

## **PAID PARENTAL LEAVE ACT PASSED BY PARLIAMENT**

29 June 2010

NAT 007/10

### **Summary**

The *Paid Parental Leave Act 2010* has been passed by Parliament. The Act implements a Government-funded, paid parental leave scheme applicable to eligible primary carers who have or adopt a child on or after 1 January 2011.

Payments are made at the level of the National Minimum Wage for a maximum period of 18 weeks.

The Government's parental leave payments will be channeled through employers, for longer-serving employees who remain attached to the enterprise. Other employees will be paid directly by the Family Assistance Office.

The intent of the Government is that employees receive the Government funded paid parental leave payments in addition to any paid parental leave currently being provided by employers.

### **What is the operative date?**

The Act operates from 1 October 2010. The scheme provides parental leave pay to eligible primary carers who have or adopt a child on or after **1 January 2011**.

### **What is the level of payment?**

Payments are made at the level of the National Minimum Wage (\$569.90 per week).

### **How long do payments continue for?**

The maximum period is 18 weeks. Payments cease when the employee is no longer eligible (eg. when they return to work).

### **Who is eligible?**

To be eligible for parental leave pay a person must:

- Satisfy the work test;
- Satisfy the income test (NB. Persons with an individual income of more than \$150,000 are not eligible);
- Satisfy the Australian residency test;
- Be the child's primary carer;
- Have not returned to work (except where the baby is stillborn or dies);
- Not receive the Baby Bonus; and

- Have verified the birth.

Under the "work test" a person must have:

- worked continuously for at least 10 of the 13 months prior to the birth; and
- worked for at least 330 hours in that 10 month period (around one day a week).

However, a person also meets the work test if the Family Assistance Office (FAO) is satisfied that the person would have met the work test were it not for the premature birth of the child or due to pregnancy related complications or illness.

A person is regarded as having worked continuously even if they have worked casually, part-time or have had multiple employers. As long as the person did not have more than an eight week break between working days they will be regarded as having worked continuously. A working day is a day on which they worked for at least one hour.

### **Do the payments apply to mothers and fathers?**

Parental leave payments are paid to the primary carer of the child. In most cases this will be the mother but it could also be the father. Only one person can be regarded as the primary carer at any point in time and a family can only receive one 18 week period of paid parental leave per birth.

## **How do the “keeping in touch” provisions operate?**

“Keeping in touch” provisions in the Act permit an employee to perform work (eg. attending a staff meeting) on up to 10 days during the period of parental leave, by agreement between the employee and the employer, without the person being deemed to have returned to work. Any work performed must be paid by the employer.

## **What happens if the baby is stillborn or dies?**

If the baby is stillborn or dies, the person who would have been the primary carer is eligible for parental leave payments, if they would have been eligible in other circumstances. The employee is entitled to the payments regardless of whether they take leave or return to work.

## **Who provides the payments to employees?**

The Government-funded parental leave payments will be channeled through employers for employees who have 12 months or more of service, who have not resigned and who are eligible to receive at least eight weeks of parental leave pay.

This approach is intended to reinforce the employee’s link with the workplace, and achieve better return to work outcomes.

During the first six months of the scheme’s operation (ie. 1 January to 30 June 2011), employers are not required to provide the parental leave payments to employees but may choose to do so. During this period, if an employer does not wish to provide the payments, the employee will be paid directly by the FAO.

If an employee is eligible under the scheme but their employer is not required to provide the payments they will be paid directly by the FAO.

## **When are employers required to make the payments to employees?**

Employers are required to make the parental leave payments to employees on the regular pay day. For example, if the employee is usually paid monthly on the 14<sup>th</sup> of each month, the employee must be paid the parental leave payments at that time.

There is no obligation upon an employer to provide the parental leave payments to an employee unless the employer has received sufficient funds from the FAO to cover the payments.

## **How are the payments calculated?**

Eligible employees are to be paid 7.6 hours of pay at the rate of the National Minimum Wage for each week day regardless of the number of hours that they usually work each day. Eligible full-time, part-time and casual employees receive the same amount.

Payments continue for a maximum of 18 weeks but cease if the employee is no longer eligible (eg. if the employee returns to work).

## **Is an employer required to deduct taxation from the parental leave payments?**

Yes, employers must withhold tax from parental leave pay under the usual PAYG withholding arrangements and must include parental leave pay on Payment Summaries issued for tax purposes.

## **What are the record-keeping requirements?**

Employers must keep records of the funds received from the FAO and the payments made to employees.

