

# Parental leave guide

This guide outlines the rules and entitlements for parental leave and payments during parental leave for employees and employers. Parental leave entitlements cover all permanent arrangements where the applicant has primary responsibility for the care, development, and upbringing of a child under 6 years. This includes adoption, Home for Life parents, whāngai, grandparents, etc.

## Overview

The Parental Leave and Employment Protection Act 1987 (“the Act”) and amendments prescribe minimum entitlements with respect to parental leave and protects the rights of employees during pregnancy and parental leave.

There are different entitlements for parental leave and payments for employees depending on their length of service. The Act provides for eligible employees to take unpaid leave on the birth of a child or on the assumption of primary care of a child under the age of six. The Act also provides for taxpayer-funded paid parental leave for up to 26 weeks for eligible employees.

## Leave entitlements

Parental leave is generally unpaid, although eligible employees and self-employed persons may qualify for the government’s paid parental leave (set out in the below section). There are four kinds of parental leave for employees:

- Special leave (up to 10 days)
- Primary carer leave (up to 26 weeks)
- Partner’s leave (up to 2 weeks)
- Extended leave (up to 52 weeks, less any primary carer leave taken)

### Special leave

Special leave of up to 10 days is available to a pregnant employee, before Primary Carer Leave begins. This is for pregnancy-related reasons, such as antenatal classes or appointments with a doctor or midwife. Special Leave is unpaid.

Special Leave is not taken into account when calculating the total period of Parental Leave available. The employee may also be entitled to use any paid sick leave they have available for those purposes.

## Primary carer leave

Primary carer leave is a continuous period of up to 26 weeks which, at the employee's request, can start up to six weeks before the expected date of delivery (where a child is to be born to the employee), or on the day the employee assumes primary care for a child under the age of 6.

Primary carer leave may begin earlier:

- if agreed by the employee and the employer
- if the baby is born before the scheduled leave
- if directed by a medical practitioner or midwife
- at the employer's request (if a pregnant employee is unable to perform their job to the safety of themselves or others or is unable to perform their job adequately, and no other suitable work is available).

However, if the primary carer leave commences early, the employee is still entitled to at least 20 weeks' primary carer leave after the arrival of the child (even if this means more than 26 weeks' primary carer leave is taken in total).

The primary carer leave period is taken into account in calculating the total parental leave period available.

### Who is a 'primary carer'?

- a female who is pregnant or has given birth to a child ("the biological mother")
- the spouse or partner of the biological mother, if the biological mother has transferred part or all of her entitlement to a parental leave payment to that spouse or partner (in which case the spouse or partner is the primary carer for the period of time in relation to which the entitlement is transferred)
- a person, other than the biological mother or her partner, who takes permanent primary responsibility for the care, development, and upbringing of a child who is under the age of 6 years.

### Eligibility for primary carer leave

An employee who has worked for their employer for an average of at least 10 hours a week for not less than 6 months (including at least one hour every week or 40 hours in every month) at the expected date of delivery or the date on which they will assume primary care for a child under the age of 6, is entitled to take primary carer leave.

## Partner's leave

Partner's leave is available to be taken within the period beginning 21 days before the expected date of delivery or the date on which the primary carer will assume primary care for a child under the age of 6, and ending 21 days after the expected arrival date (or at any other time if agreed between the employee and the employer). The duration of partner's leave will be either one or two weeks, depending on duration of employment.

Partner's leave is not normally counted as part of the total period of parental leave available.

### Who is a 'partner'?

A 'partner' is the spouse or partner of the biological mother or nominated primary carer of a child, male or female, same sex or different sex.

### **Eligibility for partner's leave**

An employee is eligible for up to one week of partner's leave if:

- they have been employed by the same employer for at least an average of 10 hours a week in the six months before the due date of the baby or the date their partner becomes the primary carer of the child under 6 permanently.

An employee is eligible for up to two weeks of partner's leave if:

- they have been employed by the same employer for at least an average of 10 hours a week in the twelve months before the due date of the baby or the date their partner becomes the primary carer of the child under 6 permanently.

### **Extended leave**

The amount of extended leave that an employee may take depends on whether each parent meets either the six month or 12 month time criteria. Extended leave may be shared by two parents who both meet the criteria, and they can take it at the same time or one after the other.

