

Parental Leave Guide

eBook

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Overview

This eBook contains an overview of answers to frequently asked questions relating to parental leave.

A Parental Leave policy and letter template is also available in the Resource Hub to provide to your employees, which includes forms that need to be completed by your employee in order to apply for parental leave and return to work from parental leave.

Should you have any questions in relation to the information below, please reach out to one of our Employment Relations experts on:

[Tel: 1300 887 458](tel:1300887458)

[Email: enquiries@liquidhr.com.au](mailto:enquiries@liquidhr.com.au)

Parental Leave

Who is eligible for Parental Leave?

Employees who are employed on a full-time or part-time basis and have worked for their employer continuously for at least 12 months are entitled to take parental leave.

Casual employees who have worked on a regular and systematic basis for 12 months and have a reasonable expectation of ongoing employment are also eligible for parental leave.

Parental leave applies to eligible employees who have, or will have, responsibility for the care of a child.

An employee's right to take unpaid parental leave is guaranteed as part of the National Employment Standards. If they meet the eligibility criteria described above, they are entitled to at least 12 months of unpaid parental leave.

What type of leave is available?

There are several leave options available depending on the situation during pregnancy and after pregnancy which we have listed below. These leave types are minimum entitlements provided by the National Employment Standards unless an employer has highlighted it as an additional company benefit.

Unpaid Parental leave is unpaid leave for up to 52 weeks. This leave can be used when:

- An employee gives birth
- An employee's spouse or de facto partner gives birth
- An employee adopts a child under 16 years of age

Parental leave can be taken at the same time or at different times by the parents who are spouses or in a de facto relationship, this can be up to 12 months, or to 24 months (in total) if an extension has been approved by their employer.

The leave can be taken as a single continuous period, as a flexible period of up to 100 days, or as a combination of a continuous period and flexible days.

An employee choosing to take continuous unpaid parental leave, can take flexible parental leave before and after taking continuous parental leave, accumulating up to a total of 12 months, unless an extension has been requested by the employee.

If only one eligible person is taking parental leave, they can request for an additional 12 months leave subject to the approval of the employer.

In the case of a stillbirth or an infant death during the first 24 months of life, an eligible employee is entitled to take unpaid parental leave. They can take up to 12 months unpaid parental leave.

Special maternity leave is unpaid leave taken by a female employee to recover from a miscarriage, terminated pregnancy or when the mother has a pregnancy related illness. Paid sick leave may be taken instead of special maternity leave if available. Special maternity leave does not reduce the amount of unpaid parental leave an employee is entitled to.

Pre-Adoption leave is 2 days unpaid leave for either the adoptive mother or adoptive father who will be taking parental leave. This leave is to be taken to attend relevant adoption interviews or examinations unless directed by the employer to use an alternative leave type (for example, annual leave).

Employer Funded Paid Parental Leave is a company benefit employers can choose to provide as additional financial support to eligible employees who will be the primary carer.

An example of employer funded paid parent leave; offering paid leave for a period of 3 months, paid at the rate of pay as at the last pay period prior to commencing Parental Leave. This paid leave will incur tax deductions and superannuation. Annual and Long Service Leave will also accrue during periods of Employer Funded Paid Parental Leave.

Employer Funded Partner Leave is a company benefit employers can choose to provide as additional financial support to eligible employees whose spouse or de facto partner gives birth or adopts a child (up to pre-school age).

An example of employer funded partner leave; offering paid leave for a period of 5 days, paid at the rate of pay as at the last pay period prior to commencing Parental Leave. This paid leave will incur tax deductions and superannuation. Annual and Long Service Leave will also accrue during periods of Employer Funded Paid Parental Leave.

Compassionate Leave is available for up to 2 days if an employee, an employee's spouse or de facto partner has a miscarriage or if a child is stillborn and would have been a member of their immediate family or household. Full time and part time employees are entitled to paid compassionate leave. Casual employees are entitled to unpaid compassionate leave.

Employer Funded Bereavement Leave is a company benefit employers can choose to provide for eligible full time and part time employees in addition to statutory compassionate leave.

An example of employer funded bereavement leave: following a miscarriage or still birth of a child from the second trimester (13+ weeks) or where a child dies in the first 24 months of life, eligible employees will be entitled to 3 days paid bereavement leave and up to 5 employer funded counselling sessions. Employer Funded Bereavement Leave will be paid at the rate of pay as at the

last pay period prior to commencing Bereavement Leave. This paid leave will incur tax deductions and superannuation is applicable. Annual and Long Service Leave will accrue during periods of this leave type.

Parental leave entitlements

Is parental leave paid leave?

Generally, no. An employee will only receive paid parental leave if it is provided in an award, enterprise agreement, contract of employment, or company policy.

Employees may be entitled to paid parental leave from the Government. Further information is [available here](#).

How long is parental leave?

