

WE KNOW

HUMAN RESOURCES

PARENTAL LEAVE

QUICK GUIDE

This Quick Guide provides summarised information on how to manage parental leave.

OVERVIEW

This quick guide provides an overview of current and future entitlements to leave, payments and provisions to facilitate retaining attachment to work.

ELIGIBILITY AND ENTITLEMENT

There are five types of leave:

- **Primary carer leave**
- **Partner's leave**
- **Extended leave**
- **Special leave.**
- **Negotiated Carer leave**

Collectively these are referred to as Parental Leave.

In addition, **Keeping in Touch hours (KIT)** are available to allow for an employee to return to work for a short amount of time during leave.

Under the statutory scheme, **an employer does not pay a person for any period of primary carer leave.** Individuals need to make an application to Inland Revenue for Parental Leave payments.

Primary Carer Leave

Currently eighteen (18) weeks primary carer leave and government-funded parental leave payment is available to a mother, adoptive parent or primary carer* if he/she has worked at least 10 hours per week in any 26 weeks out of 52 weeks preceding the expected date of delivery, adoption or becoming primary care giver. This applies to persons who have recently changed jobs, seasonal and casual workers and workers with more than one employer although this group will not automatically have their jobs held open. If necessary, this leave can begin up to 6 weeks prior to the expected date of delivery, adoption or permanent care.

Every eligible person who is entitled to take primary carer leave is entitled to parental leave payments for up to 18 weeks. The payment is paid by Inland Revenue directly to the mother, adoptive parent or primary carer. The biological mother or someone other than the biological mother is required to provide specific information on eligibility.

An employer can direct a pregnant employee to begin leave early if she is unable to perform her work adequately or safely due to pregnancy and no other suitable work is available.

Primary Carer Leave and Parental Leave payments may be instigated earlier in the event that a child is born prematurely. In these cases and for each week a child is premature, an additional week is paid up to a maximum of 13 weeks.

From 1 July 2018 Primary Carer Leave increases from 18 to 22 weeks and again from 1 July 2020 to 26 weeks.

Partners Leave

An employee may take partners leave if he/she has worked continuously for the same employer for 12 months or more. In this case he/she is entitled to take a continuous two-week period of leave around the time of the birth or adoption. If the employee has worked for between 6 and 12 months the leave entitlement is one week. Partner's leave is unpaid and may be taken at any time during the period commencing 21 days before the expected delivery date or the expected date of adoption, or care commencement and ending on the 21st day following delivery/ adoption/care.

Extended Leave

Extended leave is available to employed parents or any other person who takes permanent primary responsibility for a child, who also meets eligibility requirements, on the birth of a child, or on the adoption or primary care of a child under the age of 6 years. To be eligible for extended leave, an employee must, by the expected date of delivery, adoption or care, have:

- Worked continuously for the same employer for 6 months, for an average of at least 10 hours a week, or
- Worked continuously for the same employer for 12 months, for an average of at least 10 hours a week and
- Worked no less than one hour every week or 40 hours every month during that period.

Employees who have worked for between 6 and 12 months are entitled to up to 26 weeks leave in total (including primary carer leave) provided they have worked an average of at least 10 hours a week, or 40 hours every month during that period.

Employees who have worked for 12 months or more are entitled to up to 52 weeks leave in total (including primary carer leave) provided they have worked an average of at least 10 hours a week, or 40 hours every month during that period.

Extended leave can be shared by an employee and their spouse or partner as long as the total extended leave does not exceed maximum individual entitlement. If an employee and that employee's spouse or partner are each individually entitled to extended leave in respect of the same child, the maximum combined entitlement of the employee and his or her spouse or partner is—

- 26 weeks, if both meet the 6-month employment test, or
- 52 weeks, if both meet the 12-month employment test, or
- 52 weeks, if one meets the 12-month employment test and the other meets the 6-month employment test (in which case the person who meets the 6-month employment test may not take more than 26 weeks of extended leave out of the combined total entitlement of 52 weeks).

If agreed with the employer an employee can return within their entitled period of leave and take further leave again however any entitlement for leave ceases at either 26 or 52 weeks from the date care commenced, depending on original entitlement.

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Extended leave is unpaid and is not available beyond a child's first birthday or beyond one year from the date primary care commenced.

Special Leave

A pregnant employee is entitled to up to 10 days unpaid special leave for reasons connected with the pregnancy (visits to the doctor or midwife, for example).