Extended leave can begin:

- at any time after an employee ends their primary carer leave
- at any time after an employee ends their partner leave
- on a date agreed between the employee and the employer
- if an employee can take primary carer leave or partner's leave but chooses not to, they can start extended leave either when the baby arrives if the child is born to the employee or their spouse or partner, or the date the employee or their spouse or partner becomes the primary carer in respect of the child in all other cases.

Employees can finish primary carer leave or partner's leave, go back to work, and then take extended leave later.

The total extended leave period (including primary carer leave but excluding partner's leave and any Special Leave), does not normally exceed 52 weeks. The total period of parental leave may exceed 52 weeks where the biological mother had to cease work due to the pregnancy earlier than 6 weeks before the expected date of delivery of the child, or where the employer agrees.

### **When extended leave ends**

For employees who have been with their employer for at least 12 months, the end date of extended leave will be on the child's first birthday (or one year after the employee becomes the primary carer of the child). This applies whether leave was taken flexibly or not.

For employees who have been with their employer for more than six but less than 12 months, the end date of extended leave will be when the child turns six months (or six months after the date on which the employee becomes the primary carer of the child).

Extended leave also terminates if an employee ceases to have care of the child.

### **Eligibility for extended leave**

- Up to 52 weeks of extended leave is available for employees who have worked for their employer for an average of at least 10 hours a week for not less than 12 months (including at least one hour in every week or 40 hours in every month) at the due date of the baby or the date they or their partner becomes the primary carer of a child under the age of 6 permanently.

- Up to 26 weeks extended leave is available for employees who have been with their employer for more than six but less than 12 months at the due date of the baby or the date they or their partner becomes the primary carer of a child under the age of 6 permanently. Employers can choose to give their employees 12 months' job-protected leave.

## Subsequent pregnancies

Where an employee has taken a period of parental leave, they are not entitled to take a further period of parental leave until at least six months after the date on which that last period of parental leave ends and the employee resumes service with the employer.

## Payment during parental leave

Parental leave payments are an entitlement paid by government to support working parents while they take parental leave to replace the employee's earnings up to a maximum weekly amount for a maximum of 26 weeks. It is payable to both employees and self-employed persons who meet the qualifying criteria.

The current maximum payment (effective from 1 July 2023) is \$712.17 per week before tax and any other deductions. The maximum payment is adjusted as at 1 July each year to reflect the percentage movement upwards in average ordinary time weekly earnings.

All or part of the payment may be transferred to an eligible partner. In such a case, the maximum payment is shared between the parents and the payment is paid for a single continuous period for each parent.

Parental leave payments are treated as income and are taxable. Where relevant, student loan and child support deductions will be made but ACC earners' levy is not deducted.

## Eligibility for parental leave payments

A primary carer is eligible for parental leave payments if they:

- have worked for the same employer for at least six months (for an average of at least 10 hours a week (including at least one hour every week or 40 hours in every month) immediately before the due date of the baby or the date they become the primary carer of a child under the age of 6 permanently, and
- have not been on parental leave during the six months ending at the due date of the baby or the date they become the primary carer of a child under the age of 6 permanently.

The payment replaces the employee's earnings, at the rate of their ordinary weekly pay or average weekly earnings (whichever is greater), up to the maximum amount, currently \$712.17 per week (effective 1 July 2023) before tax and deductions. Payments are made only for periods of parental leave actually taken in respect of the child.

## Applying for parental leave payments

As a first step, employees will need to apply in writing for Parental Leave to their employer, at least three months before the baby is due. Once the employer has approved the parental leave request, the employee can then make an application to IRD for parental leave payments (although the employee's application to IRD can be lodged at any time up until the employee returns to work).

Application forms for parental leave payments (IR880) are available from the Inland Revenue and the Ministry of Business, Innovation and Employment (MBIE) and can be downloaded from their websites at [www.employment.govt.nz](http://www.employment.govt.nz) and [www.ird.govt.nz](http://www.ird.govt.nz).