In general, an employee can take up to 52 weeks leave which cannot go beyond their child's first birthday.

If an employee agrees, an employee may extend this period for a further 52 weeks. This equates to 24 months in total.

An employee has the option to take continuous unpaid parental leave or flexible unpaid parental leave. The specific rules vary for each type of leave depending on whether:

- one or both parents take leave
- both parents take parental leave at the same time, or
- both parents take parental leave at different times

For further information on the specific rules for each type of leave please refer to <https://www.fairwork.gov.au/leave/maternity-and-parental-leave/taking-parental-leave>

It is important to note that the combined parental leave cannot be for more than 24 months.

Can an employee have a longer period of parental leave if they are having twins or triplets?

No. However, if an employee gives birth to two children in the same year, for example, in January and then in December, they are entitled to two periods of parental leave (one for each pregnancy).

How does parental leave affect an employee's employment conditions and benefits?

Parental leave does not break the continuity of service with an employer. However, time away from work on parental leave will not count towards annual leave or personal/carers leave accrual unless provided in an award or employment contract.

Can an employer direct a pregnant employee to take parental leave?

An employer can request a pregnant employee to provide a medical certificate if the employee

wishes to continue working in the 6 weeks before the due date. The medical certificate must be provided within 7 days of the request and state that the employee can continue work and it is safe for them to do their normal job.

If an employee does not provide the medical certificate when requested or the certificate does not meet the requirements, an employer can transfer the employee to a job that is safe to perform or direct an employee to commence unpaid parental leave. Further information is <https://www.fairwork.gov.au/leave/maternity-and-parental-leave/pregnant-employee-entitlements#safe-jobs>

How to apply for parental leave

Most of the time, an employee will have informally discussed parental leave with their manager. However, there are some formal requirements that must be met.

At least 10 weeks before the date an employee wishes to start parental leave or 10 weeks before the baby is due, they MUST:

- Give notice in writing that they intend to take parental leave. They will need to include the dates they will start and finish any leave which they intend to use during your parental leave such as annual leave, long service leave, employee funded paid parental leave (if offered).
- Provide a letter of confinement from their doctor confirming they or their partner is pregnant and the expected date of birth.
- Provide the start and finish dates of any parental leave their partner has sought or taken.
- Or, an employee can provide their employer with a signed statutory declaration detailing their leave periods and their partner's leave arrangements, as well as stating that they will be the child's primary caregiver and that they will not do other work inconsistent with their employment while on parental leave.

Can an employee combine parental leave with other forms of leave?

Yes. When an employee notifies their employer about taking parental leave they can ask to combine the unpaid period of parental leave with any long service and/or annual leave they are entitled to. The combined types of leave must not exceed the maximum period of 52 weeks or go beyond their child's first birthday, unless an employer agrees.

Can an employee start parental leave before the baby is due?

Yes, if the employee meets the requirements for parental leave and the employer has given their employer all the required written notices.

What happens if a child is born earlier than expected and an employee has not supplied their employer with the required documentation?

If a child is born prematurely or there is any other compelling reason why the employee cannot provide their employer the required notice or documentation within the specified times, then the employee must provide that information to their employer within two weeks of the birth or the arising circumstances. The employee may also need to provide their employer with a medical certificate.

If something happens to the baby

What happens if an employee has a miscarriage before they start parental leave?

If an employee has not started parental leave, the leave is automatically cancelled. However, they are entitled to unpaid special maternity leave. They are also eligible for Compassionate leave and may be eligible for Employer Funded Bereavement leave (if provided by the employer).

What type of leave does an employee take if they have a still birth and haven't started parental leave?

An employee is entitled to Compassionate leave, Employer Funded Bereavement leave (if provided by the employer), paid sick leave for as long as their doctor says it is necessary on their medical certificate (if they have any available). An employee may also still take unpaid parental leave.

What type of leave does an employee take if they have a miscarriage, still birth or their baby dies (in the first 2 years of life) after they have started parental leave?

An employee is still on parental leave and they are entitled to stay on parental leave until the date they told their employer they would return to work. An employer cannot demand an employee return to work earlier.

An employee will also be eligible for compassionate leave, employer funded bereavement leave (if provided by the employer) and employer funded paid parental leave (if provided by the employer) if the employee is the primary carer.

If an employee wants to return to work and not remain on parental leave, they need to write to their employer explaining their reason and giving the date they wish to return to work.

An employer should encourage their employee to speak with them should one of these difficult circumstances arise so that a suitable arrangement can be made.

Employer Obligations

What obligations does an employer have?

An employer must not dismiss an employee because they are pregnant, have applied for or are on parental leave. An employer should inform an employee of their entitlements to parental leave and how to access the leave when an employee informs them of their pregnancy. An employer must grant an employee the leave and provide the employee their same job when they return. An employer cannot refuse to grant an employee parental leave if they are eligible.

