

LEGISLATION



Rights For LGBT+ Parents

An advice leaflet for Usdaw members



Rights for LGBT+ Parents

Over the last two decades legal rights for Lesbian, Gay, Bisexual and Transgender (LGBT+) people have changed beyond recognition. LGBT+ parents now enjoy the same rights at work as heterosexual parents.

Despite this, LGBT+ parents are sometimes wrongly refused paternity leave, adoption leave and time off for dependants on the grounds of their sexual orientation or gender identity.

Managers sometimes fail to understand that our LGBT+ members can be parents and that they have exactly the same rights to time off and pay as straight parents in these circumstances.

This leaflet aims to help reps support LGBT+ members by setting out the basic rights LGBT+ parents have at work.

Paternity leave is available to women as well as men.

Maternity Leave

Maternity leave is only available to the birth mother.

If you are an employee you are entitled to 52 weeks' maternity leave from the first day of your job.

If you are having a child through a surrogacy arrangement see page 6 for details.


Maternity Pay

If you have worked for your employer for more than 26 weeks and you earn on average over £123 per week, you may also be entitled to Statutory Maternity Pay. This is paid at 90% of your average earnings for the first six weeks and then at a flat rate of £172.48 for the next 33 weeks. The last 13 weeks are unpaid.

Paternity Leave

Ordinary Paternity Leave

If you are an employee and have worked for the same employer for 26 weeks by the 15th week before the baby is due, you should qualify for two weeks' paternity leave if you are the partner of the mother and you expect to have responsibility for the upbringing of the child.



For more detailed information on maternity and parental rights contact the Equalities Section on 0161 224 2804 for a copy of Usdaw's Maternity and Parental Rights Guide visit: www.usdaw.org.uk/baby to download the ebook.

You don't have to be married to or the civil partner of the mother to qualify. Paternity leave is also available to adopters, foster parents and intended parents in a surrogacy arrangement.

Statutory Paternity Pay

If you have worked for your employer for over 26 weeks and you earn over £123 per week, you may also be entitled to Statutory Paternity Pay. This is paid for up to two weeks at a flat rate of £172.48 per week, although Usdaw has negotiated improvements to the rate of paternity pay in many companies.



Shared Parental Leave

Shared Parental Leave runs alongside existing maternity/paternity pay and leave schemes. It gives qualifying parents/adopters the option to share leave in the year immediately following their baby's birth/placement.

A woman must still take two weeks maternity leave immediately following the birth of her baby. This is known as compulsory maternity leave.

It enables mothers/the primary adoptive parent (who are eligible for statutory maternity/adoption leave and pay) to convert the remaining 50 weeks of adoption/maternity leave and 37 weeks of adoption/maternity pay into shared parental leave and pay which she and her partner (if her partner also qualifies) can take on a more flexible basis in the first year of their child's life.

Only employees can benefit from shared parental leave and there are strict qualifying conditions for entitlement to leave and pay.

For more information see Usdaw's Maternity and Parental Rights Guide.

Adoption

Same-sex parents and single LGBT+ people have the right to be assessed and considered as adopters on the same basis as heterosexual adopters across the UK.

Adoption in England and Wales

There has never been a law preventing LGBT+ people from adopting children. However, the Adoption and Children Act 2002 allows unmarried couples, including same-sex couples, to apply for joint adoption.

Any unmarried couple, including a same-sex couple wishing to adopt, will need to be able to demonstrate that their partnership is an 'enduring and stable family relationship'.

Civil partners and married couples who jointly adopt a child have a legal right for one of them to take adoption leave (and receive statutory adoption pay) and for the other to take up paternity leave and pay.

LGBT+ single people also have a right to adopt.

Adoption leave of 52 weeks is a day one right and is available to:

- Employees who adopt.
- One member of a couple where a couple adopt jointly. The couple can choose which partner takes adoption leave (the primary carer) and which partner takes paternity leave.

You do not have to be married or civilly partnered to qualify for adoption leave.

It is only available to parents of a child who is newly matched and placed for adoption by an approved adoption agency within the UK. It can also cover the small number of cases where a child is adopted from overseas.

Where a couple jointly adopt, the person who does not take adoption leave and pay may qualify for paternity leave and pay (see page 2).

Statutory Adoption Pay

If you have worked for your employer for over 26 weeks and you earn over £123 per week you may be entitled to Statutory Adoption Pay.

This is paid at 90% of your average earnings for the first six weeks and then at a flat rate of £172.48 for the next 33 weeks. The last 13 weeks are unpaid.

