

Fact Sheet – Paid parental leave

1. What is the paid parental leave scheme?

From 1 January 2011, Australia's first ever national paid parental leave scheme came into operation. The paid parental leave scheme allows eligible working parents to receive parental leave pay while taking time off to care for children born or adopted on or after 1 January 2011. The scheme is funded by the federal government.

2. What is the paid parental leave entitlement?

The entitlement is to 18 weeks' parental leave *pay* – it is not an entitlement to parental *leave*. However, this entitlement to parental leave pay applies in addition to any entitlement to take parental leave. For example, many parents are entitled to parental leave under the National Employment Standards and the *Minimum Conditions of Employment Act 1993 (WA)*. See ELC Fact Sheet – “Minimum conditions at work” for more information on parental leave.

If your employer already has a paid parental leave scheme in place, you may be able to receive parental leave pay under both the government's scheme and the employer's scheme.

The government's parental leave pay is paid at the rate of the national minimum wage, which is currently \$719.20 per week. Parental leave pay is treated as taxable income.

3. Are you eligible to receive parental leave pay?

You may be eligible to receive parental leave pay if:

- **you are the primary carer** of a child born or adopted on or after 1 January 2011;
- **you meet the requirements of the “work test”** – i.e. you have been engaged in continuous work for approximately 10 out of the 13 months before the child's birth or adoption, and have worked for a minimum of 330 hours during that period;
- **you meet the requirements of the “income test”** – i.e. you have not have earned more than \$150,000 in the previous financial year;
- **you meet the requirements of the “residency test”** – i.e. you are an Australian resident or hold a particular type of visa and you have not been absent from Australia for an extended period;
- **you have not returned to work** after the birth or adoption; and
- **you have not claimed the baby bonus** in respect of the child.

This fact sheet looks at each of these eligibility criteria in greater detail below.

3.1 Primary carer

You are the “primary carer” of a child if:

- the child is in your care; and
- you meet the child’s physical needs more than anyone else.

Under the paid parental leave scheme, the birth mother or adoptive parent of the child is usually considered to be the primary carer.

3.2 The work test

To meet the requirements of the “work test”, you must:

- have worked for a period of at least 295 days (approximately 10 months) out of the 392 days (approximately 13 months) before the birth or adoption of the child;
- have worked for at least 330 hours during the 10 month period (i.e. approximately one day per week); and
- not have taken a break from work for any longer than 56 days (i.e. 8 weeks).

Permanent employees, casual employees, seasonal employees, self-employed persons and contractors may all be eligible for parental leave pay (provided that they meet the other eligibility criteria).

3.3 The income test

To meet the requirements of the “income test”, you must not have earned more than \$150,000 in the previous full financial year before the claim or birth or adoption (whichever is earlier).

If you are claiming parental leave pay and are a member of a couple, it is only your income that is relevant for the purposes of the income test – your partner’s income is not taken into account.

3.4 The residency test

To meet the requirements of the “residency test”, you must:

- be an Australian resident; or
- hold a special category visa (these types of visas are usually held by New Zealand citizens) and reside in Australia; or
- hold another specified type of visa and either be in Australia or not have been absent from Australia for more than 13 weeks.

For more information on the types of visas that meet the requirements of the residency test, contact Centrelink on 136 150 or see:

<https://www.humanservices.gov.au/customer/services/centrelink/parental-leave-pay>.

If you are temporarily absent from Australia and you:

- are an Australian resident; or
- hold a special category visa and reside in Australia,

you may still meet the requirements of the residency test, provided that you are not absent from Australia for 3 years or more.

3.5 Return to work

You are no longer eligible for parental leave pay if you make a claim and then return to work after the birth or adoption of the child. This means that you generally cannot receive parental leave pay if you do any paid work after the birth or adoption of the child. However, there are some exceptions to this.

For example, if you are self-employed, you may do some work without this affecting your eligibility for parental leave pay if the work only consists of overseeing the business or is an occasional administrative task for the purposes of the business.

