



Parental leave

This fact sheet outlines parental leave entitlements for all employers and employees covered by the Western Australian industrial relations system.

An employee may be entitled to:

- unpaid parental leave; and/or
- parental leave pay.

Unpaid parental leave

Unpaid parental leave is provided under the *Minimum Conditions of Employment Act 1993 (WA)* (MCE Act) and the National Employment Standards (NES) contained within the *Fair Work Act 2009* (Commonwealth).

An employee who has completed 12 months of continuous service with their employer is entitled to 52 consecutive weeks of unpaid parental leave for the birth or adoption of a child.

The provisions extend to current and former spouses, de facto partners and same sex de facto relationships. Unpaid parental leave may be shared between an employee couple.

Two employees are an 'employee couple' if they are in a spousal or de facto relationship.

The provisions permit each eligible member of an employee couple to take up to 52 consecutive weeks of unpaid parental leave. The total amount of parental leave that can be taken by an employee couple is 24 months.

Employees who wish to take unpaid parental leave must give their employer 10 weeks' written notice of their intent to take unpaid leave, including the intended

start and finish dates of the leave. If an employee is unable to provide 10 weeks' notice they must provide notice as soon as practicable.

Unpaid parental leave must be taken in a single continuous period, with the exception of concurrent parental leave.

Commencement of unpaid leave

A pregnant employee may start unpaid parental leave six weeks before the child's expected date of birth. If the employee continues working during the six weeks before the expected date of birth, the employer may request a medical certificate stating that the employee is fit to work and whether it is inadvisable for the employee to continue in her present position because of illness or risks arising from the pregnancy or hazards connected to the position.

Evidence

An employee who intends to take unpaid parental leave for the birth of a child must give their employer evidence that would satisfy a reasonable person of the pregnancy and note the child's date of birth or expected date of birth.

Extended unpaid parental leave entitlement

A further period of up to 52 weeks of leave may be requested where only one parent takes unpaid parental leave, or where one member of an employee couple wants to take more than 52 weeks' unpaid parental leave.

When one member of the employee couple takes more than 52 weeks of unpaid leave, the other employee's entitlement is reduced. For example, if a mother takes 18 months of leave, her partner is only entitled to six months of leave (ie a total of two years).

If an employee wishes to extend their unpaid parental leave, the request must be in writing and be given to the employer at least four weeks before the end of the initial 52 weeks of parental leave.

The employer must provide a written response to the employee's request within 21 days.

An employer may only refuse such a request on reasonable business grounds. If the request is refused, the employer must provide the reasons for this in writing to the employee.

Concurrent parental leave

An employee is able to take up to three weeks of unpaid parental leave at the same time their spouse or partner takes a period of unpaid parental leave. This is called concurrent leave.

Concurrent leave must not start before the birth/adoption of the child or end more than three weeks after the birth/adoption of the child, unless the employer agrees to the leave starting earlier or ending up to three weeks later.

An employee may request to extend concurrent parental leave by up to five weeks (the maximum entitlement to concurrent parental leave is eight weeks). This request must be in writing and can be made at any time before the end of the first week of concurrent parental leave.

Concurrent parental leave taken by one parent does not reduce the amount of unpaid parental leave that is available

to the other parent. For example, if the father takes eight weeks of concurrent parental leave this does not reduce the mother's entitlement to 52 weeks of unpaid parental leave.

However, if the father takes eight weeks of concurrent unpaid parental leave and a later period of unpaid parental leave (for example after the mother has taken leave), the father's amount of parental leave will be reduced by the eight weeks of concurrent parental leave he took immediately after his child's birth or placement.

Special maternity leave

An employee is entitled to unpaid special maternity leave if she is not fit for work because:

- she has a pregnancy-related illness; or
- her pregnancy ends other than by the birth of a live child within 28 weeks of the expected date of birth.

An employee must give the employer notice of taking unpaid special maternity leave as soon as practicable and must advise the employer of the period, or expected period, of the leave.

