

DAD AND PARTNER PAY AND OTHER CHANGES TO THE PAID PARENTAL LEAVE ACT AND THE FAIR WORK ACT

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Summary

Legislation has been passed by Parliament and is now operative, amending the *Paid Parental Leave Act 2010* and *Fair Work Act 2009* to address various issues relating to parental leave.

The *Paid Parental Leave Act 2010* has been amended to introduce Government funded 'Dad and Partner Pay' for eligible fathers and partners who are caring for a child born or adopted after 1 January 2013.

The *Fair Work Act 2009* has been amended to insert provisions relating to: 'Keeping in Touch Days'; new employer obligations regarding 'replacement employees'; the flexibility to commence unpaid parental leave up to 6 weeks prior to the expected date of birth; and the cancellation of unpaid parental leave in circumstances of stillbirth or the death of the child.

Dad and Partner Pay

Overview

The *Paid Parental Leave Act 2010* (PPL Act) has been amended to expand the Government's Paid Parental Leave (PPL) Scheme to include Dad and Partner Pay. Key features of Dad and Partner Pay include:

- It is one-off payment made at the level of the National Minimum Wage (currently \$606 per week) for a maximum period of 2 weeks.
- The payment is Government funded.
- Unlike the PPL Scheme (where employers have an obligation to pass on the Government's payments to eligible employees) Dad and Partner Pay is paid directly to the employee by the Department of Human Services.
- To be eligible, the father or partner must be on a period of unpaid leave and must not work during the period. If an employee is at work, or on paid annual leave, paid personal/carer's leave, paid long service leave, or paid leave under an employer funded paid parental scheme, the employee is not eligible for Dad and Partner Pay.
- The father or partner must be caring for the child during the period.
- The father or partner can take the unpaid leave, and hence qualify for Dad and Partner Pay, any time from the expected or actual date of birth, and the child's first birthday.
- Dad and Partner Pay only applies to children born or adopted **after 1 January 2013**.
- Eligible persons are able to make claims from 1 October 2012.

Who is eligible?

The following people can make a claim for Dad and Partner Pay:

- The biological father of the child;
- The partner (including same-sex partner) of the child's birth mother;
- An adoptive parent of the child; and
- A person who satisfies circumstances prescribed by the PPL Rules.

To be eligible for Dad and Partner Pay, the person must initially satisfy:

- The 'work test'. Under the 'work test' a person must have worked continuously (either on a full-time, part-time or casual basis) for one or more employers for at least 10 of the 13 months prior to the birth or adoption of the child and worked for at least 330 hours in that 10 month period (around one day a week). The person must not have had more than an eight week break between working days;
- The 'income test' (the person's income must be less than \$150,000, to be indexed after 30 June 2014); and
- The Australian residency test (the person must be an Australian resident or be in a special class of visa holder).

In addition, during the period of Dad and Partner Pay, the person:

- Must not be working;
- Must be on a period of unpaid leave; and
- Must be caring for the child.

A person will not be eligible for Dad and Partner Pay if the person:

- Is on a period of paid leave, such as personal/carers leave, annual leave, long service leave, or company funded parental leave, at the same time as receiving Dad and Partner Pay; and/or
- Performs one hour or more of paid work per day during the relevant period other than for the purpose of performing work for a business that the person carries on and that consists of overseeing the business or is an occasional administrative task.

Who is responsible for making the payment?

Dad and Partner Pay is paid directly to eligible employees by the Department of Human Services. Employers are not responsible for passing on the payment.

What happens if the baby is stillborn or dies?

Dad and Partner Pay is still paid in the event of stillbirth or neo-natal death.

What do employees need to do to apply for Dad and Partner Pay?

Employees can apply for Dad and Partner Pay by contacting the Department of Human Services.

What if the mother or primary carer claims Government funded PPL or the Baby Bonus?

Dad and Partner Pay is not available to birth mothers or transferable to any other person.

However, Dad and Partner Pay can be claimed before, during or after the payment of any other Government funded family assistance paid to the primary carer such as PPL or the Baby Bonus. The primary carer need not be working for the father or partner to be eligible for Dad and Partner Pay.

