



PARENTAL LEAVE

Workplace Relations Fact Sheet – September 2016

Parental Leave

Employees may be entitled to parental leave when a child is born or adopted. Parental leave entitlements include:

- Unpaid parental leave;
- Adoption leave;
- Special maternity leave;
- A right to transfer to a safe job; and
- A right to return to work.

Parental leave and its related entitlements are part of the National Employment Standards (**NES**) of the *Fair Work Act 2009* (Cth) (**FW Act**). These provisions apply to full-time, part-time and casual employees (who work on regular and systematic basis) and have had at least 12 months of continuous service with their current employer.

Parental Leave Entitlements

Under the FW Act, the parental leave provisions include:

- **The right to take up to 52 weeks of unpaid parental leave** for parents to take on a shared basis to care for their newborn child or newly adopted child. Other than eight (8) weeks at the time of the birth or adoption of the child, both parents cannot be on parental leave at the same time. Each parent must take their unpaid parental leave in a single, unbroken period (apart from keeping in touch days);
- **The right to request an additional 52 weeks of unpaid parental leave** can only be refused by an employer on reasonable business grounds.
- **Pre-adoption leave** of up to 2 days to attend relevant interviews or examinations. This unpaid leave can't be used if the employer requests an employee to take another type of leave.
- **Special maternity leave** of an amount as recommended by a registered medical practitioner for a pregnancy related illness or if a pregnancy ends after 12 weeks because of a miscarriage, termination or stillbirth;
- **The right to transfer to a safe job** if an employee is unable to continue in her present position because of illness or risks arising out of her pregnancy or hazards connected with that position. If it is not reasonably practicable to transfer the employee to a safe job, then the employee is entitled to take:
 - paid leave if they are entitled to unpaid parental leave; or
 - unpaid leave if the employee is not entitled to parental leave.

A woman may start a period of parental leave at any time within the six week period immediately before the expected date of birth. Where she continues to work within that period, she may be required to provide a medical certificate stating whether she is fit to work in her present position.



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If a woman takes parental leave, she is required to take at least six weeks leave after the birth of the child and to take all leave associated with the child's birth in a continuous, unbroken period of leave.

Applying for Parental Leave

To apply for parental leave, an employee is required to give their employer a certain amount of written notice and evidence, if they request it. The employee must:

- give notice to their employer at least 10 weeks (or as soon as possible) before starting their unpaid parental leave. The notice must be in writing and outline how much leave the employee wants to take, including the start and finish dates;
- Confirm their parental leave dates with their employer at least 4 weeks (or as soon as possible) before they are due to start leave;
- Provide evidence of the expected date of birth or placement of an adopted child. An employer can ask for a medical certificate or statutory declaration.

Concurrent leave

Employees taking concurrent leave (both parents taking leave at the same time) need to provide their employer at least 10 weeks' notice for their first period of concurrent leave. For second and subsequent periods, they need to provide at least 4 weeks' notice.

Pre-adoption leave

Employees taking pre-adoption leave have to give their employer notice that they are taking leave and how they expect to be on leave as soon as possible.

When on Parental Leave

If an employee takes parental leave, they are entitled to:

- **Take other leave** (for example, annual leave) for the birth or adoption of the child in combination with parental leave. The 52 weeks of unpaid parental leave is reduced by other related authorised leave taken by the employee and by the amount of any paid or unpaid parental leave taken by the employee's spouse;
- **Extend parental leave** once within the 52 week period, provided 4 weeks' written notice is given to their employer. Any other extension within or after the 52 week period is at their employer's discretion;
- **Vary or shorten parental leave**, but generally only with the employer's agreement, by giving at least four weeks' notice to their employer; and
- **Keeping in touch days** allow an employee who is on unpaid parental leave to go back to work for a few days to assist in their return to work. An employee gets 10 keeping in touch days, and if an employee extends their unpaid parental leave beyond 12 months they get an additional 10 days. This does not affect their unpaid parental leave entitlement. An employee gets paid their normal wage for each keeping in touch day or part day.

Paid Parental Leave Scheme

Leave entitlements under the parental leave provisions of the NES are all unpaid – except for no safe job leave which is paid leave in the case of an eligible employee with more than 12 months' service.

However, additional payments for employees absent on Parental Leave may be available from the Australian Government under the *Paid Parental Leave Act 2010* (Cth).



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Australian Government Paid Parental Leave Scheme

Eligible employees who are the primary carer of a newborn or adopted child get up to 18 weeks' pay at the national minimum wage. These payments are made to the employer, who then pays their employee.

Dad and Partner Pay

Eligible working dads and partners get two weeks' pay at the national minimum wage. These payments are made directly to the employee.

Record keeping

The employer needs to keep records of the following items to meet their responsibilities in the Paid Parental Leave Scheme:

- The amount of parental leave pay received from the Government and the period it covers;
- The date each payment was made to the employee;
- The period each payment covers;
- The gross and net amounts of the payment;
- The amount of income tax withheld (including other payments, if any, were made);
- A statement identifying the payment as a payment under the Australian Government Paid Parental Leave Scheme; and
- The amount of any deductions made from each payment and the bank details of the entity the deduction was given to.

An employee who receives parental leave pay must be given a pay slip for each payment.

Returning to work

An employee has the right to return to the position that they held immediately before the start of parental leave or a position that has the same terms and conditions of employment as the former position.

Flexible working arrangements

Certain employees, such as parents returning to work after parental leave, have the right to request flexible working arrangements. Employees have to request flexible working arrangements in writing, explain what changes they are requested and the reasons for the request. Employers must give a written response within 21 days of receiving the request stating whether the request is refused or granted. They can only refuse a request on reasonable business grounds and must include the reasons for the refusal.

***Note:** This information is provided for convenient reference only on the basis that it is not to be relied upon without reference to the Workplace Relations Advisers of the Canberra Business Chamber, as the circumstances in each matter are different and no one piece of advice will apply to all circumstances. For more information please contact the Workplace Relations Hotline on 1300 277 881 or wradvice@canberrabusiness.com.*