If you are not self-employed, you may do paid work for the purposes of “keeping in touch” with your workplace on up to 10 days during the period that you are receiving parental leave pay. This work cannot be done within the first 14 days after the child is born or adopted.

If you do return to work, you may be able to transfer the unused part of your parental leave pay to another person (for example, your partner), provided that he or she meets the eligibility criteria.

3.6 Baby bonus and other entitlements

You cannot claim both parental leave pay and the baby bonus. The only exception to this is where there is a multiple birth or adoption situation (for example, twins or triplets).

Similarly, it is not possible to claim the Family Tax Benefit Part B whilst receiving parental leave pay. Claiming parental leave pay may also affect Family Tax Benefit Part A and social security benefits.

If you are considering claiming parental leave pay and you may be eligible for the baby bonus or other family assistance or social security payments, you should work out which payment is likely to leave you better off. You can use the Paid Parental Leave Comparison Estimator on the Centrelink website to assist you.

4. Who pays the parental leave pay?

While the paid parental leave scheme is funded by the federal government, it is employers who will administer the parental leave payments in most cases. In other cases, the Department of Human Services will make the payments.

5. How is the payment made?

Parental leave pay is generally paid in line with the employee’s usual pay cycle. So if, for example, you are usually paid fortnightly, you should receive the parental leave pay fortnightly on your regular pay day.

The parental leave pay must be taken in a continuous 18 week period. The whole amount of the parental leave pay must be received by the child’s first birthday or the anniversary of the child’s placement in adoption.

6. When can you lodge a claim?

You can lodge a claim up to 3 months before the birth or adoption of the child. A claim must be made within one year of the birth or adoption. As mentioned above, the whole amount of the parental leave pay must be received by the child’s first birthday or the anniversary of the child’s placement in adoption. This means that in order to receive the full 18 weeks of parental leave pay, it is necessary to lodge a claim not later than 34 weeks after the child’s birth or adoption.

7. How do you lodge a claim?

You can lodge a parental leave pay claim through the Department of Human Services. Its offices are located in Medicare offices and Centrelink Customer Service Centres. Claims can also be lodged online at <https://www.humanservices.gov.au/individuals/services/centrelink/parental-leave-pay>.

8. What happens if your employer does not pay?

If your employer is not paying you parental leave payments but should be doing so, and you cannot resolve the matter with your employer, you can contact the Department of Human Services or the Fair Work Ombudsman for assistance. If you still cannot resolve the matter, you may be able to start legal action against your employer. The time limit for starting this type of legal action is usually 6 years. We recommend that you contact the Employment Law Centre for assistance if the situation has reached this point.

9. Dad and partner pay

There is now a further payment available for births and adoptions from 1 January 2013 for certain parents and partners of parents. The entitlement is to 2 weeks of pay at the national minimum wage. The same income test, work test and residence test for parental leave pay applies to dad and partner pay.

The entitlement extends to the:

- biological father of the child
- partner of the birth mother
- adopting parent
- partner of the adopting parent
- parent in a surrogacy arrangement
- partner of a parent in a surrogacy arrangement, or
- same-sex partner of the birth mother, biological father or the adopting parent.

The birth mother does not need to receive parental leave pay for the father or partner to receive dad and partner pay. In the event of a multiple birth or adoption, dad and partner pay can only be received for one child. The entitlement is available during the first 12 months after the birth or adoption.

Eligible fathers and partners must be caring for the child (whether primary care or joint care) and cannot be on paid leave or at work during the period they receive the entitlement. The payment will be available in addition to any employer funded paid leave or unpaid leave, but cannot be taken at the same time as any other paid leave.

Unlike parental leave pay, dad and partner pay is paid directly by the Department of Human Services.

10. Further information

The Employment Law Centre of WA (Inc)

Advice Line 1300 130 956 or 08 9227 0111

Web www.elcwa.org.au

Centrelink / Department of Human Services

Tel 136 150

Web www.humanservices.gov.au

Fair Work Infoline

Tel 13 13 94

Web www.fairwork.gov.au

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