

## Parental leave and related entitlements

### Overview

Unpaid parental leave is part of the National Employment Standards (NES). The NES apply to all employees in the national workplace relations system, regardless of any award, agreement or contract.

The NES entitlement to unpaid parental leave and related entitlements applies to all employees in Australia. The parental leave provisions include:

- birth-related leave and adoption-related leave (including in relation to premature birth, stillbirth or infant death)
- unpaid special parental leave
- a right for pregnant employees to transfer to a safe job in appropriate cases, or to take 'no safe job leave'
- consultation requirements
- a return to work guarantee
- unpaid pre-adoption leave.

### Which employees are eligible for unpaid parental leave?

All employees in Australia are eligible for unpaid parental leave if they have completed at least 12 months of continuous service with their employer.

This includes casual employees if they have:

- been working for their employer on a regular and systematic basis for at least 12 months
- a reasonable expectation of continuing work for their employer on a regular and systematic basis, had it not been for the birth (or expected birth) or adoption (or expected adoption) of a child.

### What is the entitlement to unpaid parental leave?

Unpaid parental leave applies to employees who have, or will have, responsibility for the care of a child.

Parents who experience a stillbirth or the death of an infant during the first 24 months of life can also take unpaid parental leave.

Parents are entitled to unpaid parental leave if:

- the employee, the employee's spouse, or the employee's de facto partner gives birth or
- the employee adopts a child under 16.

An employee's 'de facto partner' is someone who lives with the employee in a relationship as a couple on a genuine domestic basis. The employee's partner can be the same sex or different sex to the employee, and either a current or former de facto partner of the employee.

Each parent can take up to 12 months unpaid parental leave, or up to 24 months, if their employer agrees. An employee's entitlement to unpaid parental leave is not affected by how much leave their partner takes.

The parents can be working for the same or different employers.

### What are the rules for taking unpaid parental leave?

- The leave can be taken as a single continuous period, flexibly (up to 100 days), or a combination of both.
- For a pregnant employee, leave can start up to 6 weeks before the expected date of birth (or earlier if agreed), or within 24 months of the birth of the child. The parental leave must end within 24 months of the birth of the child.
- The employee who isn't pregnant can take parental leave at any time within 24 months of the birth or placement of the child, but the leave must end within 24 months of the birth or placement of the child.
- Parents can take parental leave concurrently (at the same time) for part or all of their period of leave.
- Employees can take paid leave such as annual leave at the same time as unpaid parental leave.

### Flexible unpaid parental leave

Employees can take up to 100 days of their unpaid parental leave flexibly at any time within 24 months of a child's birth or adoption.

Flexible unpaid parental leave can be taken as:

- a single continuous period of one day or longer
- separate periods of one day or longer each.

## Can an employee extend their unpaid parental leave?

An employee taking 12 months parental leave can request an extension of up to a further 12 months leave (up to 24 months in total).

The request must be in writing and given to the employer at least 4 weeks before the end of the employee's initial period of parental leave.

The employer must respond **in writing** within 21 days, stating whether they grant or refuse the request. They can only refuse if:

- they've discussed and genuinely tried to reach an agreement with the employee about an extension
- they've considered the consequences for the employee of refusing the extension, and
- there are reasonable business grounds to do so.

'Reasonable business grounds' may include:

- the requested extension would be too costly
- other employees' working arrangements can't be changed to accommodate the request
- it's impractical to change other employees' working arrangements or hire new employees to accommodate the request
- the extension would result in a significant loss of productivity or have a significant negative impact on customer service.

If an employer refuses a request, the written response to the employee must:

- detail the reasons for refusal, including the particular business grounds relied on and how they apply to the request
- set out the period of extension of unpaid parental leave that the employer would be willing to agree to or state that there is no extension of the period that the employer would be willing to agree to
- include information about the process for resolving disputes about the request.

Employers can respond to employees using our [free templates](https://www.fairwork.gov.au/templates) available at [fairwork.gov.au/templates](https://www.fairwork.gov.au/templates)

If an employer and employee cannot resolve a dispute about a request for extension of parental leave at the workplace level, the [Fair Work Commission](https://www.fairwork.gov.au/fair-work-commission) can assist with resolving the dispute. For more information visit [fwc.gov.au/issues-we-help](https://www.fwc.gov.au/issues-we-help)

## Can a pregnant employee be required to take unpaid parental leave within 6 weeks before the birth?

If a pregnant employee wants to work during the 6 weeks before birth, their employer can ask them to provide a medical certificate within 7 days which states:

- the employee is fit for work
- if the employee is fit for work, whether it is inadvisable for the employee to continue in their present position because of:
  - illness or risks arising out of the employee's pregnancy, or
  - hazards connected with the position.