An employer may require the employee seeking special maternity leave to provide evidence for the leave and may require the evidence to be a medical certificate.

The entitlement to unpaid parental leave is reduced by any period of special maternity leave taken by an employee.

Pre-adoption leave

An employee adopting a child is allowed to take up to two days of unpaid pre-adoption leave to attend interviews or examinations required to obtain approval for the adoption unless their employer requires the employee to take some other available leave.

Transfer to a safe job

If it is not safe for a pregnant employee entitled to unpaid parental leave to continue in her usual job, she must be transferred to any appropriate safe job for the risk period with no other changes to her terms and conditions of employment.

To transfer to a safe job the employee must give the employer a medical certificate that states she can continue to work but cannot perform her usual job.

No safe job leave

If an employer cannot find a safe job for a pregnant employee, the employee is entitled to take paid 'no safe job leave' for the risk period.

If an employee is on paid no safe job leave during the six-week period before the expected date of the child's birth, an employer may require an employee to provide a medical certificate stating whether the employee is fit for work.

If the employee does not give the employer the requested certificate within seven days, or the employee gives the employer a certificate stating that they are not fit for work, the employer may require the employee to take unpaid parental leave as soon as practicable.

When the period of unpaid parental leave starts the employee's entitlement to paid no safe job leave ends.

Paid no safe job leave does not shorten the employee's unpaid parental leave entitlement.

Return to work guarantee

On ending unpaid parental leave, an employee is entitled to return to the employee's pre-parental leave position. If that position no longer exists, the employee is entitled to a job for which they are qualified and suited nearest in status and pay to their pre-parental leave position.

An employee is not entitled to return to the job they had before they started parental leave if they were only acting or working temporarily in that job.

Returning to work after parental leave on a modified basis

An employee may request a return to work after their parental leave on a modified basis. Working on a modified basis could mean working fewer days or hours, on different days or at different times.

A request to work on a modified basis must be made in writing at least seven weeks before the day on which the employee finishes parental leave.

An employer must agree to such a request unless:

- the employer is not satisfied that the request is genuinely based on the employee's parental responsibilities; or
- there are reasonable grounds to refuse the request because of the harmful effect it would have on the employer's business.

If the employer refuses the employee's request, the employer must give their reasons to the employee in writing. The employer is responsible for proving it was reasonable to refuse the employee's request.

Reversion to previous working arrangements

An employee who has been permitted to work on a modified basis after parental leave may request to resume working on the same basis before starting parental leave.

For example, a previously full-time employee returned from parental leave to work three days per week. After a period working on a part-time basis that employee may ask to resume working on a full-time basis.

An employee must give their employer at least six weeks of written notice of their intention to revert to their previous working arrangements.

An employer must agree to such a request unless the employer has reasonable grounds to refuse the employee's request.

An employer may require an employee to revert to their previous working arrangements if:

- the employee no longer has a pre-school aged child; or
- allowing the employee to continue with the modified working arrangements would have a harmful effect on the employer's business.

An employer must give an employee at least six weeks of written notice before the employer wishes the employee to resume working on their previous working arrangements and the employer must give the reasons for the requirement.

Casual employees

Casual employees are entitled to unpaid parental leave if they have:

- worked for their employer for 12 continuous months and reasonably expect that they would have kept working for their employer if they had not been expecting a child; or
- regularly and systematically worked for their employer for a sequence of periods totalling at least 12 months, with breaks between each period of employment. However, the break must have been initiated by their employer and must have been no longer than three months. The employee must reasonably expect that they would have kept working for their employer if they had not been expecting a child.

Paid parental leave pay

Paid parental leave pay is provided under the *Paid Parental Leave Act 2009* (Commonwealth) (PPL Act).

The PPL Act introduced a national Commonwealth paid parental leave scheme from 1 January 2011 for all eligible Australian-based employers and their employees working in Australia.

Under the scheme, a primary carer of a newly born or adopted child with eligibility is entitled to receive up to 18 weeks of paid parental leave pay at the national minimum wage.