Negotiated Carer leave

An employee who is not entitled to primary carer leave but is entitled to parental leave payments may make a request to his or her Employer for negotiated carer leave, that is, they will be the primary care giver of the child. The request needs to be made 3 months prior to the birth or in any other case at least 14 days prior to taking primary care of a child. A request must be made in writing and an Employer is required to respond within one month. A request can be declined on the following grounds:

- inability to reorganise work among existing staff:
- inability to recruit additional staff:
- detrimental impact on quality:
- detrimental impact on performance:
- planned structural changes:
- burden of additional costs:
- detrimental effect on ability to meet customer

An employee may not challenge his or her employer's refusal of a request for negotiated carer leave however an employee may challenge his or her employer's failure to respond adequately to a request i.e. if the employee believes his or her employer has not responded within a month providing reasons.

Keeping in Touch Hours (KIT)

By mutual agreement an employee will be able to return to work for up to 40 hours during the first 18 weeks paid leave period provided that the child is at least 4 weeks old. This is designed to facilitate skills maintenance or development and assist with any handover prior to returning to work. KIT hours cannot be used during extended unpaid leave.

Primary Carers of pre-term babies are eligible for additional KIT hours up to an average of 3 hours per week for each week the baby is born prematurely.

The maximum number of KIT hours will increase to 52 hours from 1 July 2018 and again from 1 July 2020 to 64 hours.

EMPLOYEES RIGHT TO RESIGN

Employees can elect to resign without jeopardising their right to parental payments. Where an employee resigns during a period of parental leave their last day of employment will be deemed to have been their last working day. An Employer may only permanently replace an employee on receipt of a resignation unless the employee had no guarantee of return (e.g. due to conclusion of fixed term employment).

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LEAVE APPLICATION PROCESS

An employee must give their employer written notice of their intention to take Parental leave, 3 months before the expected date of delivery, adoption or primary care, stating when leave is to begin and how long it is to last.

An application from a pregnant employee must be accompanied by a certificate from a medical practitioner or midwife certifying the pregnancy and the expected date of delivery. An application from a spouse or partner must be accompanied by a certificate (or a copy of a certificate) from a medical practitioner or midwife certifying that the woman named is pregnant and the expected date of delivery; AND a written assurance from the woman named in the certificate stating that the employee is her spouse or partner and that the employee intends to assume care of the child.

A failure to give notice within the time required will disentitle the employee to extended leave until 3 months' notice has been given or the employer agrees that the employee may take extended leave. (Note that this will not apply where the employee has given notice but failed to provide all the information or assurances required. An incomplete notice will require the employer to give written notice to the employee within 7 days stating that the notice is incomplete and specifying the additional information required. The employee will then have 14 days in which to provide the missing information). Note also, the Act states that an employer must not unreasonably refuse to allow an employee to exercise any rights and benefits 'but for an irregularity'. It is suggested that members seek further advice on this matter if required.

Within 21 days of receiving a leave request, the employer must reply stating whether the employee is eligible to take leave (and if not, why not) and whether or not the employee's position can be kept open. The employer must provide the employee with details of their rights and obligations in taking leave.

Forms available include the following:

- a primary Carer, to declare he or she has primary responsibility for the child's care.
- an employer, to respond to a request for parental leave by stating whether or not the employee's job can be kept open.

Forms for these purposes can be accessed here - <https://www.employment.govt.nz/leave-and-holidays/parental-leave/>

For further information on the rules relating to receiving and responding to applications for parental leave, contact The Chamber.

REFUSING PRIMARY CARER LEAVE

The Act provides only two grounds for refusing leave:

- The person does not fulfill the eligibility criteria.
- The person's job is a key position.

In determining whether or not a job is a key position, account is to be taken of the size of the enterprise and the required skills or training period. However, the term 'key position' has been defined so narrowly by the courts that, in practice, it has proven difficult, if not impossible, to establish that a particular job is a key position.

END OF PRIMARY CARER LEAVE

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There are certain situations where primary carer leave may end early. By mutual agreement leave may also be extended, but not beyond the maximum 52-week period.

An employee who is on parental leave and whose position is being kept open by their employer must, not later than 21 days before the ending of parental leave, provide their employer with written notice stating whether or not the employee will be returning to work unless the employee's employment agreement requires a longer period of notice.

An employee must work for a further six months before again becoming entitled to take parental leave

***Examples**

If a child under the age of six years goes to live with their aunt, who intends to raise the child in place of the child's biological parents, the aunt is the child's primary carer.

If a couple formally adopt a child under the age of six years, or undertake to care for the child permanently, one member of the couple is the child's primary carer.

If a child under the age of six is temporarily placed with a foster parent, that person is not a primary carer because the placement is not permanent.

If the child's grandmother minds the child every day while his or her parents are at work, the grandmother is not a primary carer, because the child's parents still have primary responsibility for the child's upbringing.

For further information regarding Parental Leave or other aspects of Employment Relations/Human Resources, please contact The Chamber email info@cecc.org.nz or phone 03 366 5096.

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