

**In late 2023 changes to the parental leave provisions in the *Industrial Relations Act 2016 (Qld)* were passed to provide consistency with the National Employment Standards (NES) under the *Fair Work Act*. Parental leave is the umbrella term that includes paid and unpaid leave or a combination of both. The term encompasses the outdated terminology of maternity and paternity leave.**

In Queensland, parental leave includes birth-related leave, adoption leave, surrogacy leave and cultural parental leave (for both parents, irrespective of gender). It also includes pre-natal leave, pre-adoption and pre-surrogacy leave and pre-cultural parental leave. Parental leave is available to an employee who has at least 12 months' continuous service and long-term casual employees.

### **Is it paid or unpaid?**

Parental leave can be paid or unpaid. The Queensland Public Service Commission's *Parental Leave Directive* outlines the entitlements and eligibility for paid parental leave for public service employees eligibility requirements.

Employees may also be eligible to access the Commonwealth's Paid Parental Leave Scheme (CPPL) in addition to their employer paid parental leave.

### **What is the entitlement?**

Eligible individual parents can access a period of up to 12 months of unpaid parental leave; however, the total length of the leave cannot be greater than 24 months. Where only one parent accesses leave, they can apply to extend their leave up to 24 months (dependent on employer approval). An employee who is eligible to take parental leave can access up to 30 days of flexible unpaid leave from the employer in an unbroken or broken periods of leave within two years after the birth or adoption of the child.

### **Queensland Public Servants**

Queensland Public Servants with 12 months or more of continuous service may be eligible for paid parental leave as outlined in the Public Service Commission's (PSC) [\*Paid Parental Leave Directive\*](#). This outlines the eligibility for permanent, contract and long-term casual employees; how much leave is provided; and other entitlements, including sick leave whilst on paid parental leave.

### **Documentation and notice**

An employee should apply for parental leave at least 10 weeks prior to the leave commencing (where possible). An employee wishing to take birth-related leave for their own pregnancy (or in relation to their spouse) must provide evidence to their employer of the expected date of birth of the child. The evidence provided must be sufficient to satisfy a reasonable person. An employer now has the discretion to accept documentation from a health practitioner in lieu of a medical certificate (a health practitioner includes a medical practitioner, a midwife, or an Aboriginal and Torres Strait Islander health practitioner, as examples).

### **Adoption Leave**

Adoption leave in Queensland has been amended to reflect the NES and eligibility to access adoption leave has been extended to include unpaid (and, if eligible, paid leave) to care for a child of up to 16 years, who has been adopted by the employee or their spouse. This form of leave was previously restricted to a child of up to 5 years of age.

### **What is the Commonwealth Paid Parental Leave Scheme?**

The Commonwealth Paid Parental Leave Scheme (CPPL) provides financial support for eligible parents who are unable to work because they are providing care for a newborn or recently adopted child. This scheme was developed to complement (not replace) other parental leave entitlements.

- For a child born or adopted *prior* to 1 July 2023, parents can access up to 18 weeks of CPPL.
- For a child born or adopted *from* 1 July 2023, parents can access up to 20 weeks of CPPL.
- Eligibility is dependent on a work test, income test and residency rules – find out more [here](#).

### **Do I have to choose between the CPPL and my employer's paid parental leave?**

No, you do not. You can access CPPL at the same time as any employer paid parental leave. If you take them concurrently you need to consider that they are both taxable. If you don't wish to access them both at the same time, you will need to access the employer paid parental leave initially. You must access at least 12 weeks of the CPPL prior to the child's first birthday and be on approved leave from your employer. Information about eligibility and further details on the PPL can be found [here](#).

### **How much is the CPPL and how will I be paid?**

CPPL is paid at the national minimum wage. Employees must arrange leave from work to access the leave and make application directly to Services Australia. Birth parents and first adoptive parents can make claims for CPPL up to three months prior to the anticipated birth/adoption. The family can access up to 100 days/20 weeks based on a five-day work week.

### **Flexible parental leave**

Employees who are eligible for parental leave can now take up to 30 days of flexible unpaid leave in an unbroken or broken periods of leave within two years of the birth or adoption of a child.

### **Concurrent leave**

An employee may take up to eight weeks of unpaid leave at the same time with their spouse. An employee will now be able to also take their 52 weeks' unpaid leave concurrently with the spouse. This leave can be taken in broken periods of at least two weeks a time or in an unbroken period.

### **Safe Jobs**

Everyone has a right to be safe at work, including pregnant and breastfeeding employees. If their usual job or role is no longer safe for a pregnant or breastfeeding employee (including casual employees), they are entitled to move to a safe job. Their pay, conditions and other entitlements must be maintained in the safe job and, unless agreed to by both parties, the hours must also stay the same. Supporting documentation (from a health practitioner) may be requested by the employer. Where no safe job is available, the employee can access any birth-related leave or accrued sick leave.

### **Still born child and miscarriage**

An employee and their spouse are entitled to take their accrued sick leave and/or unpaid sick leave if the pregnancy ends by the birth of a stillborn child. This is in addition to paid leave entitlements if a pregnancy ends before the expected date of birth, other than by the birth of a living child, and if an employee suffers illness related to pregnancy before commencing parental leave. Employees (other than casuals) are entitled to two days of paid bereavement leave if they, or their spouse, is pregnant and the pregnancy ends other than by the birth of a living child. Casual employees are entitled to two days of unpaid bereavement leave.

### **Keeping in Touch (KIT) days?**

Keeping in Touch (KIT) days are provided by the *Industrial Relations Act 2016 (Qld)* to support parents returning to work from parental leave and allow up to 10 days paid at your usual rate of pay. KIT days are recognised as service for leave accrual and other employment entitlements. KIT days do not interrupt parental leave. Work on a KIT day may include training, participation in planning or attendance at conferences. It is not the intent or purpose of KIT days to undertake usual work or provide relief or backfill for other employees. There must be agreement between the employee and the employer in relation to the timing and purpose of the KIT day. Parents must be on unpaid leave from their employer to access KIT days (but can be accessing the Commonwealth's Paid Parental Leave scheme).

### **Returning to work – flexible work options and returning to former position**

Under the Act, parents returning to work following a period of parental leave may request to work on a part-time basis. This request must not be unreasonably refused. Where the employer does not approve the request, a written response outlining the reasons for refusal of the request must

be provided. The employee is able to access dispute resolution processes should the matter remain unresolved. An employee who has returned to work on a full-time basis after taking parental leave may now apply to their employer to work part-time up until the child is school aged.

An employee who has been on parental leave (paid or unpaid) is entitled to return to their pre-parental leave position or an available position which is nearest in status and pay to the previous position, if their previous position no longer exists.

### **Discrimination**

The 2014 *Supporting Working Parents: Pregnancy and Return to Work National Review Report* released by the Australian Human Rights Commission found at least one in two mothers reported experiencing discrimination in the workplace at some time during pregnancy, parental leave or on return to work. In Queensland, pregnancy, parental status, and family responsibilities are all protected attributes under the *Anti-Discrimination Act 1991 (Qld)*. Employees who believe they may have experienced discrimination in the workplace should seek individual advice from their union.

### **Directing employees to take parental leave**

Where a pregnant employee wishes to work in the six weeks prior to their due date, the employer may request medical documentation that indicates that they can continue to work and that it is safe for them to do so. If no documentation is provided, the employer may direct the employee to commence their leave.