



Region Legal Service Office Hawaii  
Legal Assistance Department  
850 Willamette Street  
Pearl Harbor, HI 96860

## Preventative Law Series

## Adoption & DoD Reimbursement

### Adoption

Adoption is the process of legally substituting a new parent or parents for a biological parent or parents. It usually eliminates any and all rights a biological parent may have, absolutely and forever, and gives those rights without qualification or exception to the adopting parent(s). Any person, whether a minor or adult, may be adopted. Once finalized, an adoption is nearly irreversible.

There are two methods of adoption: a private adoption and an agency adoption. A private adoption usually involves an adopting parent or parents and a child whose identity is previously known to them. The most common private adoptions are the stepparent adoption, where a stepparent adopts his or her spouse's children by a previous relationship, and the adoption by grandparents of a grandchild neglected or abandoned by the parents.

Be very cautious if you plan to use a “family/conditional” adoption process, for example if you are adopting children of foreign relatives. A servicemember must show physical and legal overseas custody of the child for a minimum of two years to bring the child to the United States under 8 U.S.C. 1101(b)(1)(F). Due to the frequency of PCS moves by military members, they often have great difficulty demonstrating compliance with this requirement. In many unfortunate scenarios, a servicemember adopts a relative or a spouse’s relative, only to find that the servicemember’s custody of the child has not been long enough to permit immigration to the United States.

Agency adoptions vary. They can be accomplished using state welfare offices, foster care programs, church organizations, commercial agencies, and placement services. To adopt through an agency, prospective adopting parents register with an agency, which then evaluates their suitability as parents and the best type of child for them. Once a child that matches the parents is found, the child will live with the adopting parents for a period of time under supervision of the agency to ensure that everything is working out. After this time passes the adoption is finalized. If you are contemplating using a private agency, be sure to check whether they are a “qualified adoption agency” for purposes of the DoD Adoption Reimbursement Program or the Adoption Income Tax Credit.

### Legal Process

Adoption usually requires several steps:

- the parental rights of the natural parents are terminated,
- a hearing is conducted to determine the adopting parents' suitability as parents, and
- a final court decree of adoption is obtained.

Parental rights can be terminated only by a court and only when there is "clear and convincing evidence" that it is in the best interests of the child. Parental rights may be terminated involuntarily if a court is satisfied a parent has abandoned the child, has failed to support the child, has abused the child, or has otherwise neglected parental responsibilities. Parental rights may also be terminated by voluntary consent of the natural parents. A consent signed by the natural parents is not binding until the court approves it and the adoption is finalized.

In addition to determining whether parental rights should be terminated, the court must determine if the adoptive parents are suitable parents for the child. The court may make this determination in open court, but more commonly will ask an appropriate agency to investigate the home environment and return a confidential report to the judge. An agency investigation may be waived under certain circumstances.

After appropriate notice to all who might have an interest in the case, the court conducts a final hearing. Afterwards, the judge will either approve or disapprove the adoption. Once an adoption is approved, a new birth certificate with the adoptee's new name may be issued.

### **DoD Reimbursement for Adoption Expenses**

Pursuant to **DODINST 1341.09** and **OPNAVINST 1754.4**, Servicemembers are eligible for \$2,000 for each child under 18 years of age they adopt up to a maximum of \$5,000 per calendar year. In the case of married Servicemembers, only one member may claim expenses for each adopted child and the couple is limited to the \$5,000 per calendar year maximum. Members are not entitled to reimbursement expenses if they leave active duty before the adoption is final.

In order to apply for the reimbursement Servicemembers must submit a completed **DD Form 2675** to the nearest military personnel and finance office no later than 1 year after finalization of the adoption. Exceptions may be granted if the Servicemember's deployment status prevented timely application.

### **The member must submit the following documentation with the application:**

- ( ) A copy of the adoption certificate or court order granting the adoption. The member must submit a full English translation of any foreign language document, to include the translator's certification that he or she is competent to translate the foreign language to English and that his or her translation is complete and correct.
- ( ) Receipts or canceled checks substantiating authorized expenses. If the receipts are from a foreign entity, they should list the U.S. currency equivalency. Reconstruction of expense records is permissible when the original records are unavailable and the Service member submits a notarized affidavit stating the costs copy of marriage certificate
- ( ) For foreign adoptions, proof of U.S. citizenship of the child.
- ( ) Where a qualified adoption agency arranged the adoption, proof of the agency's involvement, such as a copy of the placement agreement from the adoption agency or a letter from the adoption agency stating what services it provided.