Does Dad and Partner Pay impact upon the employee's entitlements under the FW Act?

Like PPL for primary carers, the receipt of Dad and Partner Pay does not result in the employee being deemed to be on paid leave for the purposes of the *Fair Work Act 2009* (FW Act). Therefore annual leave, personal/carers' leave and long service leave do not accrue under the Act during a period when an employee is receiving Dad and Partner Pay from the Government.

Are employers required to pay superannuation on Dad and Partner Pay?

Employers are not required to pay superannuation on the Dad and Partner Pay payments.

How does Dad and Partner Pay impact on company paid parental leave policies and schemes?

Employees must be on a period of unpaid leave to be entitled to receive Dad and Partner Pay. Accordingly, if the employee is being paid for a period of leave under a company paid parental leave scheme or policy, the employee is not eligible for Dad and Partner Pay for that period.

Changes to the Fair Work Act

'Keeping in Touch Days'

The PPL Act enables eligible employees to perform work on up to 10 'Keeping in Touch Days' without affecting the Government-funded PPL payments.

The FW Act has been amended to ensure that 'Keeping in Touch Days' do not break the continuity of the unpaid parental leave entitlement under the FW Act.

On a 'Keeping in Touch Day', an employee is only permitted to perform work that enables the employee to 'keep in touch' with the workplace or assist their return to work once the period of leave has ended. The rules relating to 'Keeping in Touch Days' are as follows:

- The employer and the employee must agree to the performance of work on a 'Keeping in Touch Day'.
- Employees are entitled to receive their normal pay for any hours worked on a 'Keeping in Touch Day'.
- A 'Keeping in Touch Day' must not occur within 42 days (six weeks) after the birth or adoption of the child, unless the employee has requested the 'Keeping in Touch Day'. If such a request has been made, the day must not occur earlier than 14 days after the birth or adoption of the child.
- Performing work on a 'Keeping in Touch Day' does not extend the period of unpaid parental leave.

Starting unpaid parental leave early

The FW Act has been amended to permit a female employee who is pregnant with or who gives birth to a child to start the period of unpaid parental leave up to 6 weeks before the expected date of birth of the child, or earlier if the employer and employee agree.

Requirement to inform 'replacement employees'

A new section (84A) has been inserted into the FW Act imposing the following obligation upon employers in respect of 'replacement employees':

“Before an employer engages an employee to perform the work of another employee who is going to take, or is taking, unpaid parental leave, the employer must notify the replacement employee:

- (a) that the engagement to perform that work is temporary; and*
- (b) of the rights:
 - (i) the employer; and*
 - (ii) the employee taking unpaid personal leave;**

have under subsections 77A(2) and (3) (which provide a right to cancel the leave if the pregnancy ends other than by the birth of a living child or if the child dies after birth); and
- (c) of the rights the employee taking unpaid parental leave has under:
 - (i) subsections 77A(4) to (6) (which provide a right to end the leave early if the pregnancy ends other than by the birth of a living child or if the child dies after birth); and*
 - (ii) section 84 (which deals with the return to work guarantee); and**
- (d) of the effect of section 78 (which provides the employer with a right to require the employee taking unpaid parental leave to return to work if the employee ceases to have any responsibility for the care of the child).”*

Changes regarding stillbirth or infant death

A new section has been inserted into the FW Act to address the circumstances of stillbirth or the death of a child after birth.

If the period of unpaid parental leave **has not commenced** and the pregnancy ends due to stillbirth:

- The employee may give the employer written notice (of at least four weeks) cancelling the leave; or
- The employer may give the employee written notice (of at least six weeks) cancelling the leave.

The above notice periods can be reduced by agreement between the employee and the employer.

If the period of unpaid parental leave **has commenced** and the pregnancy ends due to stillbirth, or the child dies, the employee is entitled to continue taking the unpaid parental leave.

Further information or assistance

For further information or assistance, please call Ai Group’s **BIZassistInfoline** on **1300 78 38 44**.



Stephen Smith
DIRECTOR – NATIONAL WORKPLACE RELATIONS
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