

Adoptive Leave and Surrogacy Leave Policy



Policy owner: UCD HR

Approval date and body: 21 September 2021

1. Purpose

University College Dublin is committed to providing an inclusive and diverse environment in which all members of our community are valued and supported, both in the workplace and in their family life. As part of our University's commitment to equality, diversity and inclusion, the University has a comprehensive suite of family-friendly initiatives and policies available to its employees. The UCD Adoptive Leave and Surrogacy Leave policy is one such policy that reflects the high value the University places on our employees. The purpose of this policy is to ensure that UCD employees are supported before, during and after their adoptive/surrogacy leave.

The area of surrogacy is currently unregulated in Ireland. Therefore, in cases of surrogacy there is no statutory entitlement to leave and there is no social welfare entitlement. In line with UCD's equal opportunities approach, a nominated parent who is availing of a surrogate to have children, may avail of leave similar to adoptive leave i.e. Surrogacy Leave. The intending parents can choose who should take the surrogacy leave (i.e. who will be the nominated parent for the purpose of the leave). For the avoidance of doubt, where both commissioning parents are employed by UCD, only one parent will be eligible to avail of surrogacy leave.

This policy does not cover employees who are surrogate mothers, bearing a child on behalf of another person.

Definitions

Some of the following definitions are based on legislation whilst others are based on good practice in the area.

Adoptive Parent

An adoptive parent, as per the Adoptive Leave Acts 1995 – 2005, shall be understood to include:

- a. a person in whose care a child (of whom they are not the natural mother) has been placed or is to be placed with a view to the making of an adoption order, or to the effecting of a foreign adoption or following any such adoption;
- b. a man in whose sole care a child has been placed or is to be placed with a view to making an adoption order, or to the effecting of a foreign adoption or following any such adoption; or
- c. the nominated parent of a qualifying couple as set out in the Adoption (Amendment) Act, 2017

Nominated Parent

The intending parents can choose who should take the adoptive leave or surrogacy leave (i.e. who will be the nominated parent for the purpose of the leave)

Surrogacy – Relevant Definitions¹

- **Surrogacy Arrangement**

A surrogacy arrangement is where a woman agrees to carry and gives birth to a child on behalf of other intending parents, and to relinquish care of the child and all rights of parentage and parental responsibility, to the intending parents.

- **Intending/Commissioning Parents**

Intending parent(s) are parties who commission the use of donor gametes/embryo(s) and/or surrogates with the intention of conceiving a child that they will care for from birth. One or both intending parents will be named on the birth cert and one will apply for guardianship on the birth of the child.

- **Guardianship**

Guardianship is a bundle of legal rights and responsibilities in respect of a child, including the prima facie right to custody of the child as against anyone who is not a guardian; the right to determine where the child will reside; the right to decide on the child's religious upbringing; and the right to consent to medical treatment. The rules governing guardianship in Irish law are set out in the Guardianship of Infants Act 1964 (as amended).

Adoptive Leave/Surrogacy Leave

Adoptive Leave:

Under the consolidated Adoptive Leave Acts 1995 – 2005, an adoptive parent is entitled to twenty-four weeks leave from the date of the placement of the child regardless of the length of service. This leave period is known as adoptive leave. The adopting couple can choose who should take the adoptive leave – that is who will be the nominated parent. An adopting couple means a married couple, a couple who are civil partners or a cohabiting couple adopting a child.

Adoptive Leave will commence as soon as the child is placed with the Adopter for adoption. An employee who intends to take adoptive leave must give adequate notice in writing to their Head of School/Unit. The minimum advance notice of such intention is four weeks before the expected placement of the child. The expected day of placement may be provided later where this is not possible. However, written notification must be provided no later than the proposed date of commencement of the leave.

Surrogacy Leave:

In a surrogacy arrangement, a period of surrogacy leave of 24 weeks will be applicable to the nominated parent of intending/commissioning parents upon the birth of the child. Surrogacy leave will commence from the date of birth of the child. An employee who intends to take surrogacy leave must give adequate notice in writing to their Head of School/Unit. The minimum advance notice of such intention is four weeks before the due date of birth of the child.

¹ A Review of Children's Rights and Best Interests in the Context of Donor Assisted Human Reproduction and Surrogacy in Irish Law - Professor Conor O'Mahony, Special Rapporteur on Child Protection (December 2020)

Additional Unpaid Adoptive Leave/Surrogacy Leave

Adoptive parents or nominated parents in a surrogacy arrangement are entitled to sixteen weeks additional unpaid leave immediately after their adoptive/surrogacy leave ends. This period is known as additional unpaid adoptive leave/surrogacy leave.

Adoptive Benefit

Adoptive Benefit is a payment made to parents by the Department of Employment Affairs and Social Protection, who are on adoptive leave from work and meet the contribution requirements of social insurance (PRSI) records. Eligible employees are obliged to claim this benefit for the duration of their adoptive leave. This benefit does not apply to surrogacy.