Time off for Adoption Appointments

Adoptive parents

Single adopters are entitled to paid time off work to attend up to five adoption appointments.

In the case of joint adoptions (ie couples who have been jointly matched to adopt the child), one of the adopters will be entitled to paid time off to attend up to five adoption appointments.

The other adopter may be entitled to unpaid time off work to attend up to two adoption appointments.

Up to 6.5 hours is allowed for each appointment.

You will need to provide your employer with a matching certificate that you get from your adoption agency as evidence of your entitlement to time off for adoption appointments.

Adoption in Scotland

The Adoption and Children (Scotland) Act 2007 allows same-sex couples to adopt jointly, giving them the same parenting rights as straight couples.

Adoption in Northern Ireland

LGBT+ people can apply to adopt as a single person or if you are married or in a relationship. Same-sex couples and LGBT+ people also have the right to foster children.

Fostering

LGBT+ people can apply to become foster parents. To be approved as a foster parent the applicant has to satisfy a detailed assessment in which the welfare of the child is paramount.

Same-sex couples and single LGBT+ people have the right to be considered as foster parents on the same basis as anyone else.

The right to time off to attend adoption appointments (see page 4) is also available where a local authority notifies foster parents that a child is to be, or is expected to be, placed with them in a 'fostering for adoption'* placement.

The introduction of the Equality Act 2010 protects LGBT+ people from discrimination on the grounds of their sexual orientation and gender identity when accessing goods, facilities and services – including foster care services.

The law now recognises that being LGBT+ doesn't make you a bad parent, just as being straight doesn't necessarily make you a good one.

*A fostering for adoption placement is where a local authority places a child with foster parents who are also approved prospective adopters under Section 22c of the Children Act 1989.

The Equality Act 2010

The Equality Act 2010 protects LGBT+ people from discrimination on the grounds of sexual orientation and gender identity in the provision of goods, facilities and services. This means that adoption agencies cannot refuse a potential adoptive couple on the basis of their sexual orientation.

Faith-based adoption agencies also have to comply with the new law and cannot refuse to assess same-sex couples or lesbian and gay individuals.

If you are yourself an adopted child, or if you have given up a child for adoption, then support organisations are listed at the end of this leaflet.



Surrogacy

If you are having a child through a surrogacy arrangement, as long as you have applied for and expect to obtain (or have obtained) a parental order under the Human Fertilisation and Embryology Act 2008 you may be entitled to:

- Paid adoption leave (see page 4).
- Paid paternity leave (see page 2).
- Shared parental leave (see page 3).

Surrogate (birth) mothers are considered the legal parent and have automatic parental responsibility.

Trans Parents

The law makes it clear that, if a person changes legal gender, they do not lose their legal status as the 'mother' or 'father' of an existing child. That means that a transgender woman remains her child's legal father if she legally becomes a woman and a transgender man remains his child's legal mother if he legally becomes a man.

Time Off for Dependants

From the first day of your job, you can take reasonable (but unpaid) time off work to help family members who depend on you in an emergency, for example, if your child is ill or your childcare arrangements fall through.

A dependant is a spouse, a civil partner, a child, a parent, or a person living in the same household as the employee, other than his/her employee, tenant, lodger or boarder. It covers:

- Same-sex partners who haven't registered their partnership.
- Children, including those who aren't your children but who live in the same house, such as step children, whatever their age.

The law doesn't say how long 'reasonable' is, but this right is there to give you time to make alternative care arrangements rather than stay off work to care yourself (although in certain limited circumstances this may be considered reasonable, for example if you cannot make alternative care arrangements).

Parental Leave

Parents who are employees can take up to 18 weeks' unpaid parental leave (after they have worked for the same employer for at least one year). The leave must be taken before the child reaches the age of 18, or where the child has been adopted, within 18 years of the child being placed for adoption.

To take parental leave you must have, or expect to have, parental responsibility.

A civil partner or spouse automatically has parental responsibility.

Same-sex couples who aren't married or haven't registered their partnership may have to acquire parental responsibility either by entering into a legal agreement or through a court order.

If you have adopted a child, parental responsibility is given from the date of the placement.

Neither grandparents nor other carers are entitled to parental leave unless they have a parental responsibility order, which is difficult to acquire if the child doesn't live with them at least part of the time.

The Law

Civil Partnership Act 2004

The Civil Partnership Act, which came into force in December 2005, marked a big step forward in the acceptance of LGBT+ people as equals in society. It gave same-sex couples who register their relationship as a Civil Partnership rights equivalent to marriage.

