

Checklist for Parental Leave

The following is a summary of the law in relation to parental leave as at July 2015, it is not legal advice. Please contact us if you need advice on a particular situation.

1. Background

1.1 Types of Parental Leave

Both female and male employees are entitled to take parental leave before, during and after the birth (or adoption) of a child under the Parental Leave and Employment Protection Act. Under the Act leave is unpaid but you can agree to pay your employee if you so wish. "Parental leave" covers three types of unpaid leave:

- **Maternity Leave:**
 - applies to female employees;
 - unpaid leave of up to 16 weeks for the birth and recovery period
 - employee may start maternity leave six weeks before the baby is due (earlier in special cases);
 - a doctor's/mid-wife's certificate must be obtained stating expected date of delivery (**EDD**).
- **Paternity Leave:**
 - available to spouse or de facto partner;
 - unpaid leave of up to two weeks (one week if 6 mths' service and two weeks if 12 mths' service);
 - no earlier than three weeks prior to the EDD and no later than three weeks after the date of delivery of the child.
- **Extended Leave:**
 - may be taken by either partner or may be shared by both parents taking leave separately;
 - must be no more than a total of 52 weeks including maternity leave but not taking into account paternity leave, the 10 days special leave, where employer directs maternity leave to commence early due to performance or health and safety issues, or where commenced early on medical grounds;
 - parents may share the leave but must each take it continuously.

There is also:

- **Special Leave:**
 - taken before maternity leave;

- additional unpaid leave up to 10 days available to pregnant women only for reasons directly connected with pregnancy, e.g. ante-natal classes, doctor's and midwife appointments.
- Parental leave is not automatic and must be applied for.
- Parental leave may last up to a total of (and no more than) 52 weeks, except that paternity leave can be over and above this maximum.
- Parties do not have to be married to apply for extended leave but if they are not they must be living together.

1.2 Who Can Take Parental Leave?

- An employee who is pregnant or whose partner is pregnant; or
- An employee who is adopting a child under five.
- To be eligible an employee must have been employed by you for an average of 10 hours per week in the 6 months immediately before the EDD or for adoption, 6 months before the employee will assume care for the child. To be eligible for extended leave the period of employment must be 12 months.

1.3 How much is paid parental leave?

- From 1 July 2015 paid parental leave is at the employee's normal weekly pay up to a maximum of \$516.85 before tax.

1.4 When Does the Leave Begin?

- Maternity Leave:
 - date of confinement; or
 - up to six weeks earlier than date of delivery (with notice); or
 - earlier if you and employee agree; or
 - earlier for medical reasons and if the period of leave may be extended to up to eight weeks after date of delivery; or
 - earlier if you consider that your employee's pregnancy is affecting work safety or her performance.
- Paternity Leave:
 - date of confinement of employee's spouse/partner or date employee assumes care of adoptive child; or
 - between up to three weeks before date of confinement (or care) and three weeks after child discharged from hospital (or employee assumes care of adoptive child); or
 - any other time by agreement between you and your employee.
- Extended Leave:
 - on expiry maternity/paternity leave; or

- if maternity/paternity leave not taken, from date of confinement or care of child;
or
- on date agreed between you/employee.

1.5 Restrictions on Taking Parental leave

Cannot take second period of parental leave within a period of less than 6 months since the day after the date on which previous parental leave ended.

If parental leave has been taken before, there must be 6 months between the day after the date on which the former period of parental leave ended and the next period of parental leave.

1.6 Do you have to give leave on these terms?

Yes, unless:

- You have given the employee equivalent (or greater) maternity leave in your employment contract; or
- the employee decides to take annual or sick leave which your contract defines in sufficiently wide terms instead of parental leave (e.g. to extend the time available);
or
- it is less than 6 months since the end of their last period of parental leave.

