
An Employer's Guide to Parental Leave

Parental leave can often be confusing. This easy-to-read guide has been created with the intent to clarify the basic parental leave conditions and what can be expected in standard circumstances.

Understanding Parental Leave Entitlements

Eligibility

To be eligible for parental leave fulltime or part-time employees must have completed 12 months service at their expected date of commencing parental leave. Casual employees are eligible if they have been employed on a 'regular and systematic basis' for a period of 12 months and have a reasonable expectation of ongoing work.

Amount

As a new parent, and the primary carer for a child, employees are entitled to 12 months unpaid leave. Employees have the option to request to extend the period of unpaid leave up to an additional 12 months and the employer cannot reasonably refuse.

Maternity Leave / Partner Leave

Both parents may take up to eight weeks unpaid parental leave at the same time. For the secondary care giver (i.e. the parent who is only taking up to 8 weeks leave), this leave can be arranged either in a full block, or in 2 week blocks after the birth or placement of a child. Beyond this 8 weeks, any unpaid Carer's leave taken by the secondary care giver reduces the 12 month entitlement of the primary care giver (i.e. both parents cannot take 12 months unpaid leave).

What is Adoption Leave?

Eligible employees are entitled to parental leave if they are adopting a child under 16 years of age who is not already a member of the immediate family or household (e.g. adopting the child of the partner you marry is not eligible as they are already part of the immediate family). Other eligibility criteria for adoption leave are the same as for parental leave.

Eligible employees are also entitled to an additional 2 days unpaid pre-adoption leave to attend relevant interviews or examinations. You can request that the employee take another type of leave instead of this unpaid pre-adoption leave (i.e. annual leave).

Taking Other Leave During Parental Leave

Parental Leave can include other forms of leave entitlements (i.e. annual and long service leave). The period of 12 months parental leave is taken simultaneously with any other leave taken. This means that other leave taken (e.g. annual leave) does not extend the period of parental leave and it is still only 12 month total entitlement (except where an extension is applied for and approved by the employer).

Government Paid Parental Leave Scheme

Further information relating to entitlements for paid leave under the Governments Paid Parental Leave Scheme can be found by visiting <https://www.servicesaustralia.gov.au/individuals/services/centrelink/parental-leave-pay>. In order for an employer to provide eligible employees with the Government Paid Parental Leave through their payroll they must follow the following steps:

- If you haven't already, register with Centrelink Business Online Services by visiting <http://www.humanservices.gov.au/business/services/centrelink/centrelink-business-online-services/registering-for-centrelink-business-online-services>.
- Once registered, opt in to provide Parental Leave Pay to eligible employees.
- Employees will make their claim directly to the Department of Human Services who will determine their eligibility.
- The Department will notify you if the employee is eligible and if you are required to provide the Parental Leave Pay through payroll.
- At this stage you will need to confirm with the Department your pay-cycles and bank account details.
- The Department will send you the funds before you need to pay them to your employee.
- The Parental Leave Pay is paid in the same way in which you currently pay the employee's wages.

Timeline - What to Expect and When

- **Notification & application** - ask your employee to provide written notice of their intent to take leave specifying the intended start and end dates at least 10 weeks prior to starting leave (or as early as possible). The employee will need to include with their application what the intended arrangements are for payment of any monetary entitlements (i.e. annual leave or long service leave).
- **Confirmation of leave** - at 4 weeks prior to starting leave, ask the employee to confirm their start and end dates or advise of any changes.
- **Commencement of leave** - leave should commence 6 weeks prior to the employee's expected date of birth. If the employee wants to continue working within this 6-week period, you can request that they provide you with medical certification stating they are fit to continue working within that time.
- **Varying periods of leave (within the first 12 months)** - Should an employee wish to extend the period of leave they must give 4 weeks' written notice. Should an employee request to reduce their period of leave then no notice period is required provided that the employer and employee agree on the new return date.
- **Extending parental leave beyond the initial 12-month period** - should an employee wish to request an extension on their leave beyond the initial 12 month period they are required to provide a written request 4 weeks prior to the end of their initial leave period. You need to consider this and if it is not reasonably possible, respond in writing with the reason.
- **Returning to work** - should an employee be returning to work in accordance with the date specified on their original leave application then no further written confirmation is required by the employee. It is best practice to contact the employee and confirm that they will be returning to work on this date and in the same capacity.

Manager's Essentials Guide

Here is a simple go-to guide for Managers to use for before, during and after periods of parental leave.

Before an employee commences leave you will need to ensure the following:

- The employee is eligible for unpaid parental leave (see eligibility section above)
- Has the employee provided notice of taking unpaid leave and specified:
 - Start and end dates for the period of leave, and

- Discussed other leave entitlements they want to be paid (i.e. annual leave or long service leave).
- Should you feel necessary, you are entitled to ask for evidence which may consist of a medical certificate confirming proof of pregnancy and/or proof of expected date of confinement.
- Should you feel necessary, you are entitled to ask for written confirmation of the period of leave to be taken by the other party.