The employer can require the employee to take a period of unpaid parental leave as soon as possible if:

- the employee fails to provide the requested medical certificate within 7 days of the request, or
- the employee provides a certificate within 7 days that states they are not fit for work, or
- the certificate says it's inadvisable for the employee to continue in their present position and the employee hasn't provided the required notice and evidence for taking unpaid parental leave.

The employee's unpaid parental leave will then start when they are directed to take unpaid parental leave and will count as part of the employee's total unpaid parental leave entitlement. The rules about when the leave must start and notice requirements don't apply.

## What are the notice and evidence requirements for taking unpaid parental leave?

An employee is not entitled to take unpaid parental leave (either continuously, flexibly or both) unless they:

- inform their employer of their intention to take unpaid parental leave by giving at least 10 weeks written notice (unless it is not possible to do so)
- specify the intended start and end dates for any continuous unpaid parental leave
- state the total number of flexible unpaid parental leave days the employee intends to take
- at least 4 weeks before the intended start date confirm:
  - the intended start and end dates,
  - the number of flexible unpaid parental leave days they're taking,
  - advise the employer of any changes to the intended start and end dates (unless it is not possible to do so).

An employer may require evidence that would satisfy a reasonable person of the actual or expected date of birth of a child (for example a medical certificate), or the day or expected day of placement of a child under 16.

### Notice requirements for flexible unpaid parental leave

In addition to the notice requirements above, an employee has to give at least 4 weeks' notice of the specific flexible parental leave days they intend to take.

Notice can also be provided later if the employer agrees.

## Parental leave for stillbirth, premature birth or infant death

### Stillbirth or infant death

In the case of a stillbirth or an infant death during the first 24 months of life, an eligible employee is still entitled to take unpaid parental leave. They can take up to 12 months unpaid parental leave.

An employer can't make an employee come back to work, or cancel their unpaid parental leave, after a stillbirth or an infant death. The employee can also 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 practicable).

An employee can also choose to return to work if they want to. They can reduce or cancel their planned parental leave if their pregnancy ends due to stillbirth or infant death.

If the unpaid parental leave hasn't started, the employee can cancel the leave with written notice.

If the leave has started, the employee can give at least 4 weeks written notice cancelling the leave and providing a return to work date. This date must be at least 4 weeks after the employer receives the notice.

### Compassionate leave

Parents who experience a stillbirth or an infant death may take compassionate leave while on parental leave. Another employee may also be entitled to take compassionate leave where the child was, or would have been, their immediate family or household member.

### Premature birth and birth-related complications

Parents can agree with their employers to put their unpaid parental leave on hold if the child has to remain in hospital after birth or is hospitalised immediately after birth. This includes if the child was premature or developed a complication or contracted an illness during birth or following birth.

This means that while their baby is hospitalised, a parent can return to work and the period where they are back at work will not be deducted from their unpaid parental leave. The parent can then resume their unpaid parental leave at the earliest of:

- a time agreed with their employer
- the end of the day when the child is discharged from the hospital, or
- if the child dies, the end of the day when the child dies.

The period the employee works doesn't break their period of continuous unpaid parental leave.

Employers can request evidence that would satisfy a reasonable person that the child is in hospital and the employee is fit for work, such as a medical certificate.

## Other entitlements related to parental leave

### Unpaid special parental leave

An eligible pregnant employee is entitled to take unpaid special parental leave if the employee is not fit for work because:

- of a pregnancy-related illness, or
- they have been pregnant and:
  - their pregnancy ends after at least 12 weeks because of miscarriage or termination
  - the infant isn't stillborn.

While the employee won't be entitled to take special parental leave if the infant is stillborn, the employee may still be entitled to take unpaid parental leave.

An employee must give their employer notice they are taking unpaid special parental leave as soon as possible (which may be after the leave has started). They need to tell them the expected period of leave.

An employer can ask for evidence that would satisfy a reasonable person (for example a medical certificate).

The entitlement to unpaid parental leave isn't reduced by the amount of any unpaid special parental leave taken by the employee while they are pregnant.

### Transfer to a safe job or 'no safe job leave'

A pregnant employee is entitled to be transferred to an 'appropriate safe job'. An appropriate safe job is a job that has:

- the same ordinary hours of work as the employee's present position, or
- a different number of ordinary hours that the employee agrees to.

This entitlement applies if the employee has provided evidence (for example a medical certificate) that would satisfy a reasonable person that:

- they are fit for work, but
- it is inadvisable for them to continue in their present position during a period because of:
  - illness or risks arising out of the pregnancy, or
  - hazards connected with that position.

If there is an appropriate safe job available, the employee must be transferred to that job for the risk period (until it's safe to go back to their normal job or until they give birth), with no other change to the employee's terms and conditions of employment.

The safe job must have the same ordinary hours of work, unless the employee agrees to a different number of ordinary hours. The employer must pay the employee at their full rate of pay for the position they were in before the transfer and for the hours they work during the risk period. If the employee works different ordinary hours, they may get different penalties, loadings and allowances.

