

## **FAIR WORK AGREEMENT**

### **Information Sheet**

*Changes are coming! From 1 July 2023 the federal paid parental leave system is changing. Please check back for updates.*

**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 The term encompasses the outdated terminology of maternity and paternity leave. Unpaid parental leave must be provided to employees who have the responsibility for the care of a child (infant).**

It covers:

- birth-related leave and adoption-related leave (including the loss of the infant through premature birth, stillbirth, or infant death during the first 24 months of life);
- unpaid pre-adoption and pre-birth leave;
- unpaid special maternity leave;
- a return-to-work guarantee; and
- a right to transfer to safe job in appropriate cases, or to take “no safe job” leave.

### **What is parental leave?**

Parental leave is one of the 11 minimum entitlements under the *National Employment Standards* (NES). Under the NES, all Australian employees who have completed 12 months of continuous service with their employer are eligible for unpaid parental leave. Casual workers can access unpaid parental leave in the following circumstances:

- they have been employed with the same employer in a “regular and systematic” basis for at least 12 months; and
- there is a reasonable expectation of continuing work with the same employer on a “regular and systematic” basis and, if it were not for the birth, expected birth or adoption of the child and the need to care for the child, they would be working.

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

Parental leave can be paid or unpaid. Where the employer provides paid parental leave, the details of the entitlement and eligibility requirements will be contained in the relevant award or workplace agreement. Employees may also be eligible to access the Commonwealth’s Paid Parental Leave Scheme (CPPL) in addition to the employer paid parental leave.

### **Who can access unpaid parental leave?**

Unpaid parental leave must be provided to eligible employees if:

- they themselves, their spouse, or their de-facto partner gives birth; or
- they adopt a child under 16.

### **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. This applies whether the parents work for the same or different employers. Where only one parent accesses leave, they can apply to extend their leave up to 24 months (dependent on employer approval). Under the NES, an employee who is eligible to take parental leave can access up to 30 days of flexible unpaid leave from the employer.

Where **one parent is taking parental leave**, they can take up to 12 months (or 24 months if their employer approves). This leave can be taken as a single continuous period or a single continuous

period and a flexible period of up to 30 days. You can find more detailed information on flexible unpaid parental leave [here](#).

Where **the pregnant person is taking parental leave**, the leave must start on the birth of the child, or up to 6 weeks prior to the birth of the child (or earlier if agreement is reached with the employer).

If the **parent/employee who isn't pregnant is the parent taking the unpaid parental leave**, the leave must start on the date of birth of the child. The parent can begin their unpaid parental following the birth of the child if they have responsibility for the child or their pregnant partner is not working. It is a requirement that this leave must commence prior to the child's first birthday.

### **Documentation and notice**

An employee should apply for parental leave at least 10 weeks prior to the leave commencing, if possible. They should provide the start and end date of the parental leave and then confirm this at least four weeks prior to the planned commencement. Any changes should be communicated as soon as possible.

An employee accessing parental leave must provide documentation that includes the expected date of birth of the child or the anticipated date of placement of a child under 16.

### **Adoption Leave**

Employees who are accessing parental leave to care for an adopted child are entitled to two days of unpaid pre-adoption leave to attend relevant appointments related to the adoption. An employer can tell an employee to access another type of leave (such as paid annual leave).

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

The Commonwealth Paid Parental Leave (CPPL) scheme 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, the 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 CPPL 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 CPPL and make application directly to Services Australia. Birth parents and first adoptive parents can make claims 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.

### **What is flexible parental leave?**

Under the NES, an employee who is eligible to take parental leave can access up to 30 days of flexible unpaid leave from the employer. Where one parent is taking parental leave, they can take up to 12 months (or 24 months if their employer approves).

### **Safe Jobs**

Everyone has a right to be safe at work, including pregnant employees. If their usual job or role is

no longer safe for a pregnant 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 (medical certificate) may be requested by the employer.

Where no safe job is available, then the employee can access *no safe job leave*. If the employee has no entitlement to unpaid parental leave, then *no safe job leave* is without pay. If the employee has access to unpaid parental leave, then the *no safe job leave* is paid.

### **Parental leave and Stillborn Baby payment**

Parents whose baby is stillborn or dies prior to birth (but has reached 20 weeks' gestation) may still be eligible for paid parental leave or the stillborn baby payment. Detailed information and a comparison between the payments is available [here](#).

### **What are Keeping in Touch (KIT) Days?**

Keeping in Touch Days are provided by the *Fair Work Act* to support parents returning to work from parental leave, allowing up to 10 days' paid at your usual rate of pay (these are recognised as service for leave accrual and other employment entitlements). These can be accessed as a part day, one day at a time, a few at a time or all at once.

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, 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 are not able to access KIT days while on employer paid parental leave but can suspend their PPL to access KIT days.

### **Returning to work**

The *Fair Work Act* makes clear that flexible work should be prioritised for parents returning from parental leave or those who have the care of children who are below school age. Under recent changes to the FWA, there is now the requirement for employers to consider flexible work requests within two weeks and provide a written response (with an explanation where a request cannot be accommodated). Employees now have access to a dispute resolution process should the request not be approved. Further information in relation to flexible work options can be found in our *Flexible Work Options* information sheet.

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 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.