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Fair Work
OMBUDSMAN

Best Practice Guide Parental leave

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Working at best practice

Best practice employers have in place parental leave policies that are practical, flexible and tailored to the specific circumstances of the business and its employees. Employers operating at best practice go beyond their minimum legal obligations and strive to implement initiatives that benefit their business as well as their employees.

The best parental leave policies benefit both employers and employees. They assist employees to manage their transition out of and back into work by providing clarity around entitlements and expectations. They also help employers ensure that valuable members of staff are attracted, retained and feel appreciated.

Best practice parental leave policies acknowledge the importance of an employee's parental and family responsibilities, and complement other family-friendly policies by helping employees achieve genuine work-life balance. Best practice employers recognise that employees who feel valued and supported are more likely to remain attached to their workplace and be flexible and committed employees.

This Best Practice Guide explains:

- the advantages of having a best practice parental leave policy

- the benefits to employers of parental leave

- employees' entitlements to paid and unpaid parental leave

- what employers can do to make parental leave work for them and their employees

- how employers can assist a new parent whose partner is on parental leave

- how to implement best practice return to work policies

- discrimination in relation to pregnancy and parental responsibilities.

Why work at best practice?

The benefits of a best practice parental leave policy and family-friendly, flexible working arrangements can be enjoyed at all workplaces. Businesses with flexible working arrangements, including good parental leave policies, can benefit from:

- lower staff turnover, resulting in lower recruitment and training costs

- recognition as an employer of choice

- improved employee satisfaction and commitment

- greater ability to attract new employees

- smoother transitions for employees between work and parental leave.

What is parental leave?

Parental leave allows employees to take time away from work for the birth or adoption of a child. The term 'parental leave' encompasses several types of complementary entitlements, including:

- employer-funded paid parental leave, including paid maternity and paternity leave

- government-funded Parental Leave Pay

- unpaid parental leave

- adoption leave

- the right to return to work.

Workplace parental leave policies at individual workplaces may provide some or all of these entitlements. There are certain legal minimum entitlements that all workplaces must provide. More information on these entitlements is outlined later in this Guide.

Paid parental leave

Paid parental leave can include both employer-funded and government-funded parental leave schemes.

Employer-funded paid parental leave

Many employers provide paid parental leave to their employees. This may be through a contract of employment, enterprise agreement or a workplace policy.

The Australian Government's Parental Leave Pay scheme is not intended to replace existing entitlements to employer-funded paid parental leave. Having an existing entitlement to employer-funded paid parental leave does not affect an employee's potential eligibility for the Australian Government's Parental Leave Pay scheme. If an employer currently provides paid parental leave through an enterprise agreement, they can't withdraw the entitlement for the life of the agreement.

Australian Government Parental Leave Pay Scheme

The Parental Leave Pay scheme is an entitlement for working parents of children born or adopted from 1 January 2011.

The Australian Government's scheme doesn't provide eligible employees with a new entitlement to leave. The scheme provides Government-funded Parental Leave Pay at the National Minimum Wage for a maximum period of 18 weeks. Parental Leave Pay can start from the date of birth or adoption, or at a later date.

From 1 July 2020, eligible employees can claim parental leave pay (PLP) for 1 set period and 1 flexible period for a total period of 18 weeks (90 days):

Initial Parental Leave Pay period

- The first PLP period is a set period of 12 weeks. This cannot be split and must be taken in a continuous block.
- The initial period can be taken any time within 12 months of the child's birth or adoption.
- The parent cannot return to work within this period without ending their initial PLP period (with the exception of 'keeping in touch' days, which are explained later).

Flexible Parental Leave Pay period

The second PLP period allows an employee to take up to 6 weeks (30 days) of flexible PLP. The flexible PLP period:

- usually starts after the first PLP period ends
- can be taken after the parent has returned to work, though only on work days when the employee is not working
- can be taken in flexible periods as negotiated by the employee with their employer. For example, this could include 1 day at a time. It may also be taken in another continuous block
- must be taken within 24 months of the birth or adoption of the child.

