



Government releases draft paid parental leave legislation

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On 4 May 2010 the Federal Government released its draft legislation introducing a paid parental leave scheme (**PPL Scheme**). This draft legislation followed the Government's announcement in the 2009 – 2010 Budget that it would introduce a PPL Scheme for parents who are the primary carers of children born or adopted on or after 1 January 2011.

The PPL Scheme provides an eligible working parent with a legal entitlement of up to 18 weeks paid parental leave calculated at the national minimum wage (currently \$543.78 per week before tax) while the parent stays at home to look after a newborn or newly adopted child. The pay entitlement complements parents' unpaid leave entitlements under the *Fair Work Act 2009* (Cth), but is not a leave entitlement itself.

If the legislation is passed in its current form, payments will be funded by the Government, with employers required to make the payments to eligible employees as part of their payroll system.

Main features of the PPL Scheme

When will an employee be eligible for PPL?

An employee will be eligible to claim PPL if he or she satisfies the eligibility criteria. The employee must:

- (a) have been engaged in work for a total period spanning at least 10 of the 13 months prior to the expected birth of the child (with a break of no greater than eight weeks between any two consecutive work days) and undertaken at least 330 hours of paid work during the 10-month period (the 'work test');
- (b) have a taxable income of \$150,000 (indexed) or less in the previous full financial year before the birth or the date of their claim for PPL, whichever is the earlier (the 'income test');

- (c) reside in Australia and be an Australian citizen or resident from the child's date of birth and remain so whilst claiming the payment (the 'Australian residency test');
- (d) be the child's primary carer (though if the primary carer returns to work before having received all of the 18 weeks of parental leave pay, the person's partner may be able to receive the unclaimed amount of PPL);
- (e) not have returned to work; and
- (f) not be entitled to the baby bonus.

If eligible, an employee can only receive the parental leave pay in one continuous 18 week period after the date of birth or adoption, which must itself be within the first 12 months.

Employers will not need to provide parental leave pay to short term employees, namely those with less than 12 months service.

Also, employees who resign from their employment or whose employment contract expires (such as seasonal or fixed term employees), as well as those who are self-employed, will still be able to claim PPL provided they meet the eligibility criteria. In such cases, the Family Assistance Office (**FAO**) will provide the payments instead of the employer.

Employees can 'keep in touch' during their leave

Although an employee must not return to work during the pay period, an employee will be able to agree to 'keep in touch' with her or his workplace. An employee will be able to participate in activities (such as training) at the workplace for up to 10 days during the PPL period without losing parental leave pay. Importantly, employers will not be entitled to require employees to work. Days spent 'keeping in touch' will not affect any entitlements the employee receives in addition to their PPL or any leave taken under the *Fair Work Act 2009* (Cth).

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When and how is PPL claimed and paid?

The draft legislation establishes the following procedures for the administration of the PPL Scheme.

First, employees will have to lodge a claim with the FAO up to three months before the expected birth or adoption at the earliest.

Second, the FAO will assess the employee's eligibility. If the employee is judged to be eligible, their employer will then be contacted by the FAO and asked to provide certain information (such as confirmation of business, ABN and contact details, bank account details, and details of the employee's pay cycle). If the employer believes that they are not required to pay an eligible employee, they will have up to 14 days to ask the FAO for a review of the decision. If not satisfied with the outcome of the review, an employer will then be able to appeal to the Social Security Appeals Tribunal.

Third, employers will receive funds from the FAO which are to be used to make the payments to the eligible employee. These funds can be received in either fortnightly instalments or in three instalments every six weeks. Importantly, employers will not be obliged to provide parental leave pay to their employees until after they have received the requisite funds from the FAO.

Transitional arrangements

Although the PPL Scheme, if passed in its current form, will commence on 1 January 2011, employers will only be required to make parental leave payments to their eligible employees from 1 July 2011.

In the interim six months, the PPL Scheme will be phased in, with the FAO making the payments directly to eligible employees, in order to help employers make the transition to the new scheme. However, employers will be able to take part from the commencement of the PPL Scheme should they choose to do so, and in agreement with any eligible employees.

How will the PPL Scheme be enforced?

If a dispute arises between an employee and their employer that cannot be resolved by the FAO, the FAO may refer it to the Fair Work Ombudsman (**FWO**). The FWO will have the power to investigate employers, and if employers are found to have not met their obligations under the PPL Scheme, issue a compliance or infringement notice, and in some circumstances, impose civil penalties.

How will the PPL Scheme affect employers with existing schemes?

Employees will be entitled to claim PPL in addition to any existing employer-provided paid leave, including paid parental leave, at either the same time or consecutively.

Other aspects employers should be aware of?

- PPL will be paid to employees in the same way as salary and wages, and as such employers will need to withhold tax (under the usual PAYG arrangements) and include parental leave pay in the total amounts on the employee's payment summaries.
- Employers will be able to claim a tax deduction for the amount of parental leave pay provided to employees, as they would with wages.
- No superannuation contributions will be required to be made in respect of such parental leave pay.
- On the issue of payroll tax, the Federal Government has stated that it is 'working with state and territory governments to ensure that PPL is not subject to payroll tax'.
- Participation in the PPL Scheme will not increase workers' compensation premium liabilities nor result in additional leave entitlements for employees.
- Employers will not be required to provide any regular reports to the FAO, establish any special bank accounts, or separately identify PPL funding amounts in their annual financial statements, though proper financial records will



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- need to be kept. Interest can be earned on the funds provided.
- Employers will need to provide employees with access to a record of their parental leave pay within one working day of the payment being made.
- Employers will also need to notify the FAO when an employee returns to work or is no longer engaged with the employer.

What should employers do once the legislation is passed?

Employers will need to decide if they want to take part in the PPL Scheme before the compulsory start date (1 July 2011) and start making payments to eligible employees from 1 January 2011.

Larger employers should consider pre-registering their business details with the FAO from 1 October 2010 in order to simplify the process. This will ensure that employer details will only need to be confirmed rather than provided each time the

FAO contacts the employer regarding payments to eligible employees.

What now?

The Senate Community Affairs Committee is currently conducting an inquiry into the draft legislation and is due to report on 2 June 2010. The draft legislation is expected to be passed by Parliament in June 2010.

It should be noted by employers that the draft legislation as it currently stands is in draft form, and is subject to change if and when it passes through Parliament.

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