from a chosen date after the child's actual date of birth or date of the child's placement.
- 6.5 OPL can start on any day of the week on, or following, the child's birth or placement but must be completed:
- within 56 days of the actual date of birth of the child or date of placement; or
 - if the child is born early, within the period from the actual date of birth up to 56 days after the expected week of confinement
- 6.6 Only one period of OPL is available to employees irrespective of whether more than one child is born as a result of the same pregnancy or more than one child is placed with the adopter.

7. Ordinary Statutory Paternity Pay (OSPP)

- 7.1 During their OPL, employees may be entitled to Ordinary Statutory Paternity Pay (OSPP). Appendix 1 details the eligibility criteria to qualify for OSPP.
- 7.2 OSPP is paid for either one or two consecutive whole weeks as the employee has chosen. As such, an employee who applies for and is granted five working days' leave (discretionary leave), for example, Monday to Friday, may choose to be paid their five days fully paid paternity leave and would not be eligible for OSPP. The rate of OSPP is the lower of £128.73 per week (current rate from 3 April 2011) or 90 per cent of average weekly earnings.
- 7.3 Where the College grants up to five days' discretionary leave with full salary this will be offset against any payments made by way of OSPP

7.4 An employee may not elect to receive OSPP if he has elected to receive statutory adoption pay.

8. Notice of Intention to take OPL

8.1 Employees are required to inform the College of their intention to take OPL by the fifteenth week before the baby is expected or for UK adoptions within seven days of the adopter being notified by their adoption agency that they have been matched with a child, unless this is not reasonably practicable. They must complete and submit the appropriate leave application form to the HR Department, advising on:

- the week the baby is due or when the child is expected to be placed;
- whether they wish to take one or two weeks² leave; and
- when they want their leave to start

8.2 Employees adopting a child from overseas must give notice in three stages that they intend to take OPL, as detailed in Appendix 3.

8.3 Employees may change their mind about the date on which they want their leave to start, providing they give at least 28 days' notice, unless this is not reasonably practicable, to their HR Department.

8.4 Requests for up to five days discretionary leave should be made to the HR Department in the normal manner.

9. Eligibility for Additional Paternity Leave (APL)

9.1 Employees may also take APL for births or adoption placements from 3 April 2011. Employees can start their additional paternity leave any time between 20 and 52 weeks after the child is born or the child's placement (or arrival into Northern Ireland for overseas adoptions).

9.2 A minimum of two continuous weeks and a maximum of 26 continuous weeks' leave can be taken.

9.3 For an employee to qualify for additional paternity leave they must be taking the time off to care for the child and meet the relevant criteria set out in Appendix 2.

9.4 The child's mother or co-adopter must also:

- be entitled to statutory maternity leave, statutory maternity pay or maternity allowance or adoption leave or pay;

² A whole week is deemed to be 7 calendar days running from Sunday to Saturday

- return to work at least two weeks after the child's birth, but with at least two weeks of unexpired statutory maternity leave entitlement remaining or at least two weeks after the child's placement for adoption.

9.5 The employee will be treated as having the necessary length of service if both:

- the baby is born earlier than the qualifying week; and
- if the birth hadn't occurred early, the employee would have been employed continuously for the 26 weeks ending with the qualifying week.

9.6 An employee can only have one period of additional paternity leave regardless of the number of children resulting from a single pregnancy or the number of children matched with the employee at the same time or adopted from overseas as part of the same arrangement.

10. Additional Statutory Paternity Pay

10.1 Additional statutory paternity pay (ASPP) is payable to eligible workers who meet the eligibility criteria for additional paternity leave and:

- are taking time off to care for their child during their partner's 39 week statutory maternity pay, maternity allowance or statutory adoption pay; and
- their partner has returned to work.

10.2 The rate of ASPP is the same as OSPP (see 7.2)

11. Notice of Intention to take APL

11.1 To qualify for additional paternity leave and pay an employee must give notice to the College, in writing, at least eight weeks before the start of the leave.

11.2 The employee must complete and submit the appropriate leave application form to the HR Department, advising on:

- expected date of the child's birth or the date they were notified of being matched for adoption or received official notification (see Appendix 3);
- actual date of the child's birth, placement for adoption or the actual date the child entered the UK;
- start date for their additional paternity leave and pay (if applicable);
- end date for their additional paternity leave and pay (if applicable).