Once an employee returns to work after unpaid parental leave, even if it is only part-time, their leave ends. To be eligible to claim flexible PPL days as part of a part-time return to work, an employee needs to negotiate with their employer to take additional time off work or return part-time. More information about making a flexible work request can be found at www.fairwork.gov.au/employee-entitlements/flexibility-in-the-workplace/flexible-working-arrangements.

Example of a flexible PLP period

Jane works 5 days a week. After she has a child, she takes her initial 12 weeks of PLP.

After the 12 weeks of PLP, Jane returns to work and enters into an agreement with her employer to work 3 days each week. Jane applies to be paid flexible PLP by the Australian Government on the 2 days each week that she is not working. The Australian Government pays her flexible PLP for 15 weeks, a total of 30 days.

Parental Leave Pay is taxable and can be received before, after, or at the same time as existing entitlements, such as annual leave, and long service leave.

Eligible employees either receive the Government-funded PLP directly from the Australian Government, or via their employer.

Employers have to provide PLP to eligible employees who:

- have been an employee for 12 months or more prior to the child's expected date of birth or adoption
- will remain an employee of the employer for the period they receive Parental Leave Pay
- are working for an Australian-based employer
- are expected to receive eight weeks or more of Parental Leave Pay.

Eligible employees who don't meet these criteria will be paid by Centrelink. But employers can still make the payments if they and the employee agree to this arrangement. Centrelink will also pay eligible parents directly if they are contractors or self employed. Flexible PLP not taken as part of a continuous block will also be paid by Centrelink, to reduce administrative burden for employers.

To make sure an employer is ready to provide Parental Leave Pay to an eligible employee, employers can register for the Parental Leave Pay scheme through Centrelink Business Online Services.

For further information on the Australian Government's Parental Leave Pay scheme visit www.humanservices.gov.au/paidparentalleave.

Dad or partner pay

Dad or partner pay is a payment for working dads and partners (including same-sex partners) who are on leave to care for a child born or adopted from 1 January 2013.

An eligible working dad or partner will receive up to 2 weeks of government-funded pay at the National Minimum Wage. Dad or partner pay can be received at any time in the first year after the child's birth or adoption, as long as the dad or partner is on leave. This means that dad or partner pay must start within 50 weeks of the child's birth or adoption to ensure that payments are made in time.

For further information about dad or partner pay visit www.humanservices.gov.au/dadandpartnerpay.

Unpaid parental leave under the National Employment Standards

Under the National Employment Standards (NES), employees (including long term casual employees) with 12 months or more of continuous service with an employer are entitled to take up to 12 months of unpaid parental leave from work, with the right to request an additional 12 months of unpaid parental leave, subject to some requirements under the *Fair Work Act 2009* (FW Act).

The NES provides employees with a return-to-work guarantee, allowing them to return to the same position they held before they commenced their period of parental leave. If upon their return to work their pre-parental leave position no longer exists, the employee is able to be transferred to an available position which is nearest in status and pay to their pre-parental leave position, and for which they are suitably qualified.

These provisions are discussed in more detail in the *Parental leave and related entitlements and the National Employment Standards* fact sheet, which is available on the Fair Work Ombudsman's website.

Best practice parental leave schemes

The positive impact of extended leave entitlements on the attraction and retention of staff has long been recognised. Policies should be tailored to the specific needs of the employer and employees in a particular workplace. Options available to best practice employers wishing to introduce a paid parental leave scheme include providing additional paid leave or other amounts or greater flexibility in how employees can use leave, for instance:

- extended periods of employer-funded paid parental leave

- 'topping up' an employee's pay during the period of Government-funded Parental Leave Pay to their full rate of pay

- continuing to pay an employee's superannuation contributions while on unpaid leave

- a return-to-work bonus, payable after an employee has returned to work following parental leave

- taking paid leave at half pay

- non primary carer leave provisions to be taken at the time of birth or placement of a child

- allowing the non-primary carer to access existing paid leave entitlements, including annual leave and long service leave, for extended periods around the birth or adoption of a child

- allowing employees to purchase longer periods of paid leave.

