

**IMPORTANT NOTICE:** The information outlined below applies to employees and employers who are under State industrial relations jurisdiction. Since the commencement of the federal government's workplace relations laws on 27 March 2006, employers who are constitutional corporations (including a financial or trading corporation – generally Pty Ltds or Limiteds) and their employees are now covered under federal industrial relations jurisdiction. These employees and employers should contact the Queensland Workplace Rights hotline on **1300 737 841** or visit [www.workplacerights.qld.gov.au](http://www.workplacerights.qld.gov.au) for further information and assistance on the laws.

### What is family leave?

Family leave includes various types of leave that employees can use to balance their work and family responsibilities.

Employee entitlements are outlined in the *Industrial Relations Act 1999* and cover:

- parental leave;
- carer's leave;
- bereavement leave; and
- cultural leave.

The family leave provisions of the Act apply to all employees whether or not an award or agreement covers their employment.

For the purposes of the family leave provisions the following definitions are applicable:

- long-term casual employee is defined as a casual employee who has been engaged by an employer on a regular and systematic basis for at least one year.
- short term casual employee is a casual employee, other than a long term casual employee,
- Members of the immediate family are defined as the employee's spouse (including a former spouse, defacto spouse and spouse of the same sex as the employee), and a child, ex-nuptial child, step child, adopted child, ex-foster child, parent, grandparent, grandchild or sibling of the employee or the employee's spouse.

### Parental Leave

#### What is parental leave?

Parental leave is unpaid leave and includes:

- leave for the birth of a child to a pregnant employee;
- leave for the birth of a child of an employee's spouse; and
- leave for the adoption of a child.

Parental leave is available for an employee to be the child's primary care giver.

The family leave provisions of the Act apply to all employees whether or not an award or agreement covers their employment.

If the provisions under the Act are more favourable to an employee, the Act will override family or parental leave provisions under an award or agreement. The entitlements under the Act in most instances will be more favourable than the provisions contained within the *Family Leave Award 2003*.

The *Family Leave Award 2003* applies only to employers and employees who are subject to a Queensland State award or agreement where:

- The award has a clause deeming the *Family Leave Award 2003* to be part of the award; or
- The industrial agreement is listed in the schedule of the *Family Leave Award 2003*.

#### Who is entitled to parental leave?

Full-time and part-time employees who have had at least 12 months continuous service are entitled to parental leave.

In addition, long term casual employees (i.e. casual employees who have been engaged by an employer on a regular and systematic basis for at least 1 year) are entitled to take parental leave.

Casual employees who are not long term casuals, seasonal employees and pieceworkers are not entitled to parental leave.

As long as an employee has completed 12 months continuous service with the same employer, they do not

have to complete another 12 months at work to be eligible for a further period of parental leave.

An employee can be married, unmarried or living in a defacto relationship to have an entitlement to parental leave. There is no age qualification.

### **How much parental leave can the employee take?**

A pregnant employee can take up to 52 weeks maternity leave for the birth of the child and to be the primary care giver.

For the birth of a child to an employee's spouse, the employee may take:

- short parental leave - one week at the time of the birth; and
  - long parental leave - up to a further 51 weeks to be the child's primary care giver or,
  - apply for extended parental leave to include either or both
- an extension of short parental leave up to eight weeks in total  
- an extension of long parental leave up to 96 weeks in total.

For the adoption of a child, an employee may take:

- short adoption leave - up to three weeks at the time of the placement; and
  - long adoption leave - up to a further 49 weeks to be the child's primary care giver or,
  - apply for extended adoption leave to include either or both
- an extension of short adoption leave up to eight weeks in total  
- an extension of long adoption leave up to 96 weeks in total.

Parental leave cannot extend beyond one year after the child was born or adopted unless an extension of parental leave as provided under the Act has been made. New extension provisions operate as from 22 February 2006, however, if an extension was agreed under the old provisions, it continues.

An employee and their spouse can only take a total of 52 weeks parental leave or a total 104 weeks under the provisions where an extension has been granted.