#### Example

Sammie is a full-time shiftworker at a loading dock.

When Sammie was 15 weeks pregnant, her doctor advised that although she was fit for work, her current duties are a risk to her pregnancy.

Sammie spoke to her employer about her situation. They agreed that she will work day shifts in the office until she takes parental leave.

Even though Sammie performs lower paid duties in the office, she will get the same pay rate for the hours she works during the risk period. However, she won't get her shift loadings as she is no longer doing shiftwork.

If there is no appropriate safe job available and the employee is entitled to unpaid parental leave, they are entitled to paid 'no safe job leave' for the risk period. They need to be paid at their base pay rate for ordinary hours of work during the risk period.

If there is no appropriate safe job available and the employee isn't entitled to unpaid parental leave, they are entitled to unpaid 'no safe job leave' for the risk period. No safe job leave is paid at the base rate of pay for the employee's ordinary hours of work.

If an employee is on paid 'no safe job leave' during the 6 week period before the expected date of birth, the employer can ask the employee for a medical certificate stating whether they are fit for work.

If the employee doesn't give the employer a medical certificate within 7 days after the request, or they provide a certificate stating they are not fit for work, the employer can require them to take unpaid parental leave as soon as practical (if they are eligible).

The 'no safe job leave' ends when the period of unpaid parental leave starts.

### **Consultation**

Employees on unpaid parental leave are entitled to be kept informed of any decisions their employer makes that will have a significant effect on the status, pay or location of their pre-parental leave position. The employer must take all reasonable steps to give the employee information about (and an opportunity to discuss) the effect of any such decisions on the employee's position.

The employee's pre-parental leave position is the position they held before starting the unpaid parental leave, or the position they held before they were transferred to a safe job or reduced their hours due to the pregnancy.

### **Return to work guarantee**

An employee is entitled to return to:

- their pre-parental leave position, or
- an available position for which they are qualified and suited, which is nearest in status and pay to their pre-parental leave position, if their pre-parental leave position doesn't exist anymore.

Before hiring an employee to perform the work of the employee on leave, the employer needs to notify any replacement employee:

- their engagement is temporary
- the employee on leave has a right to return to work when their unpaid parental leave ends (including if the period is extended, or if it is reduced in the case of a stillbirth or infant death or if they are no longer responsible for the care of the child).

### **Keeping in touch days**

A keeping in touch day is when an employee performs work for the employer on a day or part of a day while on a period of approved parental leave.

An employee on unpaid parental leave gets 10 keeping in touch days. If the employee extends their period of unpaid parental leave beyond 12 months, they can take an additional 10 days.

Keeping in touch days can be worked:

- as a part day
- one day at a time
- a few days at a time, or
- all at once.

Keeping in touch days can occur at least 42 days after the date of birth or adoption of the child or earlier if the employee requests it. If a request is made, a keeping in touch day can't be worked earlier than 14 days after the date of birth or placement of the child.

The employer and employee have to agree to the keeping in touch days. An employee doesn't have to use keeping in touch days if they don't want to.

An employee gets their normal pay and accumulates leave entitlements for each keeping in touch day (or part day).

### **Unpaid pre-adoption leave**

All employees (regardless of how long they've worked for the employer) are entitled to up to 2 days of unpaid pre-adoption leave to attend any interviews or examinations required to adopt. This leave can be taken as:

- a single continuous period of up to 2 days, or
- any separate periods to which the employee and employer agree.

If an employee has other leave available, such as annual leave, the employer may direct them to use this leave before taking unpaid pre-adoption leave.

An employee must give their employer notice they are taking unpaid pre-adoption leave as soon as possible (which may be after the leave has started). They need to tell them the expected duration of the leave and, if required, provide evidence that would satisfy a reasonable person.

### **What about paid parental leave?**

Some employees are also entitled to paid parental leave. The Australian Government Paid Parental Leave scheme provides government funded Parental Leave Pay at the National Minimum Wage to employees who meet the eligibility criteria. For more information about government funded paid parental leave, you can visit the [Services Australia](https://www.servicesaustralia.gov.au) website at [servicesaustralia.gov.au](https://www.servicesaustralia.gov.au) or call them on 13 61 50.

## Further information

For more information, see our [Parental leave best practice guide](#) available at [fairwork.gov.au/bestpracticeguides](http://fairwork.gov.au/bestpracticeguides)

We also have [templates](#) relating to requesting and granting parental leave, available at [fairwork.gov.au/templates](http://fairwork.gov.au/templates)

Unpaid parental leave is provided for by sections 70-85 of the Fair Work Act 2009.

### CONTACT US

Fair Work Online: [www.fairwork.gov.au](http://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 you with advice that you can rely on. The information contained in this fact sheet 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.

Last updated: December 2023  
© Copyright Fair Work Ombudsman