In consultation with their employer, employees can choose to organise their employer-funded paid parental leave in a way which best meets their financial and caring needs. Subject to the terms of employer-funded paid parental leave policies, employees can receive paid parental leave from both government-funded and employer-funded schemes consecutively or concurrently.

When designing a parental leave scheme, employers should keep in mind that if they top-up an employee's pay during a period of government-funded leave to the employee's usual pay rate, the difference between the government-funded pay and the usual pay rate may be classed as paid leave under the FW Act. This means

that other forms of leave, including annual and personal leave, will accrue on the portion of the payment that is employer-funded.

Keeping in touch with employees on parental leave

Best practice parental leave policies should include details about keeping in touch when an employee is on leave. Good communication arrangements can help an employee on leave feel attached to the workplace, their career and their colleagues. Some ideas to assist employers with keeping in touch with an employee on parental leave include:

- sitting down with an employee before they commence their period of leave to discuss key contacts, handovers of work or clients, important dates and milestones during the leave

- arranging a pre-determined time to get in touch with an employee on leave, so the employee's expectations and preferences concerning contact during parental leave can be considered and managed

- making sure a particular person in the workplace is given responsibility to forward important information about the workplace to the employee on leave, such as any important changes to the structure of the employee's workplace

- forwarding staff newsletters, updates and important emails to the employee's home email account where appropriate, or arranging for them to have remote access to their work email account where practical

- inviting all employees on parental leave to attend any social events, planning days, training or team building days which occur during their leave

- arranging a meeting with the employee when they are nearing the end of their leave to discuss the return-to-work expectations of the employee and the employer, such as hours of work, flexible working arrangements, or any adjustments that might need to be made to their role.

It is important to remember that an employee can choose whether they participate in any work-related activities while on a period of leave; it can't be a requirement for an employee on leave to attend work meetings or functions as a condition of their leave. If the employee does attend work during a period of leave, they need to be paid for any work-related activity performed at their usual rate of pay.

Employees on unpaid parental leave, including those receiving payments under the Australian Government Parental Leave Pay scheme, can access up to 10 keeping in touch days without affecting their ongoing entitlement to unpaid leave or Parental Leave Pay. Employees who are taking up to 24 months of unpaid leave can access an additional 10 keeping in touch days in the second 12 months (or part thereof) of their leave.

Unpaid parental leave can be taken at the same time as other forms of paid leave (such as employer-funded paid parental leave or paid annual leave).

Best practice example

Sheridan has been working for SJL Pty Ltd as a full-time logistics manager for three years. Sheridan is soon to have a baby and meets with her supervisor, Jess, to discuss her parental leave arrangements.

SJL Pty Ltd provides all ongoing employees with 14 weeks paid parental leave at full pay after 12 months of service, which is able to be taken at half pay over 28 weeks. Sheridan meets the government-funded Parental Leave Pay eligibility criteria, so can also choose to receive 18 weeks of government-funded Parental Leave Pay.

Sheridan wants to take 12 months off work and structure her leave to ensure she maintains a regular income throughout that period. She decides to take her employer-funded parental leave at half pay first. Sheridan then claims the 18 week government-funded Parental Leave Pay. These 18 weeks are made up of the initial 12 week block – that is, her initial Parental Leave Period – and then she chooses to take the additional 30 days (6 weeks) of flexible Parental Leave Pay directly after in another continuous block. Sheridan also has three weeks of annual leave accrued, which she negotiates with her employer to receive at half pay after she receives the Government-funded Parental Leave Pay.

Jess and Sheridan fill in SJL's leave request forms, and Sheridan applies to Centrelink for the government-funded Parental Leave Pay. Jess and Sheridan discuss hand-over arrangements for her work, and Jess provides Sheridan with an information pack containing the contact information and forms she will need to take with her on leave. Megan, Sheridan's co-worker, agrees to forward any important workplace bulletins to Sheridan's home email account while she is on leave. Jess and Sheridan book in a phone catch up for two months after Sheridan's due date, to arrange a visit to the workplace with her baby.

Returning to work – flexible working arrangements

A successful parental leave policy should incorporate innovative and flexible arrangements that assist parents before, during and after a period of parental leave.