11.3 The College may request additional information from the employee within 28 days of receiving a written notice to support their claim for APL or ASPP. The College may ask for either:

- the child's birth certificate; or
- the notification from the adoption agency, including the name and address of the agency; the date on which the employee was notified of having been matched for adoption and the date that the agency was expecting the placement to begin; or
- the official notification (see Appendix 3) from the relevant domestic authority and documentation proving that the child entered the UK.

11.4 The College may also request the name and address of the mother's or co-adopter's employer, or their business address if they are self-employed.

11.5 Any of the above information requested by the College must be provided within 28 days of the request in order for the claim for APL to be valid.

11.6 The College will confirm the dates of the employee's APL and ASPP within 28 days of receiving a written notice under section 8.1. If the employee is not eligible for ASPP, the College will advise the employee of that decision and the reasons for it.

11.7 Employees may change their mind about the date on which they want their APL to start or if they no longer wish to take it, providing they give at least six weeks' notice, unless this is not reasonably practicable, to their HR Department. Similarly, if an employee wishes to return early from a period of APL they must give the College six weeks' notice in writing.

11.8 If an employee is no longer eligible for APL - for example because their partner has not returned to work or because they will not be caring for the child - they must tell the College as soon as possible.

12. Contractual Benefits

12.1 Employees are entitled to benefit of their normal terms and conditions of employment, except for terms relating to salary, throughout a period of OPL and a period of APL

13. Return to Work after Paternity Leave

13.1 Employees are entitled to return to the same job following a period of OPL or a period of APL.

14. Relationship to Conditions of Service

14.1 OSPP/ ASPP shall not be payable to an employee in respect of a statutory pay week during any part of which the employee works under a contract of employment. Thus no double payments can be made.

- 14.2 Any contractual remuneration paid by the College shall go towards discharging any liability of that College to pay OSPP/ASPP to the employee in respect of that period and likewise any OSPP/ASPP paid by a College to an employee in respect of any period shall go towards discharging any liability of that College to pay contractual remuneration.
- 14.3 Two or more contracts of employment in respect of which the same person is an employee are to be treated as one.
- 14.4 Continuous service is not broken by College holidays provided that the employee continues to be employed up to the start of a holiday period and resumes work immediately after it.

15. Protection from Detriment and Dismissal

- 15.1 Employees will be protected from suffering detriment or unfair dismissal for reasons related to taking, or seeking to take, paternity leave. Employees who believe they have been treated unfairly may invoke the appropriate College Procedure.

16. Pension Position

- 16.1 Where an employee's contributable salary is reduced due to paternity leave, the employee's contributions are based on the reduced rate of salary paid. Employer contributions during such a period of leave are paid on a rate of pensionable pay as if no reduction has been made.
- 16.2 If an employee chooses not to pay contributions during unpaid leave, that period will not count as reckonable for pension purposes. Any queries regarding contributions during a period of unpaid leave for pension purposes should contact the relevant pension provider as detailed below.
- 16.3 Any enquiries regarding an employee's pension position should be made to Teachers' Pensions Branch (Tel: 028 7131 9000).

ORDINARY STATUTORY PATERNITY PAY (OSPP) ELIGIBILITY

APPENDIX 1

	<u>Births</u> If an employee's partner is having a baby, the employee will qualify for OSPP if they have:	<u>UK Adoption</u> A person qualifies for OSPP when adopting a child from within the UK if they have:	<u>Overseas Adoptions</u> A person qualifies for OSPP when adopting a child from overseas if they have:
CONTINUOUS SERVICE	At least 26 weeks' continuous service with the employer by the end of the 15th week before the expected week of childbirth	At least 26 weeks' continuous service with the employer by the matching week – (this is the week in which the adopter is notified of having been matched with the child) and continued to work for the employer from the matching week to the date of the child's placement	At least 26 weeks' continuous service with the employer by the later of either the week that official notification is received or the time they want payment of OSPP to begin and they continue to work for you up until the point the child enters the UK
AVERAGE WEEKLY EARNINGS	Average weekly earnings (AWE) at or above the lower earnings limit (LEL) for National Insurance contributions	Average weekly earnings (AWE) at or above the lower earnings limit (LEL) for NICs that applies at the end of the matching week	Average weekly earnings (AWE) at or above the lower earnings limit (LEL) for NICs that applies at the later of either the end of the week in which official notification is received or the end of the week in which they complete 26 weeks' service
ELIGIBILITY FOR OSPP	Declared their eligibility for OSPP by giving you a completed form [SC3] at least 28 days before they want their OSPP to start (or as soon as reasonably practical)	Declared their eligibility for OSPP by giving you a completed form [SC4] at least 28 days before they want their OSPP to start (or as soon as is reasonably practicable)	Declared their eligibility for OSPP by giving you a completed form [SC5] at least 28 days before they want their OSPP to start (or as soon as is reasonably practicable)
OFFICIAL NOTIFICATION			Advised the employer that official notification relating to the adoption has been received

