

ADOPTION IN IDAHO



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INTRODUCTION

Military members considering adoption are entitled to some unique benefits under federal law. In order to make a sound decision on whether to adopt, there are two primary legal considerations: Idaho adoption law and the DoD policy on adoption reimbursement.

WHO CAN BE ADOPTED?

Any minor child may be adopted by any adult person residing in and having residence in Idaho. Persons who are not minors may be adopted by a resident adult in cases where the person adopting has sustained the relation of parent to such adopted person, for over a year while the person was a minor; or for any amount of time or in a manner that the court finds a substantial family relationship has been created.

The person adopting must be at least 15 years older than the adoptee or at least 25 years of age. These age requirements do not apply in cases where the adopting parent is married to the natural parent. The age restrictions also do not apply in cases where the person adopting an adult can show that a substantial relationship as a parent has been maintained for a period in excess of one year.

LIMITATIONS ON THE RIGHT TO ADOPT

Consent of Parents, Guardians, and others.

Idaho Code § 16-1504 contains an extensive list of persons whose consent must be obtained before a child can be adopted. These include child's natural parents and any legally appointed guardian or custodian of the adoptee. The consent of a child's biological father may not be necessary if the child was born out of wedlock and the father has not acted as the child's parent – consult an attorney for a determination as to whether consent is required in a particular situation. The adoptee must give consent if he or she is over 12 years of age and special rules apply to the adoption of adults.

FILING A PETITION TO ADOPT

Once the decision to adopt has been made, you should consult an attorney to help you file a petition. The petition to adopt must be initiated by the person or persons proposing to adopt and should be filed in the district court of the county in which they live. In addition, any person whose consent is required must execute their consent in writing. If any adoptive parent, or a person not a minor being adopted by a resident adult, is a member

of the armed services and cannot attend the hearing, his/her appearance and testimony can be received by means of a deposition which must be filed in the court at the time of the hearing.

Note that prior to the placement of any child in the home of prospective adoptive parents, a thorough social investigation of the family and its members is required. The findings must then be submitted to The Idaho Department of Health and Welfare. At the end of the process, the judge may enter an order granting the adoption. In making a determination, the court will inquire into what the best interests of the child are.

LEGAL EFFECT OF ADOPTION

An adopted child or adult may take the name of the person adopting and from then on the two will sustain the legal relation of parent and child, each having all of the rights and duties of that relation. The adopted child will have the same right to inherit as a natural child.

INTERNATIONAL ADOPTIONS

Proceedings to adopt foreign born children who have been allowed to enter the United States for the purpose of adoption shall be commenced by filing a petition in the same manner as other adoptions. However, the petitioner must have resided in and maintained a dwelling within the state of Idaho for at least six consecutive months prior to filing. Parents who have adopted a child in a foreign country can petition to have that adoption recognized by an Idaho court.

DoD ADOPTION REIMBURSEMENT

Any active duty member who adopts a child under 18 years of age and who incurs expenses for the adoption of a child, may be reimbursed up to two thousand dollars per child (with a maximum reimbursement of five thousand dollars in any calendar year) for qualifying expenses.

There are some limitations to the program. In order to qualify, the adoption in question must take place through a state agency, a licensed private adoption service or another source authorized by a state to carry out adoption services and supervised by a court. A member must be serving continuous duty for at least 180 days and the adoption must be finalized while on active duty. No more than one member of a dual military couple may be reimbursed for adoption of any given child and no benefit will be paid until the adoption is completed. For more information and an application, please contact your military personnel flight.

Additionally, money you receive as reimbursement may be excluded from your gross income for federal tax purposes and you may be eligible to take a credit for non-reimbursed expenses.

***This handout is general in nature. It is not a substitute for legal advice from an attorney regarding individual situations. (August 2021)**

For additional information on this and other legal topics, see the Air Force Legal Assistance Website:
<https://aflegalassistance.law.af.mil>