A best practice employer should facilitate flexible arrangements in their workplace for new parents around the time when they are returning to work. It is important to remember that an employee returning from parental leave is legally entitled to return to the same job they held prior to going on leave. If that job no longer exists, they are legally entitled to return to an available position for which they are qualified and suited, which is nearest in status and pay to their pre-parental leave position.

There are a number of things an employer and employee should consider to ensure a smooth transition back into work, including:

- 'keeping in touch' with the employee during their period of leave

- beginning discussions early about how the employee plans to manage their return to work and what their role will be

- speaking to the employee about any accommodations that the employer may be able to make at the workplace, e.g. access to a place for breastfeeding or expressing and storing breast milk, or flexible working arrangements that could be used during the early weeks for settling a young child into child care

- clearly communicating expectations around working hours and taking leave

- giving appropriate consideration to any requests the employee makes for flexible working arrangements, including under the FW Act, or to take additional time off work, for example in connection with taking flexible PLP.

Some flexible, family-friendly working arrangements which a best practice employer may consider for employees returning from parental leave include:

- accessing annual leave in single day periods or part days

- taking time off in lieu of overtime payments

- working additional hours to make up for time taken off

- accessing accrued rostered days off in part days or more flexibly

- enabling children to access the workplace (where safe) or providing a carer's room, child care facilities or information about where parents can access these facilities near their workplace

- agreeing to an employee working part-time

- job share arrangements

- telecommuting or home-based work.

Employers must comply with relevant legal obligations as prescribed by enterprise agreements, awards, employment contracts and the FW Act. They should also consider any existing policies.

The Fair Work Ombudsman's *Work and Family Best Practice Guide*, available on the Fair Work Ombudsman's website, provides more guidance on implementing workplace practices that encourage flexibility to support a balance between the family needs of employees while achieving positive outcomes for employers.

How to implement Best Practice

Employers who wish to implement a new parental leave policy should consider the following steps:

- consulting with employees and their representatives to get a sense of their needs and ideas

- seeking advice from an employer association, professional or other business adviser to inform the contents of the draft policy

- developing a draft policy and consulting with employees and their representatives on their content

- publicising the new policy, with a view to attracting a wider pool of potential new staff.

The employer could also consider an enterprise agreement to formalise the policy arrangements.

The Fair Work Ombudsman's *Consultation and cooperation in the workplace best practice guide*, available on the Fair Work Ombudsman's website, provides guidance on developing and implementing effective consultation mechanisms which encourage cooperation and engagement between employees and employers.

Checklist for a Best Practice Parental Leave Policy

- ✓ Does the policy meet the minimum legislative requirements under the FW Act? Visit the Fair Work Ombudsman's website for further information.

- ✓ Have I sought advice from my employer or employee association or other advisers about the policy?

- ✓ Does the policy meet the needs of our employees and the workplace?

- ✓ How do I let staff know about the policy and their parental leave entitlements?

- ✓ Is the policy in writing?

- ✓ Is there a mechanism for regular review of the policy to ensure it remains relevant?

- ✓ Can the policy be used to attract and retain potential staff?

A note on discrimination

It is unlawful for an employer to discriminate or take other forms of adverse action against an employee because of reasons like their pregnancy or their entitlement to parental leave. More information on discrimination and adverse action can be found on the Protections from discrimination at work page, or by contacting the Fair Work Infoline on 13 13 94.

For more information

Fair Work Ombudsman

13 13 94
www.fairwork.gov.au

Fair Work Commission

www.fwc.gov.au

Centrelink

Parents 13 61 50
Employers 13 11 58
www.humanservices.gov.au

Acronyms used in this guide

FW Act *Fair Work Act 2009*

NES National Employment Standards

PLP Parental leave pay

Disclaimer

The Fair Work Ombudsman is committed to providing you with advice that you can rely on. The information contained in this Best Practice Guide is general in nature. If you are unsure about how it applies to your situation you can call our Infoline on 13 13 94 or speak with a union, industry association or a workplace relations professional. Produced July 2020. FWOBPG12.05.

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