Also, employers must provide each employee with a record of each parental leave payment made to them (eg. a payslip) including the following details: Business name; Employee name; Period to which the payment relates; Date on which the payment was or will be made; Gross amount of parental leave pay; Net amount of pay; ABN; Details of any amounts deducted from the gross amount.

## **What do employees need to do to apply for parental leave payments?**

Employees must apply to the FAO using the relevant form. They are required to provide information about their employer, their employment, the expected date of birth and other matters.

Employees have the option of receiving either the Baby Bonus or parental leave payments, but not both. In most cases a person will be better off receiving parental leave payments under the Act.

## **When should an employee apply for parental leave payments?**

Employees should apply to the FAO for parental leave payments as early as possible to allow time for their eligibility to be assessed and the payment processes arranged before they commence leave.

### **What do employers need to do once an employee has applied for the parental leave payments?**

If the FAO is satisfied that the employee is eligible for parental leave payments and satisfied that there is a requirement for those payments to be channeled through the employer, it will make an employer determination. The FAO must then give the employer a written notice advising them of the determination (called a notice of employer determination).

Within 14 days of the date on the notice of employer determination, the employer must give the FAO an acceptance notice (including bank account details and other required information) or apply for a review of the employer determination.

An employer declaration does not come into force until the employer gives the FAO an acceptance notice or its bank account and pay cycle information.

After an employer declaration has come into force the employer must pay the employee the required parental leave payment on each pay day, provided that the employer has been paid enough by the FAO to fund the payment.

### **Do parental leave payments impact upon an employee's entitlements under the National Employment Standards?**

The receipt of parental leave pay under the *Paid Parental Leave Act* does not result in the employee being deemed to be on paid leave for the purposes of the National Employment Standards (NES).

For example, annual leave and personal / carer's leave do not accrue during periods of unpaid leave and this will not change because an employee receives parental leave payments under the *Paid Parental Leave Act*.

Also, the eligibility requirements for unpaid parental leave under the NES have not changed.

### **Are employers required to pay superannuation on parental leave payments?**

The superannuation obligations of employers have not changed as a result of the *Paid Parental Leave Act*. Employers are not required to pay superannuation on the parental leave payments.

### **Do the parental leave payments impact upon workers' compensation premiums or payroll tax liabilities?**

All State Governments have agreed that the paid parental leave payments will not be taken into account for the purpose of calculating workers' compensation premiums. Also, State Governments have committed to ensuring that the paid parental leave payments will not impact upon the payroll tax obligations of employers.

To implement these commitments some amendments may be required to State legislation.

### **How does the Government's scheme impact upon company paid parental leave policies and schemes?**

The intent of the Government is that employees receive the Government funded parental leave payments in addition to any paid parental leave currently being provided by employers. This intent is reflected in two provisions of the Act:

- The inclusion of the following objective:  
*"The financial support provided by this Act is intended to complement and supplement existing entitlements to paid or unpaid leave in connection with the birth or adoption of a child";*
- The inclusion of the following provision:  
*"An obligation of an employer to pay a person parental leave pay under this Act is in addition to any other obligation the employer may have in relation to the person, however that other obligation might arise (including, for example, under another law of the Commonwealth, a State or a Territory, or an industrial instrument (however described))."*

For example, if a company currently has an obligation to provide paid maternity leave under an enterprise agreement then such obligation does not change as a result of the introduction of the *Paid Parental Leave Act*.

The design of the Government's paid parental leave scheme means that no changes need to be made to company paid parental leave policies and schemes, as highlighted in the following example:

## **Example**

An employer currently provides eight weeks of paid parental leave under a company policy. An eligible employee could choose to:

- Receive the company's parental leave payments for the first eight weeks of parental leave and then receive payments under the Government's scheme for a further 18 weeks – a total of 26 weeks (six months) of paid parental leave; or
- Receive both the Government payments and the company payments for the first eight weeks, then receive the Government payments for a further 10 weeks.

## **What penalties apply for non-compliance?**

Penalties of up to \$33,000 per offence apply for failure to comply with the Act's provisions relating to acceptance notices, payments to employees, unlawful deductions, record keeping and other matters.

## **Further information**

The Government has developed various brochures and booklets on the paid parental leave scheme. These are available at [www.australia.gov.au](http://www.australia.gov.au).

Also, the Government is working with Ai Group and other representative bodies to develop information and educational materials for employers and employees. These will be progressively released as they are developed.

For further information and assistance, please call Ai Group's *BIZassistInfoline* on 1300 78 38 44.



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