



### INFORMATION SHEET

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#### What is parental leave?

Parental leave is paid or unpaid leave granted to eligible employees for the purposes of pregnancy, giving birth or being responsible for the care of a newly born or adopted child. Depending on factors such as where the employee works and what industrial instrument they are employed under, parental leave can include 'maternity leave' (specifically for women and designed to accommodate pregnancy, birth and recovery), 'paternity leave' and 'parental leave' (a period of time either parent can use for providing care to a newly born or adopted child).

#### Parental leave entitlements (unpaid)

Queensland employees derive their entitlement to parental leave either through relevant legislation (the Industrial Relations Act 1999 (Qld) for state and local government employees, the Fair Work Act 2009 (Cth) or an industrial instrument (an award or enterprise agreement). Many workers are covered by either a state or federal award that may include special provisions regarding parental leave.

For state system employees (state or local government employees only), where an employee's award refers to the *Family Leave Award*, the provisions of that award will apply.

Under the *Fair Work Act*, the National Employment Standards (NES) (for national system employees), leave is available to parents and spouses at the birth or adoption of a new child, covering a total of 52 weeks unpaid leave.

#### Who is eligible?

Under the NES, parental leave is leave taken on the birth of a child or the adoption of a child under 16 (the child may be your child or your partner's child). Note that partner includes a spouse, a former spouse, a de facto partner, a former de facto partner and a same sex de facto partner. The leave is only available if you will have a responsibility for the care of the child. The terms paternity and maternity leave are no longer used in federal legislation.

To be eligible to take parental leave, you must have worked continuously for the same employer for 12 months immediately before the child's due date or adoption placement date. The 12 months can also be counted from the date on which the employee's period of leave is to start where:

- an employee is taking leave that is to start within 12 months after the birth or placement, or
- for a member of an employee couple who takes leave immediately after the end of the their partner's (the other carer) period of leave.

This includes casuals who have worked regular and systematic hours and, if not for the child's birth or placement, would have had a reasonable expectation of continuing employment.

If you have not been employed by your current employer for at least 12 months at the time you will commence parental leave, then you are not eligible for parental leave under the minimum standard in the

*Fair Work Act*. However, your award, agreement or employment contract may provide an entitlement in these circumstances.

### **How to apply for parental leave under the national system (NES)**

For all parental leave under the NES the evidence requirements are the same. The employee must:

- provide the employer with at least 10 weeks notice of their intention to take unpaid leave
- Include the intended start and end dates of the leave
- at least 4 weeks before the intended start date, confirm the start and end dates and advise the employer of any changes.

An employer may request evidence that would satisfy a reasonable person relating to the leave request. This could include, but is not limited to, a medical certificate stating the expected date of birth of the child or the expected day of placement of the child.

It is a good idea to request written confirmation from an employer regarding leave arrangements.

A pregnant employee is entitled to start leave up to six weeks before the expected date of birth. A pregnant employee can also be legally required to take unpaid parental leave within 6 weeks of the birth if she cannot provide a medical certificate (upon request) demonstrating she is fit to continue work until the expected date of birth of her child.

Under the NES, if both parents are employed the total 'concurrent' parental leave that can be taken at the same time is 3 weeks. This may be taken either immediately after the birth or placement of a child, or by agreement with the employer at any time during an extended period starting before the birth and ending no later than 6 weeks after the birth or placement. This 3 weeks counts towards the total 12 months leave for each employee.

For more details visit: <http://www.fairwork.gov.au/leave/parental-leave/pages/how-does-an-employee-apply-for-parental-leave.aspx>.

### **Changing the duration of parental leave**

Note: an employee may request to extend the duration of leave past 52 weeks but to no more than 104 weeks. An extension request must be made in writing at least 4 weeks before the original return date. The employer has the right to refuse this extension on reasonable business grounds, but must reply in writing stating their reasons.

If an employee wishes to shorten the leave period, the employer should be notified of this request and can be by agreement with the employer.

### **Request for flexible working arrangements**

Employees in the national system who are parents of, or have responsibility for the care of, a child under school age (or under 18 if the child has a disability) are entitled to request flexible working arrangements if they were continuously employed for more than 12 months (this includes casual employees). This request must be in writing and must set out the details of the change to working arrangements being sought. It is a good idea to provide details and examples of how the request might work in practice. The employer is only able to refuse the request by giving written 'reasonable business grounds' within 21 days of receiving a flexible working arrangements request.

For more information visit <http://www.fairwork.gov.au/BestPracticeGuides/01a-The-right-to-request.pdf> and also: <http://www.fairwork.gov.au/factsheets/FWO-Fact-sheet-Requests-for-flexible-working-arrangements-NES.pdf>.

## **During pregnancy**

Employees who are sick for reasons related to their pregnancy are entitled to take normal sick leave if a medical certificate is provided. Employees who are entitled to parental leave under their award, agreement or legislation may also be able to access 'special parental or maternity leave'. Special parental leave is unpaid leave that may be taken for pregnancy-related illnesses without affecting job security.