Normal Salary

Normal salary shall be understood to mean the amount an employee receives each month/week, excluding any overtime, allowances or premiums, immediately before they begin their adoptive leave/surrogacy leave. Allowances, premiums or any other payment that is in excess of the employee's normal salary, as per their contract of employment, shall not be paid during a period of adoptive leave/surrogacy leave or taken into account when assessing the employee's salary. It is the policy of the University to maintain an eligible employee's salary subject to certain deductions², for the duration of adoptive leave/surrogacy leave.

2. Scope

This Adoptive Leave and Surrogacy Leave policy applies to all UCD employees who are in receipt of a salary under a permanent contract, a contract of indefinite duration (CID), or a fixed-term contract as defined in the Protection of Employees (Fixed Term Work) Act 2003 and who are entitled to benefit under the consolidated Adoption Acts (in the case of adoptive leave). Employees employed under a fixed-term or a specified purpose contract of employment, are entitled to adoptive leave/surrogacy leave for the period of the fixed term or specific purpose only, as set out in their contract of employment. Any entitlement to leave and payment for same shall last only as long as the term of their contract of employment.

3. Principles

UCD fosters a culture that embraces equality, diversity and inclusion for all individuals in our community as demonstrated in the Equality, Diversity and Inclusion Policy. As such, the principle of equality shall be applied in the interpretation of this policy.

An employee's absence from work while on adoptive leave will count for all employment rights associated with their employment such as annual leave, pension and seniority. As Surrogacy Leave is not a statutory entitlement, some statutory entitlements will not be applicable during this leave such as the accruing of annual leave and public holidays. A period of surrogacy leave is non-pensionable.

² Adoptive Benefit shall be deducted from the employee's salary at source

It is the policy of the University to maintain eligible employee's salaries, subject to certain deductions³, for the duration of the adoptive leave/surrogacy leave. Any entitlement to leave and payment for same shall last only as long as the term of the employee's contract of employment.

In the event that an intending/commissioning parent avails of surrogacy leave and subsequently undertakes an adoption process in respect of the child for whom surrogacy leave was already taken, while they may be entitled to avail of statutory adoptive leave, they will not be eligible to receive any voluntary benefits already received under surrogacy leave from UCD (including payments) in respect of any period of adoptive leave.

Breach of this Adoptive Leave and Surrogacy Policy

Adoptive Leave/Surrogacy leave shall only be used for its intended purpose as per this policy. Where the University has reasonable grounds for believing that an employee, who is on any period of adoptive leave/surrogacy leave, is not using the leave(s) for its intended purpose, the leave(s) may be terminated, and an investigation may be carried out. Disciplinary action may be taken against employees found to be contravening this policy and/or other related policies and procedures.

4. Roles and responsibilities

The Manager should

- a) read this policy in conjunction with the online Adoptive Leave and Surrogacy Leave procedure and Support for Employees taking Family Related Leave policy and guidelines to make themselves aware of their obligations and how they can support employees before, during and after family related leave;
- b) ensure a discussion takes place with the employee in preparation for the leave and agree a plan for keeping in touch whilst on leave and support when returning from leave;
- c) sign any necessary documentation as appropriate; and
- d) promote an environment of equality, diversity and inclusion which supports family-friendly initiatives

The Employee should

- a) read this policy in conjunction with the Adoptive Leave and Surrogacy Leave online procedure and Support for Employees taking Family Related Leave policy and guidelines to make themselves aware of their obligations and supports available before, during and after family related leave;
- b) provide reasonable notice to the manager in order for a plan to be put in place to support the provision of cover;
- c) Discuss with line manager a plan for keeping in touch whilst on adoptive/surrogacy leave, if one wishes to do so, and the transition back to the workplace following the period of leave
- d) complete the relevant documentation and provide the necessary documents within the timelines as set out in the Adoptive Leave and Surrogacy Leave Procedure and submit to the relevant parties;
- e) familiarise themselves with their obligation to claim Adoptive Benefit where applicable; and
- f) follow UCD's Adoptive Leave and Surrogacy Leave Policy and procedure

Human Resources should

- a) upon request provide advice to employees regarding their entitlements and applications for adoptive/surrogacy leave(s);

³ Adoptive Benefit shall be deducted from the employee's salary at source.

- b) process all applications for adoptive/surrogacy leave(s) in a timely fashion and in an atmosphere of mutual trust and respect; and
- c) act with discretion and with due regard for the circumstances.

5. Related documents

[Adoptive Leave and Surrogacy Leave Procedures webpage](#)

[Support for Employees taking Family Related Leave Policy and Guidelines](#)

[Equality, Diversity and Inclusion Policy](#)

Visit www.ucd.ie/hr/leave/ for information on more leave types, related procedures or policies.

6. Version history

Version	Date	Description	Author
3.0	December 2012	Policy Revision	UCD HR
4.0	February 2019	Policy updated to reflect the removal of minimum service period to avail of paid adoptive leave	UCD HR
5.0	July 2020	Policy moved to new template	S Raleigh, UCD HR
6.0	May 2021	New HR website link	P Fitzgerald, UCD HR
7.0	June 2021	Inclusion of surrogacy into policy	M Fogarty, UCD HR
8.0	September 2021	Minor revisions to enhance clarity	M Fogarty, UCD HR