## Providing information on an employee's earnings

Employers are obliged to provide information to Inland Revenue or the MBIE about the employee's eligibility for paid leave and their earnings on request. This is provided for on the application form the employee submits to Inland Revenue.

## Parental tax credits

Some employees may be eligible for a parental tax credit as well as paid parental leave. In that case, the person can choose either paid parental leave or the parental tax credit, whichever is best for them (choosing the parental tax credit does not affect the employee's right to unpaid parental leave). Information on the parental tax credit is available from Inland Revenue at [www.ird.govt.nz](http://www.ird.govt.nz) or by phoning 0800 377 777.

## 'Keeping in touch' days

Paid 'keeping in touch' days are available for employees on parental leave, by agreement between the employer and employee. Keeping in touch days allow workers to work up to 64 hours during their 26 weeks of paid leave without being treated as having returned to work. For example, these hours could be used to keep up with skills development or training or completing a work handover and can help the parent ease back into work.

Keeping in touch days are not compulsory and are only used by mutual agreement between the employer and the employee. The employee and the employer also need to agree on the terms of work and the type of work to be undertaken.

The baby will need to be at least four weeks old before the keeping in touch days can be used. This is to protect the baby's and the birth mother's health. Parents of preterm babies are eligible for additional keeping in touch days.

## Notice requirements

### Notification requirements - employee to employer

An employee wishing to take parental leave is required to give their employer written notice, specifying the date on which leave is to begin and how long it is to last. Notice must normally be given at least three months before the expected due date. However, an employer may not unreasonably refuse a late application.

- **Notice from a pregnant employee:** Notice from a pregnant employee must be accompanied by a certificate from a registered medical practitioner certifying the pregnancy and stating the expected date of delivery.
- **Notice from a spouse/partner:** Notice from a spouse or partner must be accompanied by a certificate as above and include a written assurance from the biological mother named in the certificate that the employee is her spouse or partner and intends to care for the child born to her.

- **Notice if the employee is not the biological mother or her spouse/partner:** Notice from an employee who is not the biological mother, or her spouse/partner must:
  - include a statement by the employee that the employee (or their spouse or partner) will be the primary carer of the child
  - be given at least 14 days before the employee (or their spouse or partner) intends to become the primary carer of the child
  - be accompanied by any evidence that is prescribed in regulations (e.g., a social worker's letter, an interim court order, etc.).

## Notification for extended leave

Where extended leave is sought, the notice to the employer must also state:

- Whether the employee's spouse or partner intends to take any period of extended leave or primary carer leave (the spouse or partner's intention to take partner's leave need not be notified).
- An intention to claim paid parental leave.

If the employee's spouse or partner intends to take any period of parental leave, the notice must also include:

- the name of the employee's spouse or partner
- the name and address of the spouse or partner's employer
- the proposed dates on which each leave period requested by the employee and the employee's spouse or partner (including leave under any alternative provision contained in an employment agreement) is to begin and end
- an assurance that the total leave period to be taken (all primary carer leave and all other leave, other than special and partner's leave, to which each spouse/partner is entitled under any other Act or agreement), will not exceed 52 weeks.

## Failure to give written notice

If an employee fails to provide their employer with written notice within the required period, this will not affect their right to partner's leave or primary carer leave. However, failure to provide their employer with written notice may prevent the employee from taking extended leave until a further three months has elapsed.

This limitation is subject to a right of appeal but in any case, the employer and employee are still able to agree that extended leave may be taken if the notice requirements have not been met.

## Incomplete notice

Where the employee provides incomplete notice, the employer is required to reply in writing within seven days pointing out the omissions and requesting the necessary documentation. Once the employer has notified the employee as to incomplete notice, the employee must provide all the information required within 14 days. If the employee considers that the notice provided was not incomplete, they are entitled to invoke the Act's dispute procedures.

## Notice of early commencement of primary carer leave

If an employee who has given notice that they wish to take parental leave, intends to begin their primary carer leave early, the employee must give their employer not less than 21 days' notice in writing of the day on which they wish the primary carer leave to begin.

## Notification requirements – Employer to employee

Employers are subject to strict notice requirements once an application for parental leave is received. There are forms prescribed for the various notices that may be required.

