

## **Parental leave**

If you have recently found out that you are expecting a child either, by way of pregnancy or adoption or you are a partner of such a person, you should be aware of the pre-conditions/procedure, which you will be required to satisfy when requesting parental leave from your employer.

Parental leave covers maternity leave (for women), paternity leave (for men) and adoption leave.

Under Work Choices, parental leave and its related entitlements will be set in legislation as part of the Australian Fair Pay and Conditions Standard ("the Standard"). The parental leave provisions apply to permanent full-time, part-time and eligible casuals employees who have had at least 12 months of continuous service with their current employer.

Parental leave entitlements in awards will be preserved. Where an employee's entitlement for parental leave under an award is more generous than the Standard, the more generous conditions will apply to those still covered by awards (both current and new employees).

Workplace agreements made after the commencement of Work Choices must, at all times, provide for parental leave entitlements that are equal to or more favourable than entitlements provided for under the Standard.

### **Eligibility Criteria**

To apply for parental leave, an employee is required to have completed at least 12 months of continuous service with their employer by the expected date of birth.

Notwithstanding that, Parental Leave is a guaranteed entitlement under Work Choices, it has become apparent in practice that an increasing number of employees are not aware of the mandatory procedure which must be followed when requesting Parental Leave from their employer.

There are several documents and notices an employee must give to their employer no later than the times specified to be entitled to take maternity leave. Depending on whether the employment is covered by SA or federal law, there is some variation between the documents the employee is required to provide to their employer.

At least 10 weeks before your child is due, or 10 weeks before the date the employee wishes to start maternity leave the employee **MUST**:

- give notice in writing of the intention to take maternity leave
- provide a medical certificate stating that in the employee's doctor's opinion the employee is pregnant and the expected date of birth

Four (4) weeks before the date the employee plans to start maternity leave they **MUST**:

- give notice in writing stating when they wish to start and finish their maternity leave, and
- provide a statutory declaration stating:
  - the dates they will start and finish their maternity leave
  - the dates they will start and finish any leave which they intend to use during your maternity leave (such as annual, sick, personal/carer's, long service or paid maternity leave).
  - the start and finish dates of any paternity leave their spouse (including de facto spouse) has sought

- that during the time they are on maternity leave they intend to be the child's primary care giver
- that they will not engage in any activity while on maternity leave which is inconsistent with their employment contract.

### Parental leave entitlements

Under Work Choices, the parental leave provisions include:

- **up to 52 weeks of unpaid parental leave** (including maternity, paternity and adoption leave) for parents to take on a shared basis to care for their newborn child or newly adopted child under the age of five years. Other than one week at the time of the birth (or three weeks in the case of adoption), both parents cannot be on parental leave at the same time (however it may be possible for one person to request annual leave at the relevant time so as to not breach this provision);
- **special maternity leave** of an amount as recommended by a registered medical practitioner for a pregnancy related illness or in the event that the pregnancy ends other than by a live birth;
- **a period of short paternity leave** for male employees of one week taken within the week his spouse gives birth;
- **the right to transfer to a safe job** if, in the opinion of a registered medical practitioner, a female 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 (or may be directed by the employer to take paid leave) until the earliest of the end of the period stated in the medical certificate or the date of birth. Such paid leave does not reduce the total period of parental leave;
- in the case of adoption, **up to two days of unpaid pre-adoption leave** to attend any interviews or examinations required to obtain approval for the adoption unless the employee can take other authorised leave for such purposes.

If parental leave is granted and taken, the employee is entitled to:

- return to the position the employee held immediately before the start of parental leave or a position that has the same terms and conditions of employment as the former position;
- 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 14 days' written notice is given to their employer. Any other extension within or after the 52 week period is at their employer's discretion; and
- vary or shorten parental leave, but generally only with the employer's agreement, by giving at least four weeks notice to their employer.

A woman may start a period of maternity 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.

If a woman takes maternity 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.

### **Casual Employees**

Under Work Choices, the entitlement to parental leave will be extended to eligible casual employees. An eligible casual employee is defined as a casual employee who has worked on a regular and systematic basis for at least 12 months (or a sequence of periods totalling at least 12 months) with the same employer and has a reasonable expectation of continuing employment by the employer (other than the period of parental leave).

This fact sheet should not be read as a substitute for legal advice as each situation varies, for more information please contact:

Victoria Mezhvinsky of Johnson Lawyers on (08) 8360 8360.