The legal rights only apply to same-sex couples who officially register their partnership through the same process as a heterosexual couple marrying at a registry office. This enables the same-sex civilly partnered couple to claim the same tax arrangements that apply to straight married couples, the same access of next of kin rights, and no liability for inheritance tax.

Couples who have registered their partnership can choose to adopt the surname of their partner in the same way as married heterosexual couples. Couples who have registered a civil partnership in England and Wales have been able to convert this to marriage since 10 December 2014. In Scotland it has been possible from 16 December 2014.

Following a judgement by the Supreme Court, the Government agreed to extend civil partnerships to heterosexual couples. The Act was amended in 2019.

Gender Recognition Act 2004

The Gender Recognition Act enables transgender members to acquire legal equality in their acquired gender. It means that anyone who obtains a Gender Recognition Certificate is entitled to have documentation (such as their birth certificate, passport and driving licence) changed to reflect their acquired gender. At the time it was pioneering but it is now in need of significant revision.

In England, Wales and Scotland, equal marriage legislation has ended the requirement for anyone currently married to divorce their current marriage partner before obtaining a full Gender Recognition Certificate where consent is obtained. See the next section, Equal Marriage.

It is important to understand that anyone - including a trade union rep - who acquires information about someone's transgender status commits an offence if they pass that information to a third party (for example an employer) without the individual's consent.



Equal Marriage

The Marriage (Same-Sex Couples) Act 2013, and in Scotland the Marriage and Civil Partnership (Scotland) Act 2014, enable same-sex couples to marry in civil ceremonies.

Same-sex marriage has been legal in Northern Ireland since 13 January 2020 following the enactment of the Northern Ireland (Executive Formation) Act 2019.

The equal marriage provisions allow for:

- Same-sex couples to marry in civil ceremonies, or a 'religious' marriage ceremony where the religious organisation has opted in to solemnising same-sex marriage.
- Civil partners to convert their civil partnerships into marriage.
- Individuals to change their legal gender without having to end their marriage where both parties consent. In the past, in order to obtain a full gender recognition certificate the partner changing gender had to divorce their current marriage partner.

Support Organisations

Adoption UK

Supporting adoptive families before, during and after adoption.

Tel: (England): **0300 666 0006**
Tel: (Northern Ireland): **028 9077 5211**
Tel: (Wales): **02920 230319**
Tel: (Scotland): **0131 202 3670**
web: **www.adoptionuk.org**

Albert Kennedy Trust

Provides accepting, supportive and caring homes for lesbian and gay young people who would otherwise be homeless or in a hostile environment.

Tel: (London): **0207 831 6562**
Tel: (Manchester): **0161 228 3308**
Tel: (Newcastle): **0191 281 0099**
web: **www.akt.org.uk**

Fertility Network UK

A national charity supporting anyone who has experienced fertility problems.

Supportline: **0121 323 5025**
web: **www.fertilitynetworkuk.org**

Human Fertilisation and Embryology Authority

HFEA licenses and monitors clinics that carry out in vitro fertilisation (IVF) and donor insemination.

Enquiries must be submitted by email.

email: **enquiriesteam@hfea.gov.uk**
web: **www.hfea.gov.uk**

NHS

Support and guidance for LGBT+ people starting a family.

web: **www.nhs.uk/pregnancy/having-a-baby-if-you-are-lgbt-plus**

Rainbow Families

LGBT+ parent group (inc. co-parents and parents to be) in Brighton and Hove.

email: **info@rainbowfamilies.org**
web: **www.rainbowfamilies.org**

The Rainbow Project (Northern Ireland)

A health organisation working to improve the physical, mental and emotional health of LGBT+ people in Northern Ireland.

Telephone: **028 9031 9030 /028 7128 3030**
web: **www.rainbow-project.org**

Stonewall

LGBT+ campaigning organisation offering a free information service.

web: **www.stonewall.org.uk**

More information

Usdaw nationwide

Wherever you work, an Usdaw rep or official (Area Organiser) is not far away. For further information or assistance, contact your Usdaw rep or local Usdaw office. Alternatively you can phone our Freephone Helpline **0800 030 80 30** to connect you to your regional office or visit our website www.usdaw.org.uk You can also write to the Union's Head Office. Just write **FREEPOST USDAW** on the envelope and put it in the post.

Join Usdaw

You can join online at www.usdaw.org.uk/join



Scan the QR code to join today.

What happens next

Once we process your application, you will receive a membership card with our Helpline telephone number and a New Member's Pack giving details of all the benefits and professional services available to you.



www.usdaw.org.uk

UsdawUnion

