

Advantage Partnership Lawyers

PARENTAL LEAVE

Parental Leave Entitlements

The minimum statutory entitlements to parental leave are contained in the National Employment Standards (NES) in the *Fair Work Act 2009*.

Under the NES, parental leave includes:

- Birth related leave (i.e. unpaid parental leave taken in association with the birth of a child);
- Special maternity leave; and
- Adoption-related leave.

There may be other statutory minimum entitlements to parental leave under enterprise agreements. However, these arrangements will only apply if they are more favourable than the NES.

Unpaid Parental Leave

The NES entitles employees to a minimum period of up to 12 months' unpaid parental, as well as:

- Unpaid special maternity leave;
- Unpaid pre-adoption leave;
- The right for a pregnant employee to transfer to a safe job in appropriate cases, or else to take paid 'no safe job leave';
- A return to work guarantee;
- An entitlement to request an extension of unpaid parental leave for a period of up to 12 months; and
- An obligation for employers to consult with employees during their parental leave about any changes that might affect their pre-parental leave position.

An employee will be entitled unpaid parental leave associated with the birth of a child if:

- The child is a child of the employee or the employee's spouse or de facto partner;
- The employee has (or will have) the responsibility for the care of the child;
- Immediately before the proposed leave is set to begin, the employee has (or will have) completed at least 12 months' continuous service with the employer, or be a long-term casual employee with a reasonable expectation of continuing employment with the employer after the birth of the child.

In order to be eligible for unpaid parental leave, an employee must provide a written notice stating their intention to take the leave and the proposed start and end dates. The notice must be given 10 weeks before the first

day of the intended period of leave. The intended start and end date must be confirmed at least 4 weeks before the intended start date.

When is Unpaid Parental Leave Taken?

An employee must take unpaid parental leave in a single, continuous period.

When the employee is giving birth to the child, her leave must commence:

- a. On the day of the birth; or
- b. In the 6 week period before the expected birth date.

An employer can direct a pregnant employee to start unpaid parental leave early if they are unfit for work. There are certain requirements that must be met before directed leave can be given.

If the employee is the spouse or partner, their leave must commence on the day of the birth.

Varying the Period of Unpaid Parental Leave

An employee can shorten their period of unpaid parental leave if the employer agrees. This agreement should be recorded in writing.

An employee can extend the period of unpaid parental leave to no more than 12 months without the agreement of the employer by giving at least 4 weeks written notice before the end date of the original period of parental leave. The notice must specify the new end date for the leave.

Employees are able to request an additional period of unpaid parental leave of up to 12 months immediately following the initial 12 month parental leave period. The procedure for making such requests is the same as requests for flexible working arrangements.

The period of unpaid parental leave taken by an employee cannot extend beyond 24 months after the date of the child's birth.

If only one parent takes parental leave they are entitled to extend the 12 month period to a maximum of 24 months. However, if a couple both intend on taking parental leave, they must share the total extended amount of parental leave of 24 months between them.

Unpaid Special Maternity Leave

Unpaid special maternity leave is taken by a female employee:

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- Who is not fit for work because she has a pregnancy-related illness; or
- Whose pregnancy has ended unexpectedly within 28 weeks of the expected date of birth.

In order to take such leave, the employee must provide a medical certificate stating how long her period of leave will be or is expected to be.

Any period of special maternity leave taken by the employee while she is pregnant will count as part of her entitlement to 12 months of unpaid parental leave.

Safe Jobs

A safe job is a job that a pregnant employee may perform on a temporary basis because it is no longer safe to continue working in her original role. This may be due to hazards associated with her positions. A pregnant employee is entitled to this transfer if she is entitled to unpaid parental leave and has provided medical evidence that she is fit for work, but not in her current position.

While the employee is in the safe job she must be paid at her full rate of pay for the position she was in before the transfer and with no other change to her terms and conditions of employment for the period. Unless the employee otherwise agrees, she must receive the same ordinary hours of work.

If there are no appropriate safe jobs available, the employee is entitled to take paid no safe job leave at her base rate of pay for her ordinary hours of work. This does not reduce her entitlement to unpaid parental leave.

Return to Work Entitlements

Unpaid parental leave should not disadvantage an employee. After a period of parental leave, an employee is entitled to return to the same job they had before they went on leave.

If an employee's pre-parental leave position no longer exists, the employee is qualified and able to perform another vacant job, then the employee is entitled to return to that vacant job. If there are no vacant roles, then the employee's employment will end for reasons of redundancy.

If someone is engaged to do the work of an employee on parental leave, the replacement employee must be informed upfront that their engagement is temporary.

Paid Parental Leave Scheme

The Federal Government-funded Paid Parental Leave (PPL) scheme is for a maximum period of 18 weeks and is paid at the Federal Minimum Wage rate (which, as at 1 July 2012, is \$606.40 per week).

To be eligible for the scheme, an employee must:

- Be the primary carer of a child born or adopted on or after 1 January 2011;
- Have been engaged in work continuously for at least 10 of the 13 months prior to the expected birth or adoption of the child, with a break of no greater than 8 consecutive weeks between 2 consecutive work days;
- Have undertaken at least 330 hours of paid work in that 10 months period;
- Not have worked between the date of birth or adoption of the child and their nominated start date for PPL;
- Have an income of \$150,000 gross or less in the financial year prior to the date of birth or adoption of the child or the date of their claim, whichever is earlier; and
- Meet Australian residency requirements.

The period of PPL will be taken at the same time as the corresponding proportion of unpaid parental leave.

How is PPL Paid?

The employer of an employee who is eligible for PPL will receive funding from the Federal Government to make the leave payments. PPL payments must then be passed on by the employer to the employee via the usual payroll cycle, including PAYG deductions.

PPL payments do not attract a Superannuation Guarantee Charge liability, although an employee may choose to salary sacrifice PPL payments for non-cash remuneration.

The employer must declare the PPL payments as income. However, the payments can be claimed as a deduction, plus the reasonable costs of complying with the PPL scheme.

PPL is separate and additional to any existing obligations an employer may have in respect of paid parental leave, or paid annual or long service leave in other employment instruments.