## **Discrimination and the return to work guarantee**

*The Fair Work Act* provisions prevent an employer from taking adverse action (dismissal, injuring employment, altering an employee's position or discriminating against them) against them because they are pregnant. There are also protections in the Federal *Sex Discrimination Act (1984)*, and the Qld *Anti-Discrimination Act (1991)* that prohibit employers from discriminating against an employee due to their sex or pregnancy. Examples of discrimination may include not being offered training or promotion or not being allowed to take leave for pregnancy-related illnesses. Additionally, employers have a responsibility to try and accommodate the needs of pregnant employees by making adjustments to work where they are reasonable.

Employees also have the right to return to their original position after parental leave is completed. During pregnancy and parental leave, employees maintain their rights to receive training, to apply for a promotion and to be informed about changes to the workplace, including potential restructure or redundancy.

For more information visit: <http://www.fairwork.gov.au/leave/parental-leave/pages/returning-to-work.aspx>.

## **Paid parental leave**

The Paid Parental Leave Scheme provides eligible employees with parental leave pay but does not provide an actual entitlement to leave. The scheme does not change any existing employer-provided leave entitlements.

Paid parental leave is available to parents of babies born (or adopted) from 1 January 2011, with applications able to be lodged up to 3 months before the expected due date. The scheme provides 18 weeks of paid parental leave at the minimum wage, which is currently \$606\* a week before tax (\*as at June 2012). Parents are required to choose between the Paid Parental Leave Scheme and the Baby Bonus (which is approximately \$5000 for the first child and \$3000 for subsequent children and not taxable).

This entitlement is provided for by the *Paid Parental Leave Act 2010*. The statutory paid leave scheme does not replace existing arrangements for employer-funded parental leave, such as those contained in some enterprise agreements.

There are four main eligibility criteria for the Paid Parental Leave Scheme:

**Primary carer** – The applicant must be the primary carer, the person who meets the child's physical needs more than anyone else during the leave period.

**Work test** – The applicant must have worked at least 330 hours in 10 out of the 13 months prior to the estimated due date. This equates to approximately a day a week. A minimum of one hour must be worked on each occasion work is performed. This can be work carried out as an employee or as an independent contractor. ‘Work’ also includes periods of paid leave. There can be a ‘permissible break’ within the 10-month period of up to 56 days where no work is performed.

**Income test** – The applicant must have earned \$150,000 or less than in the financial year prior to the claim date. (This figure changes each year after 30 June.)

**Residency test** –The applicant must be living in Australia, and be an Australian citizen, a New Zealand citizen, a permanent resident or a holder of a specified temporary visa. However, the work does not have to have been performed only in Australia.

The leave can be shared between parents. For example, if the mother cares for the baby for the first three months then returns to work, if her partner then takes over a full-time caring role, the partner can access the remaining weeks of paid leave (providing they are eligible as above).

Employers are required to administer the payments through their payroll system if the employee has worked with them for a minimum of 12 months. Employers can otherwise make the payment to their employee by agreement and through registration with the Department of Human Services. Other applications can be made directly through the Department.

For more details on how to apply visit:

<http://www.humanservices.gov.au/customer/services/centrelink/parental-leave-pay>.

### **Paid leave for partners**

As of 1 January 2013 the federal government will provide payment to partners (including same sex partners) at the national minimum wage (currently \$606.40) for two weeks.

The payment is available to full-time, part-time, casual, seasonal, contract and self-employed workers who have worked at least 330 hours (just over one day a week) in 10 of the 13 months before the birth of their baby and who earned \$150,000 or less in the previous financial year. Visit the above website for more information.

The government scheme is separate from any employer obligations for paid parental leave under an award, agreement or policy.

## **FOR MORE INFORMATION**

**Fair Work Infoline** (For employees with wages, dismissal, employment conditions and discrimination complaints)

Ph: 13 13 94

[www.fairwork.gov.au](http://www.fairwork.gov.au)

**Fair Work Commission** (For advice about dismissal and general protections information and application forms)

Ph: 1300 799 675

[www.fwa.gov.au](http://www.fwa.gov.au)

**Queensland Council of Unions** (for information about joining a union)

Ph: 3846 2468

[www.qcu.asn.au](http://www.qcu.asn.au)

**Anti-Discrimination Commission Queensland**

Ph: 1300 130 670

<http://www.adcq.qld.gov.au>

**Australian Human Rights Commission**

Ph: 1300 656 419

[www.ahrc.gov.au](http://www.ahrc.gov.au)

**Department of Human Services (Family Assistance Office)**

Ph: 1300 786102

<http://www.humanservices.gov.au/customer/contact-us/write-message-us>

*Queensland Working Women's Service is a free and confidential information, advice and advocacy service for vulnerable working women on all work-related matters. QWWS is funded by the Commonwealth Government. This information has been provided as a guide only and is subject to change without notice. Queensland Working Women's Service (QWWS) disclaims all responsibility and all liability to any person for loss, damage, cost, injury, expenses or compensation of any kind arising either indirectly or directly out of or in connection with any act or omission on the part of QWWS in relation to this information*