After receiving notice of an employee's intention to take parental leave, an employer must advise the employee in writing and in the prescribed form within 21 days:

- whether they are entitled to take leave and, if not, the reason for the refusal (the employee may dispute this decision)
- whether the employee's position can be kept open (where they are entitled to leave)
- that the employee may be entitled to paid parental leave.

If the position cannot be kept open, the employee must be told:

- that the employer's decision may be disputed, and
- that, from the time leave ends, the employee will be given a period of 26 weeks preference over other applicants for any vacant position substantially similar to the position the employee held before parental leave began.

In either case, the employee must be told:

- what their rights are in relation to primary carer, partner's and extended leave, including the right to end parental leave early or to extend it, and
- that an eligible pregnant employee has the right to take primary carer leave six weeks before the expected due date or the date on which they will assume primary care for a child under the age of 6, and that an eligible spouse/partner has the right to partner's leave and extended leave.

## Further notice after parental leave commences

Within 21 days of the employee commencing parental leave, the employer is also required to provide written notice advising:

- the date on which the parental leave will end
- either the date on which the employee must return to work (if the employer is able to keep the employee's position open until the end of the parental leave period), or the dates of the period of preference that will apply (if the employer is not able to keep the employee's position open until the end of the parental leave period)
- confirmation that the employee is able to return to work early or to extend their period of parental leave in some circumstances (see 'Extending or shortening a period of parental leave' section below)
- confirmation that the employee is required to notify the employer in writing not less than 21 days before the end of parental leave whether they will be returning to work.

**Note:** The prescribed forms, including fact sheets covering the information required to be given to the employee, can be downloaded from the Ministry of Business, Innovation and Employment's website at: [www.employment.govt.nz](http://www.employment.govt.nz).

## Extending or shortening a period of parental leave

Usually employees can only go back to work early or start their preference period early if their employer agrees. If an employee is on primary carer leave in relation to a child they gave birth to, their employer may ask for a medical certificate showing that the employee is fit to return to work before agreeing to them coming back early.

Employees can end their parental leave early without their employer's consent (either to return to work or to begin a period of preference for employment) where:

- the child miscarries, is stillborn or dies, or
- the employee or their spouse or partner is no longer the primary carer of the child.

Employees in this position may still be entitled to continue their primary carer leave and paid parental leave for the full 26 weeks.

In all cases the employee is required to give 21 days' notice of their intention to return to work or to begin a period of preference.

Parental leave may also be extended to a specified date with the employer's consent. However, the employer is not bound to agree with such a request and if it is not granted the employee is expected to return to work on the date originally approved.

## Rights of employees taking parental leave

### Dismissal by reason of pregnancy or parental leave prohibited

Employees are protected from having their employment terminated:

- because of their pregnancy
- because of the state of their health during pregnancy (unless the state of the employee's health is materially affected by causes not related to the pregnancy)
- because they have indicated that they wish to take parental leave or receive their entitlements under the Act
- because they have become the primary carer of a child.

### Presumption that an employee's position can be kept open

There is a general presumption that the employee's position can be kept open for any period of parental leave.

Where the first period of parental leave is four weeks or less and the employee has provided their employer with the appropriate notice, it is presumed that an employee's position can be kept open. Redundancy, in this instance, is the only basis for refusal.

For all other periods of parental leave, it is presumed that an employee's position can be kept open unless the employer can show that:

- a temporary replacement is not reasonably possible because of the employee's key position (taking into account the size of the employer's operations and the training period or skills required in the job)
- a redundancy situation has arisen.



**Note:** If an employee is temporarily transferred to another position during the pregnancy for any reason, the position to be protected is the position they ordinarily hold and not the position they were temporarily transferred to.

## Continuity of service

Continuity of service is not broken by parental leave. Employers should be aware that after an employee returns to work from parental leave, the employee's service for all purposes including annual and sick leave is deemed to have continued over the leave period.

## KiwiSaver and other superannuation obligations

Member contributions and compulsory employer contributions are not required while the employee is receiving parental leave payments from IRD. Normal contributions will restart when the employee is back at work.

However, if an employer continues to pay their employee for any reason during parental leave, (e.g., paying out annual leave) the employer will need to continue to deduct member contributions and to make compulsory employer contributions.

