

Going back to work early

Find out about cancelling parental leave and returning to work early.

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Employee asks to return to work

An employee on unpaid parental leave can shorten their leave, if their employer agrees. If the employer doesn't agree, then the employee has to return to work on the planned date.

No notice period is required when an employee and employer agree to the new return date.

Different rules apply if there's a stillbirth or infant death.

Employer asks employee to return to work

An employer can ask an employee to return earlier than planned from unpaid parental leave if they no longer have responsibility for the care of the child.

The employee has to return to work if their employer makes such a request.

An employer has to give written notice to the employee stating the return to work date. The return to work date has to be at least:

- 4 weeks after notice to return to work is given
- 6 weeks after the birth of a child, if the employee was pregnant.

Different rules apply if there's a stillbirth or infant death.

Effect on partner's unpaid parental leave

Returning to work early from unpaid parental leave can affect an employee partner's leave dates and entitlements.

If an employee returns to work early, the partner may need to start their leave earlier as unpaid parental leave usually needs to be taken in one continuous period.

The partner should discuss any changes to the timing of unpaid parental leave with their employer before taking the leave.

Returning to work due to stillbirth or death of a child

An employee can reduce or cancel their period of unpaid parental leave if they experience a stillbirth or death of a child.

Death of a child, or 'infant death' under the Fair Work Act 2009 (FW Act), is when a child dies within the first 24 months of life.

Before unpaid parental leave has started

An employee can cancel their unpaid parental leave with written notice before it starts.

An employer can't require an employee to return to work or cancel their upcoming unpaid parental leave after the employee experiences a stillbirth or death of a child.

Where an employee experiences a stillbirth or death of a child, the employee can take unpaid parental leave even if they haven't previously given notice to their employer (as long as they notify their employer as soon as they can).

After unpaid parental leave has started

If the employee has started unpaid parental leave but the infant is stillborn or dies, the employee is still entitled to be on unpaid parental

leave unless the employee ends the leave.

An employee can end the leave by giving their employer at least 4 weeks' written notice. The employer needs to respond with a return to work date within that notice period. Employers and employees can agree to the employee returning to work on an earlier date.

An employer can't require an employee to return to work or cancel any upcoming planned leave after a stillbirth or infant death.

Source reference: [Fair Work Act 2009 s.77, 77A and 78](http://www.comlaw.gov.au/Series/C2009A00028) (http://www.comlaw.gov.au/Series/C2009A00028)

Tools and resources

- [Application to reduce, extend or cancel leave within initial 12 months template \(PDF 248KB\)](http://www.fairwork.gov.au/ArticleDocuments/766/application-to-vary-parental-leave-within-12-months.pdf.aspx) (www.fairwork.gov.au/ArticleDocuments/766/application-to-vary-parental-leave-within-12-months.pdf.aspx) ([DOCX 56.6KB](http://www.fairwork.gov.au/ArticleDocuments/766/application-to-vary-parental-leave-within-12-months.docx.aspx)) (www.fairwork.gov.au/ArticleDocuments/766/application-to-vary-parental-leave-within-12-months.docx.aspx)
- [Pregnant employee entitlements](http://www.fairwork.gov.au/Leave/maternity-and-parental-leave/pregnant-employee-entitlements) (www.fairwork.gov.au/Leave/maternity-and-parental-leave/pregnant-employee-entitlements)

Related information

- [Returning to work from parental leave](http://www.fairwork.gov.au/Leave/maternity-and-parental-leave/returning-to-work-from-parental-leave) (www.fairwork.gov.au/Leave/maternity-and-parental-leave/returning-to-work-from-parental-leave)
- [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)

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