

Workplace Relations Alert June 2010

Parental Leave

Australia is about to join the majority of the developed world in having a paid parental leave scheme, following the Senate's approval of the Paid Parental Leave Act (PPL Act) on 17 June 2010.

What will the scheme provide?

The PPL Act will provide eligible employees with up to 18 weeks of government funded paid parental leave (GPPL), paid in instalments at the Federal minimum wage (\$569.90 gross per week), up to a total entitlement of \$10,258.20. The frequency of instalments will be limited to the employee's regular pay cycle. Employees will be eligible to claim GPPL within the first year after the birth of a child, or within the first year after the placement of a child for adoption.

An employee who receives GPPL will not then be entitled to receive the current Baby Bonus (except in the case of multiple births).

Interaction with employer funded paid parental leave

The Government has announced that it does not expect the GPPL to replace employer funded paid parental leave (EPPL). Rather, GPPL would be paid in addition to EPPL.

Who will pay?

The GPPL will be paid by the Family Assistance Office (FAO) to employers who will pass on the payments to eligible employees.

When will it start?

The GPPL will be payable for children born after 1 January 2011. Employers can elect to administer payments from 1 January 2011, but employers will only be compelled to administer payments after 1 July 2011.

Eligibility

An employee will be eligible for GPPL if she or he:

- satisfies the work test;
- satisfies the income test;
- satisfies the Australian residency test;
- is the primary carer of the child; and
- has not returned to work.

The work test is satisfied if the employee has worked for at least 330 hours, over a 10 month period, in the 13 months before the birth or adoption of the child. During this 13 month period, the employee can take a break of up to 8 weeks between each eligible work day. A seasonal, casual or part-time employee may therefore be eligible for GPPL. A woman who would have otherwise satisfied the work test, but for the premature birth of her child, or who suffered pregnancy related complications which prevented her from working, may also be eligible to receive GPPL.

The income test is satisfied if the employee's salary is not more than \$150,000. This does not include the employee's partner's income.

An employee may return to work through a 'keeping in touch' program of up to 10 days without forfeiting the GPPL entitlement.

Employees other than birth or adoptive parents (e.g. a grandparent) may be eligible to claim GPPL if they become the primary carer of a child as a result of serious illness or death.

Application process

An eligible employee will need to make an application to the FAO with supporting documents. An employee who works for multiple employers (for example a casual employee) may nominate the employer to administer the GPPL payments.

The Secretary of the FAO will issue a determination requiring the nominated employer to make the instalment payments (Employer Determination). If the employer does not accept the decision, the employer can seek a review in the Social Security Appeals Tribunal.

Other issues for employers

An employee on GPPL will not accrue leave and will not be entitled to receive superannuation payments on the GPPL amount.

The differences between GPPL and other existing leave will require modification to payroll systems and will inevitably create new administrative work for employers.

Civil remedy provisions

Employers who breach their obligations will be liable for fines of up to \$33,000.00.

Recommendations for employers

You should consider the impact of GPPL and its interaction with any existing parental leave policies and contractual terms. You may need to seek advice to resolve any potential difficulties or confusion over employees' conditions of employment after the scheme comes into effect.

You should also ensure that your organisation's payroll system is updated to accommodate the differences between GPPL and other forms of leave and wages.

For further advice, please contact a member of our Workplace Law Team.

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