If another superannuation scheme requires that either the employee or employer has continuing obligations to pay into a superannuation scheme during unpaid leave, those obligations must be complied with. KiwiSaver schemes are specifically barred from requiring continued contributions during parental leave.

## Holiday pay entitlements

An employee's time on parental leave is regarded as continuous service. This means that the employee continues to accrue annual leave but their entitlement to holiday pay for that period is calculated using the employee's average weekly earnings for the 12 months immediately before the end of the last pay period before the annual holidays are taken (or paid out). An employer may choose to pay out more than this.

The employer is not required to pay the normal minimum rate of ordinary weekly pay when calculating holiday pay for any year that includes a period of parental leave.

Public holidays that occur during a period of parental leave are normally unpaid, but payment may be due for any holiday that falls at the beginning of a period of parental leave.

## When an employee is not able to do their normal work

### Temporary transfer to other work

A pregnant employee may be temporarily transferred to other work if they are unable to perform their work safely or adequately because of the pregnancy. Remember, the protected job is the one the employee ordinarily held when the application for parental leave was made, not one they were temporarily transferred to.

### Early commencement of primary carer leave

If no suitable alternative work is available, an employee may be directed to begin their primary carer leave earlier than six weeks before their expected due date. In this case, the leave taken before that 6 -

week date is not counted as part of the employee's primary carer leave period or as part of the total 52 weeks available.

**Note:** Employers should exercise their right to require the employee to transfer to other work or to cease work early carefully and in consultation with the employee. The employee has the right to take a parental leave complaint if they consider that the employer's decision was unjustified.

## Termination of employment during parental leave

### Termination by the employee

The employee will terminate their employment if they:

- fail, without good cause, to return to work at the conclusion of the parental leave period
- inform the employer that they have decided not to return to work
- fail, without reasonable excuse, to take up a suitable position offered during a period of preference.

In any such case, the employee's termination date is deemed to be the day on which the parental leave commenced.

### Dismissal

The employer is entitled to dismiss an employee (after a fair process) at any time for cause or for any justifiable reason not related to the pregnancy or application for parental leave. However, the employer is not entitled to dismiss an employee:

- on grounds of pregnancy or state of health during pregnancy
- because an employee indicates a wish to take parental leave
- because care of a child is assumed with a view to adoption.

Dismissal on any of those grounds is likely to lead to a personal grievance.

### Redundancy during parental leave

In cases of genuine redundancy an employee may be dismissed while on parental leave or during any period of preference. In any such case, the rules relating to redundancy will apply to the employee on parental leave in the same way as for other employees. This means that employers should include the employee on parental leave in any consultation process required before decisions are made on the proposed changes, and also in relation to selecting the employees to be made redundant and the options available.

## Negotiating alternative conditions for parental leave

The Act allows employees and employers to negotiate alternative conditions for parental leave, provided those conditions are not less favourable overall to the employee. Employers are not permitted to agree to waive an employee's rights under the Act.

The statutory provisions do not apply where the provisions under the employment agreement are more favourable, and the employee is not entitled to pick and choose between the benefits in the agreement and the statutory conditions.

## Recruiting for parental leave cover

An employee engaged on a fixed term (temporary) basis to replace an employee on parental leave must be recruited on that basis and told in writing before employment commences that their employment is fixed term, the reason why, and that employment may end before the specified date if the employee on parental leave returns to work early.

This advice must be included in the employee's fixed term employment agreement. As with all employment agreements, this fixed term agreement should be signed before employment commences.

## Further information

### Parental leave complaints

An employee may bring a complaint under the Act if they consider that an employer has taken action or failed to take action, thereby affecting their rights. In any such case the complaint should be dealt with as an employment relationship problem.

### Forms, notices and general information

Various forms and notices are required to be given to employees at different stages of the process. These forms are readily accessed at [www.employment.govt.nz](http://www.employment.govt.nz). There are several other resources available on the site, including detailed information and more specific resources on aspects of the law affecting parental leave.

### Discretion for irregularities

MBIE has discretion to approve a parental leave payment to an employee or self-employed person despite an irregularity in the application. The Act provides guidance on what an irregularity is and what factors must be taken into account.