Eligibility

Employers will not be responsible for determining an employee's eligibility to paid parental leave pay. Eligibility is determined by the Family Assistance Office (FAO).

The birth mother or the initial primary carer of an adopted child must lodge a claim for the 18 weeks parental leave pay directly with the FAO, unless there are exceptional circumstances. A claim can be lodged up to three months before the expected date of birth.

An employee may be eligible for parental leave pay if they:

- are the primary carer of a newborn child or the initial primary carer of a recently adopted child;
- are an Australian resident;
- have satisfied a minimum number of work days and hours before the expected birth or placement of the child;
- have received an individual adjusted taxable income of \$150,000 or less in the previous financial year; and
- are on leave or not working from the time they become the child's primary carer.

Key features

Employers and their employees need to understand the following key features of the scheme:

- The PPL Act provides for payments only. It does not provide an additional leave entitlement.
- Parental leave pay can be transferred to a new primary carer if the original carer returns to work.
- Employees are entitled to receive payment in addition to any existing employer-funded paid parental leave.
- Parental leave pay is taxable and no superannuation is payable.

- Employees cannot receive the Baby Bonus or Family Tax Benefits Part B while receiving parental leave pay.
- Parental leave pay is fully funded by the Commonwealth Government.

Accessing the scheme

From 1 January 2011 to 30 June 2011 the FAO will provide payments direct to eligible employees.

From 1 July 2011 employers will be required to act as 'paymaster' and administer paid parental leave payments upon notification from Centrelink.

Keeping in touch provisions

The PPL Act contains 'keeping in touch' (KIT) provisions which allow employees to agree to attend work for up to 10 days during the 18 weeks they are receiving parental leave pay, with the exclusion of the two weeks immediately after the birth or adoption of a child.

If used, these 10 days are to be paid at the employee's normal wage rate for the hours worked in addition to the parental leave pay.

Attendance at work for a part day will count as a full day of the 10 day entitlement.

Some examples of keeping in touch situations include training, attending a conference, team building exercises or planning days.

Keeping in touch provisions and returning to work

The NES and the MCE Act provide for 52 weeks of continuous unpaid leave.

Subsequently, unpaid parental leave will stop when an employee returns to work for any purpose, including KIT.

The Commonwealth Government intends to amend the NES to allow employees to access KIT while on unpaid parental leave. Once these amendments are made they will apply to all employees in Australia.

To ensure that an employee does not lose their entitlement to unpaid leave, it is advisable that employees do not return to work for KIT while on unpaid parental leave until the necessary amendments are made to the NES.

Need more information?

If you require more information about unpaid parental leave, please contact:

Wageline

Ph: 1300 655 266

8.30 a.m. – 5.00 p.m. weekdays
except Wednesdays 9.00 a.m. – 5.00 p.m.

If you require more information about the Commonwealth paid parental leave scheme, please contact:

Family Assistance Office

Ph: 13 61 50

www.centrelink.gov.au

The information contained in this fact sheet is designed for employees covered by the Western Australian industrial relations system. If you or your business is covered by the national system, call the Fair Work information line on 13 13 94.

This information is provided by the Department of Commerce as a general guide only and is not designed to be comprehensive or to render legal advice. Readers should not rely on the contents of this information without first obtaining legal advice. The Department of Commerce does not accept liability for any claim which may arise from any person acting on, or refraining from acting on, this information.

Copyright © 2011 by the Department of Commerce. All rights reserved. This material may be reproduced in whole or in part provided the source is acknowledged.

National Relay Service: 13 36 77
Quality of service feedback line: 1800 30 40 59
Translating and Interpreting Service (TIS) 131 450

This publication is available in other formats on request to assist people with special needs.

Regional Offices

Goldfields/Esperance	(08) 9026 3250
Great Southern	(08) 9842 8366
Kimberley	(08) 9191 8400
Mid-West	(08) 9920 9800
North-West	(08) 9185 0900
South-West	(08) 9722 2888