ADDITIONAL PATERNITY LEAVE - ELIGIBILITY CRITERIA

APPENDIX 2

	<u>Birth</u> An employee qualifies for additional paternity leave if:	<u>UK Adoption</u> An employee qualifies for additional paternity leave when adopting a child if:	<u>Overseas Adoption</u> An employee qualifies for additional paternity leave when adopting a child if:
RELATIONSHIP	They are the father of the baby and/or the husband or partner ³ including same-sex partner or civil partner)	They are married to or are the partner ³ , or civil partner, of the person who has chosen to take adoption leave	they are married to or are the partner ³ , or civil partner, of the person who has chosen to take adoption leave
QUALIFYING WEEK	They are employed by you on the qualifying week - the 15th week before the expected week of childbirth	If they are employed by you the qualifying week the week they are matched for adoption	If they are employed by you on the qualifying week the later of either the week official notification was received, or the week the employee had been employed by you for 26 weeks
SERVICE REQUIREMENTS	Have at least 26 weeks' continuous employment with you ending with the qualifying week and they continue to work for you from the qualifying week into the week before they wish to take additional paternity leave	They have been continuously employed by you for at least 26 weeks ending with their qualifying week and they continue to work for you from the qualifying week into the week before they wish to take additional paternity leave	They have been continuously employed by you for at least 26 weeks ending with their qualifying week and they continue to work for you from the qualifying week into the week before they wish to take additional paternity leave
RESPONSIBILITY FOR UPBRINGING	Intend to care for the child during the ASPP and /or APL period, and have, or expect to have, the main responsibility for the baby's upbringing, apart from any responsibility of the mother	Intend to care for the child during the ASPP and/or APL period	Intend to care for the child during the ASPP and /or APL period, and have, or expect to have, main responsibility for the child's upbringing (apart from the co-adopter)

³ A partner is someone who lives with the mother of the baby in an enduring family relationship but is not an immediate relative

1 Official notification for overseas adoptions

Official notification is written notification issued by or on behalf of the relevant domestic authority (usually the Department of Health, Social Services and Public Safety) that the authority either:

- is prepared to issue a certificate to the overseas authority dealing with the adoption of the child;
- has issued a certificate and sent it to that authority.

In either case, the notification certificate confirms that the other or main adopter:

- is eligible to adopt;
- has been approved as being a suitable adoptive parent.

2 Notification of OPL - overseas adoptionsStage 1

The employee must inform the employer of:

- The date on which the other or main adopter received official notification.
- The date the child is expected to enter the UK.

Where the employee already has the necessary 26 weeks' qualifying service when the adopter receives official notification, they must advise the employer of this information within 28 days of the adopter receiving official notification. At this point, the employee should know roughly when the child will enter the UK.

Where the employee receives official notification before they have the necessary qualifying service, they must give the employer notice within 28 days of completing the 26 weeks' qualifying service. Again, at this point, the employee should know roughly when the child will enter the UK.

Stage 2

The employee must give at least 28 days' notice of the actual date they want their OPL (and OSPP if they qualify) to start. They can give this notice at the first notification stage if they know the date. OPL cannot start before the child has entered the UK.

Stage 3

After the child has entered the UK, the employee must tell you the date the child entered the UK. They must tell you this within 28 days of the child's date of entry.

If they are also claiming OSPP, they will need to give evidence of the date of entry. Employees must tell you as soon as is reasonably practicable if they find out that the child will not be entering the UK.