Please note that these last 2 elements are less common for small businesses today.

Sick Leave and Pregnancy

Pregnant employees are entitled to normal sick (Personal) leave entitlements as per the NES. If a pregnant employee experiences a pregnancy related illness or injury, then sick leave can be taken, however pregnancy itself is not an illness or injury. Therefore, if a pregnant employee needs to go to a GP or related specialist for their regular pregnancy check-ups, then this time is not considered sick leave and other arrangements need to be made (e.g. annual leave or working up the time).

Replacing the employee on parental leave

As an employer you must notify the replacement employee you have hired during the period of parental leave that they are engaged for a parental leave relief position and therefore their employment is temporary and linked to the period of leave taken by the employee on parental leave.

Keeping in touch with employees on parental leave

It is best practice to keep in touch with your employees during any periods they are on Parental Leave. This can include:

- Making sure you advise the employee of any important information / changes to the workplace;
- Forwarding workplace newsletters, updates and important emails to the employee's home email account where appropriate;
- Invite them to attend any social events, planning days, training or team building days which occur during their leave; and
- Arrange a meeting with the employee when they are nearing the end of their leave to discuss their return to work;
- During these keeping in touch days an employee can be paid for up to 10 days without it affecting their paid parental leave payments.

Employee's right to return to work

An employee has a right to return to work immediately following a period of parental leave. This right entitles the employee to return to their prior position, or if that position no longer exists, another position for which they are similarly qualified and suited and is nearest in status and pay to their prior position.

Employees also have a right to request a return to work with flexible arrangements (such as different working hours, part-time arrangements etc), which the employer is obliged to consider and respond to within 21 days. The employer may only refuse if they have given the employee a reasonable opportunity to discuss their request, and there are reasonable business grounds to do so.

If a flexible working arrangement is agreed upon, it does not result in a permanent variation to the employees' employment contract. The arrangement will be subject to review and may be

terminated by either party by giving two weeks' notice in which case the employee will be required to resume their pre-leave role.

Protection from discrimination

An employee cannot be discriminated against in the workplace because she is pregnant. This means that they must not be treated any differently from any other employee. Managers need to be mindful of unintentional situations which may be discrimination.

An example of unintentional discrimination may be where a manager decides to redeploy a pregnant employee to another position because they feel that their original position is too stressful for them whilst they are pregnant. In this situation the manager may feel that they are helping the employee however they risk discriminating against them.

Unexpected Circumstances

Employee Entitlement to a 'Safe Job'

A pregnant employee has the right to be transferred to an appropriate safe job or take 'no safe job leave' if necessary. This may occur where a serious risk or illness relating to the pregnancy as a result of their position (e.g. heavy lifting, working with chemicals, working with certain animals, etc). The employee can be required to provide evidence to be entitled (i.e. medical certificate).

A safe job is one which has the same ordinary hours of work as their current position or different hours if agreed by the employee but does not expose the pregnant employee to risk. The employee must be paid their normal rate of pay that they would have been paid in their normal position.

If there is no safe job available to the employee for the period they are at risk, and the employee is eligible to unpaid parental leave (see eligibility section above) then the 'no safe job leave' is paid and in addition to their current leave entitlements. If an employee is not eligible for unpaid parental leave then this leave will be unpaid. This period of leave applies for the period in which there is no safe job, up to 6 weeks before the expected date of confinement (at which point unpaid parental leave commenced)

Because the 'no safe job' leave is paid (if they are eligible), most employers find some form of safe work for the employee if they are faced with this situation.

What is 'Special Maternity Leave'?

Special maternity leave can be utilised by eligible employees if they are not fit for work due to a pregnancy related illness or if the pregnancy ends within 28 weeks of the expected date of birth. Special maternity leave is unpaid. The employee must provide you with notice if they are taking this leave as soon as possible and the expected period of leave. You may ask the employee to provide evidence should you feel necessary (i.e. a medical certificate).

When might 'Compassionate Leave' apply?

A period of up to 2 days of paid compassionate leave (unpaid for casual) may be accessed by an employee if they or their current spouse or de facto partner has a miscarriage. Compassionate leave may also be utilised if an employee experiences a stillbirth or death of a child, or if the infant was, or would have been a member of their immediate family or household. You may ask the employee to provide evidence should you feel necessary (i.e. a medical certificate).

What to do if an employee's job no longer exists or if their job changes whilst on leave

If an employee's job changes whilst on leave, you must discuss this with the employee even if they are still on leave. If the employee's job no longer exists, then they have the right to return to work to a similar position (see employee's right to return to work section above). Alternatively, if their position no longer exists then this may mean a redundancy has taken place and appropriate redundancy steps must take place.