

Parental leave & related entitlements

Overview

Parental leave is part of the National Employment Standards (NES). The NES applies 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 apply 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 maternity leave
- a right 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 employed by the employer on a regular and systematic basis for a sequence of periods over at least 12 months
- would reasonably have expected to continue working 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 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 eligible member of an employee couple can take a separate period of up to 12 months of unpaid parental leave. The combined leave can't be for more than 24 months.

If only 1 person is taking leave, they can take up to 24 months if their employer agrees.

An 'employee couple' is where 2 employees are in a spousal or de facto relationship and want to take leave. They don't have to be working for the same employer.

What are the rules for taking unpaid parental leave?

There are different rules for taking unpaid parental leave, depending on:

- if 1 employee takes leave, or
- if both members of an employee couple take leave.

One employee taking unpaid parental leave

The following rules apply where 1 employee (or only 1 member of an employee couple) takes leave:

- The leave can be taken as a single continuous period, or as a single continuous period and a flexible period of up to 30 days (6 weeks).
- For a pregnant employee, leave can start up to 6 weeks before the expected date of birth, or earlier if agreed. If the employee is not giving birth (for example the leave is adoption related or the employee who isn't pregnant is the parent taking leave), leave starts on the date of birth or placement of the child.

- The leave can start at any time within 12 months after the birth or placement of the child if:
 - the employee has a spouse or de facto partner who is not an employee and
 - the spouse or de facto partner has responsibility for the care of the child.
- Employees can take paid leave such as annual leave at the same time as unpaid parental leave.

Both members of an employee couple taking leave

The following rules apply to an employee couple if both employees take unpaid parental leave.

- The employees are entitled to a total of up to 24 months of leave between them, which generally must be taken separately in a single continuous period.
- If the employee who takes leave first is pregnant or gives birth, they can start their leave up to 6 weeks before the expected date of birth or earlier if agreed with the employer.
- If the employee who takes leave first is not pregnant, their leave must start on the date of birth or placement.
- Both employees of an employee couple can take leave at the same time (called 'concurrent leave') for a maximum period of 8 weeks. This leave must be taken within 12 months of the birth or adoption of a child. The concurrent leave can be taken in separate periods. Each period must be at least 2 weeks unless the employer agrees to a shorter period.
- Concurrent leave counts as part of an employee's overall unpaid parental leave and is deducted from their overall entitlement of 12 months of leave.
- Employees can take paid leave such as annual leave at the same time as unpaid parental leave.

Flexible parental leave

Employees can take up to 30 days (6 weeks) 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 1 day or longer
- separate periods of 1 day or longer each.

An employee can take flexible unpaid parental leave on the same day their partner is on continuous unpaid parental leave. The 2 employees can only take a total of up to 8 weeks of unpaid parental leave at the same time.

An employee's entitlement to unpaid parental leave, except for flexible unpaid parental leave, will end on the first day that the employee takes flexible unpaid parental leave. Once an employee takes flexible unpaid parental leave, they can't later take a period of continuous unpaid parental leave. This means that if an employee is planning on taking a period of continuous unpaid parental leave they should do so before they take any flexible unpaid parental leave.

Can an employee extend their unpaid parental leave?

An employee taking 12 months parental leave can request an extension of a further 12 months leave (up to 24 months in total), unless they are a member of an employee couple and their partner has already taken 12 months of leave.

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 have given the employee a reasonable opportunity to discuss their request
- there are reasonable business grounds to do so.

The employer has to detail their reasons in writing.

The NES doesn't define 'reasonable business grounds' for refusing a request. Factors may include:

- the effect on the workplace (for example the impact on finances, efficiency, productivity, customer service)
- the inability to manage the workload among existing staff
- the inability to recruit a replacement employee.

Can a pregnant employee be required to take 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 that states:

- the employee is fit for work
- if the employee is fit for work, whether it is inadvisable for the employee to continue in her 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
- provides a certificate within 7 days that states they are not fit for work at all.

The employee's unpaid parental leave will then start when she is 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 parental leave?

An employee is not entitled to take unpaid parental leave 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 of the leave
- at least 4 weeks before the intended start date:
 - confirm the intended start and end dates, or
 - advise the employer of any changes to the intended start and end dates (unless it is not possible to do so).

Where concurrent leave is to be taken in separate periods, these notice requirements apply to the first period of that leave. For second and subsequent periods, the employee must provide the employer with at least 4 weeks notice.

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 parental leave

If an employee wants to take flexible unpaid parental leave (up to 30 days), they need to tell their employer:

- at the same time they give notice of their continuous parental leave, or
- at least 10 weeks before the start of their flexible parental leave.

Notice can also be provided later if the employer agrees.

An employee needs to tell their employer the total number of days of flexible parental leave they intend to take. An employee can't take more than 30 days of flexible leave.

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 any upcoming planned 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 maternity leave

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

- of a pregnancy-related illness, or
- if
 - she has been pregnant
 - her 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 maternity 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 maternity 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 maternity 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 her normal job or until she gives birth), with no other change to the employee's terms and conditions of employment. 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 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.

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 any more.

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
- 1 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, and Dad and Partner 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](http://www.servicesaustralia.gov.au) website at www.servicesaustralia.gov.au or call them on 13 61 50.

Further information

For more information, see our [Best practice guide - parental leave](#), available at www.fairwork.gov.au/bestpracticeguides

We also have [templates](#) relating to requesting and granting parental leave, available at www.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

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**

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