Can an employer hire someone to do their job while an employee is on parental leave?

Yes. An employer may employ someone to do the job of an employee on parental leave or to do part of the employee's job if they have reduced their hours of work before starting leave. Before the person starts work, the employer must tell the replacement that they are employed in the position temporarily. When an employee returns from parental leave the replacement employee's contract of employment finishes and the employee who has been on parental leave will go back to their job.

Can an employee work part-time or change their hours before they start parental leave?

If an employer agrees the employee can work part-time or change their working hours.

Government Support for Parents

The Australian government provides some financial assistance to parents during parental leave. There are eligibility requirements which need to be met to be able to access this support. Below we have provided a summary of the payment types available.

Parental Leave Pay

This is a payment for up to 100 days or 20 weeks while an employee cares for their new child.

To be eligible for this pay they must:

- be the primary carer of a newborn or newly adopted child
- have met the income test
- not be working during your government funded Paid Parental Leave period except for allowable reasons
- have met the work test
- have registered or applied to register their child's birth with their state or territory birth registry if they're a newborn.

Dad and Partner Pay

The former Dad and Partner Pay entitlement has been removed from the 1 July 2023. The additional 2 weeks pay has been combined with the existing 18 weeks Parental Leave pay as outlined above.

For further information and to check eligibility please refer your employee to www.servicesaustralia.gov.au

Keeping in Touch

What is the purpose of “keeping in touch” days?

The provision of “keeping in touch days” is to support an employee with their transition back to work after their parental leave. It allows them to keep connected to the workplace, refresh their skills, become familiar with new or updated processes, or take part in forward planning discussions that may affect their role.

Can an employer ask an employee to join in work related activities whilst they are on parental leave?

An employee is not required to participate in any work-related activity whilst on parental leave, however they may like to stay up to date or refresh their skills to assist with their return to work.

An employer cannot request a keeping in touch day within 42 days of the birth or adoption of a child.

An employee cannot request a keeping in touch day within 14 days of the birth or adoption of your child.

Does an employer have to agree to an employees keeping in touch day?

Yes, a keeping in touch day is only by the mutual agreement by the employee and the employer.

Does an employee get paid for a keeping in touch day?

Yes. An employee is paid at their normal wage, including accumulating leave entitlements, for each keeping in touch day or part day. However, there are rules regarding the type of work that can be done on these days. Typically work on a keeping in touch day may include:

- Participating in a planning day
- Training
- Attending a conference

Is there a specific number of keeping in touch days allowed?

Yes. An employee is entitled to 10 keeping in touch days in the first 12 months of parental leave which will not affect their unpaid parental leave entitlement, or their government funded paid parental leave (if eligible).

If parental leave is extended for a further 12 months, an employee is entitled to an additional 10 keeping in touch days.

Once an employee has returned to work from parental leave they are no longer able to access keeping in touch days.

How can keeping in touch days be used?

Keeping in touch days can be worked as:

- a part day
- 1 day at a time
- a few days at a time
- all at once

For reference, a part day (i.e. keeping in touch work that is only one hour or more in duration on one day) will count as one keeping in touch day.

Does an employee have to use their keeping in touch days?

No, an employee does not have to use keeping in touch days if they do not wish to.

Please also be aware that if an employee uses their keeping in touch days, this will not extend the parental leave period.

Returning to work

When an employee is due to finish parental leave, do they need to let their employer know they are coming back to work?

An employee will have given their return date when they first applied for parental leave. However, an employee must contact their employer at least four weeks prior to the date they intend to return to work to confirm their return date and make any return-to-work arrangements.

Can an employee change their mind about the length of their parental leave?

Yes. To do this an employee must give at least four weeks written notice that they want to extend their leave. The leave can be extended by agreement with their employer up to 24 months in total.

Please keep in mind that parental leave cannot be extended beyond the child's first birthday unless an employer agrees.

An employee can make changes to the length of their leave before or after they begin parental leave.

An employee can shorten their parental leave if their employer agrees. To do this they must give their employer at least two weeks written notice that they wish to return earlier than they had arranged.

Is an employee able to change their hours when they return to work from parental leave?

Parents returning to work from parental leave have the right to request flexible working arrangements. Examples of flexible working arrangements can include:

- hours of work (for example, changes to start and finish times)
- patterns of work (for example, split shifts or job sharing)
- locations of work (for example, working from home).

The business will review the request, before making a decision, taking into consideration:

- the needs of the employee
- consequences for the employee if changes in working arrangements aren't made
- any reasonable business grounds for refusing the employee's request

Can an employee resign from work while on parental leave?

Yes, but it is recommended to advise the employee to not leave their resignation advice to the last minute. An employee should provide the appropriate notice period they are required to give as outlined in their contract of employment.

If an employee resigns, can they change their mind?

Generally, if an employee resigns from work, an employee does not have the right to withdraw their resignation unless their employer agrees.



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