2. Employee's notice requirements

2.1 For pregnancy - At least three months before the EDD an employee who wishes to take parental leave must give written notice to you. The notice must:

- state the proposed date of commencement;
- the proposed duration;
- be accompanied by a medical certificate (doctor or midwife) in case of a female employee confirming she is pregnant and the expected date of delivery; or
- in the case of a spouse or partner of a pregnant employee be accompanied by a medical certificate confirming that his/her spouse is pregnant, stating the expected due date and be accompanied by a written assurance from the woman that the employee is her spouse and he/she intends to assume care of the child to be born.

2.2 If the notice is defective you must advise employee in writing within seven days of becoming aware of the defects in the notice that the notice is incomplete and specify what additional information you require. You must reply to the application within 14 days of receipt.

2.3 The employee must supply the required information to you within 14 days.

2.4 Where an employee wants to take more than 16 weeks they are seeking "extended leave". In this case notice must also:

- state whether the employee spouse is going to take any extended leave or maternity leave (before birth);
- state the name of the employee spouse and the name and address of the employer of the employee's spouse;

- state the proposed date of commencement and expiry of each period of leave proposed to be taken by the employee and the employee's spouse;
- contain an assurance by the employee that all maternity leave and extended;
- leave proposed to be taken by both the employee and the employee spouse will not exceed 52 weeks

2.5 If an employee wants to return early she/he must give 21 days notice.

2.6 Adoption:

- different notice requirements are required and are set out in the Act. This includes notice within 14 days of receipt of documentation placing the child lawfully in the employee's home. Please contact us if leave is sought in relation to an adoption.

3. **What do you as an employer need to do?**

3.1 21 days after receiving such notice you must give to the employee written notice stating:

- whether the employee is entitled to take parental leave;
- if not, why not (for example, the employee has already taken leave within the last 6 months);
- if so, whether the employee's position can be kept open at the end of the employee's leave and if not informing the employee that the employee may dispute your position.

Explanation: The Act requires you to keep the employee's position open for up to four weeks if the employee has given notice. The only exception to this is if the position is redundant. If the leave is longer than four weeks, then the Act requires you to keep the position open unless:

- (a) the job is redundant, or
- (b) the position is a "key position", and
- (c) a temporary replacement for that position is impossible.

In deciding whether or not the position is a "key" one, you should consider:

- (a) the size of your business, and
 - (b) the training period or skills required for the job.
- if the job cannot be kept open the employee must be told in the notice that they will be given preference for a period of 26 weeks after the day his/her leave ends. During this period you must give preference to the employee over other applicants for any position which is vacant and which is substantially similar to the position held by the employee at the beginning of the parental leave. If a job is offered by you then the employee must take up the job within seven days of the starting date set.
 - In addition the notice must set out the employee's rights and obligations under the Act. Guides are available on the MBIE website.
 - Any temporary employee that you employ to fill in for an employee on parental leave must be told the reason for the temporary nature of the job and be provided with a properly drafted fixed term employment agreement.

3.2 Within 21 days after your employee's leave has started you must write stating:

- when the leave ends;
- when the employee can return to work or start the preference period;
- the latest the employee can state he or she is returning to work (or not);
- whether the employee is able to return to work before the end of his or her leave.

What Effect does Parental Leave have on an Employee's Service Record?

- if your employee returns to work then his or her time on leave counts as unbroken service (except for Apprentices).
- most Kiwisaver schemes require an employee to make payments while still on leave and this should be pointed out to an employee before they commence parental leave.

The Right to Return to Work Early

- if an employee or spouse who is on parental leave suffers a miscarriage or if the child is stillborn or dies or is adopted out then the employee is entitled to return to work early.
- if an employee wishes to resume work for any other reason e.g. shorter leave, you must consent.
- an employee must give 21 days notice of his/her intention to return to work.

Failure to Return to Work

- if an employee who takes up parental leave and whose position is kept open by you fails to return without good cause to work at the end of that period; or
- informs you before the end of that period of parental leave that they have decided not to return to work at the end of the parental leave

the employee's employment shall be deemed to have ended at the date on which parental leave began unless you agree otherwise.