

Pregnant employee entitlements

There are a range of entitlements available for pregnant employees.

Sick leave

Employees who are pregnant still get their ordinary sick leave entitlements.

Pregnancy is not considered an illness or injury, however if a woman experiences a pregnancy-related illness or injury, sick leave can be taken.

Special maternity leave

A pregnant employee who is eligible for unpaid parental leave can take unpaid special maternity leave if:

- she has a pregnancy-related illness or
- her pregnancy ends after 12 weeks because of a miscarriage, termination or stillbirth.

If an employee takes special maternity leave because of a pregnancy-related illness, the leave will end when the pregnancy or illness ends, whichever is earlier. If she takes leave because of a miscarriage, termination or still birth it can continue until she is fit for work.

Special maternity leave won't reduce the amount of unpaid parental leave that an employee can take.

Notice and medical certificates

An employee will need to tell her employer as soon as possible (which can be after the leave has started) that she is taking special maternity leave. She will also need to tell them how long she expects to be on leave.

The employer can ask for evidence and can request a medical certificate.

Safe jobs

All pregnant employees, including casuals, are entitled to move to a safe job if it isn't safe for them to do their usual job because of their pregnancy. This includes employees that aren't eligible for unpaid parental leave.

An employee who moves to a safe job will still get the same pay rate, hours of work and other entitlements that she got in her usual job. She and her employer can agree on different working hours. She will stay until it's safe to go back to her normal job, or until she gives birth.

The employee will need to give her employer evidence that:

- she can work but can't do her normal job (including why her normal job isn't safe) and
- how long she shouldn't work in her normal job.

The employer can ask for this to be a medical certificate.

When no safe job is available

If there is no safe job available the employee can take no safe job leave. If the employee is entitled to unpaid parental leave, no safe job leave is paid.

For a full-time or part-time employee, no safe job leave is paid at the base rate of pay for ordinary hours of work.

For a casual, no safe job leave is paid at the base rate of pay (not including the casual loading) for the average number of hours they would have worked in the period they're on leave.

Employees who aren't entitled to unpaid parental leave can take unpaid no safe job leave.

Directing employees to take parental leave

If a pregnant employee wants to work in the 6 weeks before her due date her employer can ask for a medical certificate within 7 days that states:

- she can continue to work
- it's safe for her to do her normal job.

If the certificate says she's fit for work but it isn't safe for her to continue in her normal job, then the employee will be entitled to a safe job or no safe job leave.

If she doesn't provide a medical certificate or the certificate says she can't continue work at all then the employer can direct her to start unpaid parental leave.

An employee's unpaid parental leave starts when she is directed to take unpaid parental leave and will count as part of the employee's total unpaid parental leave entitlement.

If the employee planned to take parental leave at a later date after the birth, the period of directed leave doesn't have to be taken in a continuous period with the other parental leave.

Protection from discrimination

An employee can't be discriminated against because she's pregnant. This means that an employee can't be fired, demoted or treated differently to other employees because she's pregnant.

Example: Discriminating against a pregnant employee

Melissa is a full-time employee and works in a clothing store. She tells her boss Peter that she is pregnant.

A few weeks later her hours are reduced and she is told that she is now a part-time employee. When Melissa asks Peter about this he says he's reducing her hours to help her with her pregnancy and that in his family the women always reduce their hours when they are pregnant.

Even though Peter thinks he is helping Melissa this is still discrimination. He is treating her differently to his other employees because she is pregnant.

For more information on discrimination see [Protection from discrimination at work. \(www.fairwork.gov.au/employee-entitlements/protections-at-work/protection-from-discrimination-at-work\)](http://www.fairwork.gov.au/employee-entitlements/protections-at-work/protection-from-discrimination-at-work)

Source reference: [Fair Work Act 2009 s.73, 80-82 and 351](http://www.comlaw.gov.au/Series/C2009A00028) [☞] (<http://www.comlaw.gov.au/Series/C2009A00028>)

Need help resolving workplace issues about pregnancy, parental leave and returning to work?

For employees:

If you've lost your job, contact the Fair Work Commission (the Commission) first if you think you were sacked because of:

- discrimination
- a reason that is harsh, unjust or unreasonable
- another protected right.

