

# Parental Leave

## Maternity, Paternity or Partner and Adoption Leave



Most employees have access to parental leave entitlements. This is unpaid leave for employees having or adopting a child, unless otherwise specified in an award or agreement. Parental leave can be:

- **maternity leave**, in connection with a pregnancy or the birth of a child
- **paternity or partner leave**, for an employee whose spouse is having a child
- **adoption leave**, for parents who have adopted a child under 18 years of age.

An employee can't be forced to take parental leave.

### Who is eligible for leave?

All employees may be entitled to parental leave. Full-time and part-time employees all qualify for parental leave after completing at least 12 months continuous service with an employer.

A casual employee qualifies after working on a regular and systematic basis for at least 12 months, with a reasonable expectation of ongoing employment. Other casuals or seasonal employees are not eligible.

Once an employee has completed 12 months with the same employer, generally he or she is entitled to a separate period of parental leave for each future child.

### Parental leave entitlements for employees

A maximum of 52 weeks leave granted as follows:

**maternity leave:** an unbroken period, taken during or after pregnancy

**paternity or partner leave:** an unbroken period of up to one week taken at the time of birth (short paternity or partner leave) and a further period of unbroken leave, taken in order to be the child's primary care giver (extended paternity or partner leave)

**adoption leave:** an unbroken period of up to three weeks, taken at the time of placement (short adoption leave) and a further period of unbroken leave, taken in order to be the child's primary care giver (extended adoption leave).

All parental leave must be completed before the child's first birthday or anniversary of adoption.

An employee and their spouse may not take parental leave at the same time, except where one spouse is on a period of 'short paternity or partner leave' or 'short adoption leave'.

### Additional rights under NSW awards

Employees under NSW State awards may request their employer to allow them:

- additional short paternity or partner leave of up to a total of eight weeks
- to extend their parental leave by a further continuous period of up to 12 months
- to return to work on a part-time basis until their child reaches school age.

An employer may only refuse a request on reasonable grounds related to the effect on their workplace or business.

### Information an employer must be given

On becoming aware that an employee or their spouse is pregnant or adopting a child, the employer must inform the employee of their entitlement to parental leave and their responsibility to give notice of their intention to take leave.

### How much notice must an employee give?

**Written notice** at least ten weeks before the anticipated commencement of the parental leave of the intention to take leave.

Written notice at least four weeks before the anticipated commencement of the parental leave (14 days for adoption leave) of when they wish to start and end the leave.

### Documentation required

Maternity - a medical certificate confirming the pregnancy and expected date of birth or a notice from the adoption agency stating the date of placement.

Paternity or partner - a statutory declaration stating any parental leave sought by the spouse and a medical certificate confirming the pregnancy.

Extended paternity or partner and adoption leave - a statutory declaration stating that the employee will be the child's primary care-giver and any maternity leave sought or taken by their spouse.



## Can an employee change their mind?

Parental leave may be lengthened once by the employee without the employer's consent with at least 14 days written notice. The employer and employee must agree to any further extension.

Parental leave may also be shortened if the employer consents. The employee must give at least 14 days written notice.

## Temporary return to work

An employee may interrupt parental leave to return on a full-time, part-time or casual basis if asked by the employer. The employee can say no.

This does not affect the employee's right to return to parental leave. However, the employee must still complete the period of leave by the child's first birthday or anniversary of adoption.

The agreed period of interruption to parental leave and the agreed working arrangements should be in writing.

## Can an employee undertake other paid employment while on parental leave?

The employee may undertake paid employment while on parental leave as long as it does not compromise the original employment relationship. An employer may require an employee to agree in writing not to do anything that is inconsistent with their employment contract.

## What other leave can be taken?

An employee may take any annual or long service leave instead of, or in addition to, parental leave. The total period of all leave must not exceed 52 weeks. Sick leave is not paid unless the employer agrees.

An employee seeking adoption leave is entitled to two days unpaid leave to attend compulsory adoption interviews.

## Does an employee have any special leave entitlements for illness?

If a female employee is ill because of pregnancy while still at work, she's entitled to take unpaid 'special maternity leave' or use any paid sick leave (or a combination of both). A medical practitioner's certificate is required.

## What happens if there is a miscarriage, the child dies or the adoption does not proceed?

If the employee has not commenced parental leave, the leave is automatically cancelled. A female employee is entitled to 'special maternity leave' for a period certified by a medical practitioner. Any leave sought or taken must also be detailed in a statutory declaration.

If the employee is on leave, they may write to the employer asking to return to work. The employee must be allowed to return to work within two weeks of this letter.

## Workplace risk

If the pregnant employee's work is considered unsafe the employer is to vary the employee's working conditions or hours to avoid exposure to the risk. If this is not feasible or reasonable the employer is to transfer the employee to a safer job as near as possible in status and pay to their present work. If this option is also not feasible or reasonable the employer is to grant maternity leave or any available paid sick leave for as long as the employee's doctor certifies is necessary to avoid exposure to the risk.

Workplace risk is to be assessed on the basis of a medical certificate supplied by the employee and the employer's obligations under occupational health and safety laws.

## Returning to work after parental leave

An employee is entitled to return to the position they held immediately before commencing parental leave. If this position no longer exists, the employer must provide the employee with a position as close as possible in status and pay to that of the employee's former position.

## Can an employee be dismissed while on parental leave?

No. It is an offence to dismiss an employee because they or their spouse:

- is pregnant or has applied to adopt a child
- has given birth to or adopted a child
- has applied for or is on parental leave.

An employee may also be able to lodge an unfair dismissal application to the NSW Industrial Relations Commission.

## Does parental leave affect an employee's employment benefits?

Parental leave does not break the continuity of service with an employer. However, such time away from work will not count for long service or other leave entitlements.

## How long do records have to be kept?

Employers must keep records for at least six years.

## Replacement employee

An employer may engage a replacement employee who must be informed of the temporary nature of their employment and the right of the parental-leave employee to return to the position.

## Can an employer discriminate against an employee for taking parental leave?

If an employee believes an employer has discriminated against them because they are pregnant or wish to take parental leave, can contact the Anti-Discrimination Board of NSW.

**OIR's *Maternity at Work* booklet provides more information on parental leave arrangements.**

