# PAID PARENTAL LEAVE

## THE BASICS

The federal paid parental leave scheme came into operation on 1 January 2011.

It is an entitlement for working parents of children born or adopted from 1 January 2011.

The scheme provides parental leave pay at the minimum wage for a maximum period of 18 weeks.

All working parents, including full-time, part-time, self-employed, casual, contract and seasonal employees, will be entitled to parental leave pay, if they meet the "eligibility criteria".

If you work for a family business (such as a farm), you may also qualify even if the business is not generating any income, providing you are undertaking the work for financial gain or benefit.

Paid parental leave can be taken at any time in the first 12 months following the birth or adoption but must be in one continuous period.

Parental leave pay is taxable and can be received at the same time as annual leave, long service leave or other employer funded paid parental leave.

## WHAT ARE THE ELIGIBILITY CRITERIA?

The eligibility criteria are:

- the employee is the primary carer of a newborn child or the initial primary carer of a recently adopted child;
- the employee is an Australian resident;
- the employee has met the paid parental leave scheme "work test" before the birth or adoption occurs;
- the employee has received an individual adjusted taxable income of $150,000 or less in the financial year prior to the date of birth or date of claim (whichever is earlier);
- the employee is on leave or not working from the time they become the child's primary carer;
- the child was born or adopted on or after 1 January 2011.

## WHAT IS THE PAID PARENTAL LEAVE SCHEME WORK TEST?

To meet the paid parental leave work test the employee must have worked:

- for at least 10 of the 13 months prior to the birth or adoption of the child,
- worked for at least 330 hours in that 10 month period (just over one day a week) with no more than an eight week gap between two consecutive "working days".

A "working day" is a day the employee has worked for at least one hour.

It is not the employer's responsibility to ensure that the employee meets the eligibility criteria. This will be done by Centrelink who will contact the employer once eligibility has been assessed.

## HOW ARE PAID PARENTAL LEAVE PAYMENTS PAID TO THE EMPLOYEE?

From 1 January to 1 July 2011 the government will pay the employee directly if the employer does not wish to.

However, from 1 July 2011 employers must provide the payments to all employees who meet the following criteria:

- have a child born or adopted from 1 July 2011;
- have been employed by the employer for 12 months or more before the expected date of birth or adoption;
- will be an employee for the period of the parental leave pay ;
- is an Australian-based employee ;
- is expected to receive 8 weeks or more of parental leave pay.

If these criteria do not apply the government will make the payments.

Centrelink will provide paid parental leave funds to employers fortnightly before employers are required to provide parental leave pay to the employee so that employers can make the payments as part of their usual pay cycle.

Employers can also choose to receive payment in three six weekly installments.

You do not have to pay superannuation on paid parental leave payments.

## WHAT ARE THE EMPLOYER'S OBLIGATIONS?

The key obligations for employers are to:

- provide bank account and pay cycle details to Centrelink;
- pay parental leave pay correctly to the employee and provide correct written notification to the employee of the payment;
- withhold the correct amount of tax from the parental leave pay;
- maintain correct records;
- refund any unpaid parental leave pay to Centrelink if the employee ceases to be eligible, e.g. if they return to work or cease to be their employee;
- notify Centrelink of changes to the business or operation which may affect parental leave pay obligations e.g. if the business is sold or transferred or ceases to trade.

There are penalties for not complying with these obligations.

## WHAT IF THE EMPLOYEE IS NOT ENTITLED TO LEAVE?

The paid parental leave scheme does not create an entitlement to leave. If the employee has not been continuously employed so as to qualify for parental leave under the National Employment Standards the employer does not have to provide the employee with parental leave.

However, employers should seek legal advice before refusing an employee parental leave as the law in this area has not been tested by the courts and this may be grounds for a discrimination claim or an adverse action claim.

## FURTHER INFORMATION

For further information and to register for the paid parental leave scheme go to http://www.centrelink.gov.au/internet/internet.nsf/businesses/ppl_business.htm