You have 21 days from the day you were sacked to lodge an application with the Commission. Check the information at the Commission website to find out if you can apply for:

- [unfair dismissal](https://www.fwc.gov.au/termination-of-employment/unfair-dismissal) [☞] (<https://www.fwc.gov.au/termination-of-employment/unfair-dismissal>) (not available if you lost your job because of a genuine [Redundancy \(www.fairwork.gov.au/Ending-employment/Redundancy/default\)](http://www.fairwork.gov.au/Ending-employment/Redundancy/default))
- [a general protections dismissal](https://www.fwc.gov.au/termination-employment/general-protections-dismissal) [☞] (<https://www.fwc.gov.au/termination-employment/general-protections-dismissal>)
- [unlawful termination](https://www.fwc.gov.au/termination-employment/unlawful-termination) [☞] (<https://www.fwc.gov.au/termination-employment/unlawful-termination>)

For employees and employers:

- Find information, downloadable guides and toolkits on pregnancy, parental leave and parents in the workplace on the [Supporting working parents \(http://www.supportingworkingparents.gov.au/\)](http://www.supportingworkingparents.gov.au/) [☞] website.
- Learn about [discrimination \(www.fairwork.gov.au/Employee-entitlements/Protections-at-work/protections-from-discrimination-at-work\)](http://www.fairwork.gov.au/Employee-entitlements/Protections-at-work/protections-from-discrimination-at-work) and [bullying and harassment \(www.fairwork.gov.au/Employee-entitlements/bullying-and-harassment\)](http://www.fairwork.gov.au/Employee-entitlements/bullying-and-harassment) and what can be done to stop it.
- If you think a mistake has been made about pay, parental leave or returning to work, see our [Help resolving workplace issues \(www.fairwork.gov.au/How-we-will-help/How-we-help-you/Help-resolving-workplace-issues/default\)](http://www.fairwork.gov.au/How-we-will-help/How-we-help-you/Help-resolving-workplace-issues/default) section for practical advice on:
 - figuring out if a mistake has been made
 - talking to your employer or employee about fixing it
 - getting help from us if you still can't resolve it.

What to do next

- Read the [Parental leave best practice guide](http://www.fairwork.gov.au/how-we-will-help/templates-and-guides/best-practice-guides/parental-leave) (www.fairwork.gov.au/how-we-will-help/templates-and-guides/best-practice-guides/parental-leave)
- Learn about [Sick and carer's leave](http://www.fairwork.gov.au/leave/sick-and-carers-leave/default) (www.fairwork.gov.au/leave/sick-and-carers-leave/default)

Help for small business

- Find tools, resources and information you might need on our [Small business page](http://www.fairwork.gov.au/Find-help-for/Small-business/default) (www.fairwork.gov.au/Find-help-for/Small-business/default) .

You might also be interested in

- [Taking parental leave](http://www.fairwork.gov.au/Leave/maternity-and-parental-leave/taking-parental-leave) (www.fairwork.gov.au/Leave/maternity-and-parental-leave/taking-parental-leave)
- [When on parental leave](http://www.fairwork.gov.au/Leave/maternity-and-parental-leave/When-on-parental-leave/default) (www.fairwork.gov.au/Leave/maternity-and-parental-leave/When-on-parental-leave/default)
- Information, downloadable guides and toolkits on pregnancy in the workplace on the [Supporting working parents](http://www.supportingworkingparents.gov.au/) (<http://www.supportingworkingparents.gov.au/>) [↗](#) website
- Australian Human Rights Commission's report [Pregnant and Productive: It's a right not a privilege to work while pregnant](https://www.humanrights.gov.au/pregnant-and-productive-its-right-not-privilege-work-while-pregnant) (<https://www.humanrights.gov.au/pregnant-and-productive-its-right-not-privilege-work-while-pregnant>) [↗](#)
- the Workplace Gender Equality Agency's [Workshop: practical guide to pay equity](https://www.wgea.gov.au/events-and-workshops/workshop-practical-guide-pay-equity) [↗](#) (<https://www.wgea.gov.au/events-and-workshops/workshop-practical-guide-pay-equity>)

Page reference No: 1955

Contact us

Fair Work Online: www.fairwork.gov.au

Fair Work Infoline: 13 13 94

Need language help?

Contact the Translating and Interpreting Service (TIS) on 13 14 50

Hearing & speech assistance

Call through the National Relay Service (NRS):

For TTY: 13 36 77. Ask for the Fair Work Infoline 13 13 94

Speak & Listen: 1300 555 727. Ask for the Fair Work Infoline 13 13 94

The Fair Work Ombudsman is committed to providing advice that you can rely on. The information contained on this website 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 workplace relations professional. Visitors are warned that this site may inadvertently contain names or pictures of Aboriginal and Torres Strait Islander people who have recently died.