Apart from short parental or short adoption leave, leave taken by a spouse reduces the amount of leave available to the employee. This is regardless of the fact

that different employers may employ the employee and their spouse.

### **What extensions of parental leave are available to an employee?**

Under the Act, an employee can apply for two types of extension.

- an extension of parental leave or adoption leave where the total leave does not exceed 52 weeks, or
- an extension of parental or adoption leave beyond 52 weeks and up to 104 weeks in total.

### **What must an employee do to extend their parental leave?**

An employee who has applied for parental or adoption leave of less than 52 weeks may make an application to extend that leave up to the full 52 weeks. The application must be made in writing and the agreement of the employer is not necessary for this extension. However, an employee:

- may by written notice apply (once only) to extend their parental leave up to a total of 52 weeks
- must give their employer at least 14 days notice before their parental leave starts or
- if started, the notice to extend must be given at least 14 days before their parental leave ends.

The second type of extension (more than 52 weeks and up to 104 weeks) can be made even if an employee started their parental leave before 22 February 2006. An application for this extension can only be made once within any 12 month period unless the employer agrees otherwise. The application must be made by giving the employer the following notice:

- extension of short parental or short adoption leave – at least 2 business days before the leave ends,
- extension of long parental or long adoption leave – at least 4 weeks before the leave ends

The written application must include:

- the start and end dates for the proposed extension of leave,
- the impact refusal of the application might have on the employee and their dependants,
- the employee's statutory declaration that they are seeking an extension to continue to be the child's primary caregiver.

## Can an employer refuse to grant an employee's application to extend parental or adoption leave up 104 weeks in total?

An employer must not unreasonably refuse this type of application and must give proper consideration to an employee's application. An employer must give their written decision to the employee within 14 days or for short parental or short adoption leave – as soon as possible but before the short leave ends. In deciding whether to agree to an employee's application, an employer must consider:

- the employee's circumstances particularly those relating to role of primary caregiver,
- the impact refusal of the application might have on the employee and their dependants,
- the effect that agreeing to the application would have on the conduct of the employer's business. (e.g. any additional costs, reorganisation of work, replacement staff, any loss of efficiency, the impact on delivery of customer service)
- if the application is refused, that the employer must provide the employee with written reasons for the refusal.

## What are an employee's obligations to advise their employer about particular changes?

In addition to requirements about giving notice to take parental leave an employee must advise their employer of any change to their contact details including a change of address.

Take reasonable steps to advise their employer of any significant change about

- the length of parental leave, or
- intended date of return to work or
- an earlier decision to return to work on a full time basis or
- an application to return to work on a part-time basis.

## Can an employee and their spouse take leave at the same time?

With the exception of short parental leave and short adoption leave, the employee and their spouse **cannot** both take leave at the same time. Long parental leave is taken to be the child's primary care giver.

## Who is the employee's spouse?

Under the *Industrial Relations Act 1999* the "spouse" of an employee includes:

- a former spouse; and
- a de facto spouse, including a spouse of the same sex as the employee.

## Is parental leave unpaid leave?

Yes, parental leave is unpaid leave granted by the employer.

## Are casuals entitled to parental leave?

Long term casual employees are entitled to a maximum of 52 weeks unpaid parental leave or a total 104 weeks under the provisions where an extension has been granted.

## How much notice is required when taking parental leave?

An employee wishing to take parental leave must give his or her employer written notice at least 10 weeks prior to the presumed date of confinement or the expected date of placement of the adopted child. The employee must also give the employer at least four weeks written notice of the dates on which she or he proposes to start and finish the leave. However, in the case of adoption leave the employee must give as much notice as possible, but this can not be less than 14 days.

## What documents does an employee need to produce to take parental leave?

A pregnant employee wishing to take leave must provide her employer with:

- a doctor's certificate stating that she is pregnant and the expected date of birth; and
- a statutory declaration stating any periods of parental leave to be taken by her spouse.

An employee whose spouse is pregnant must produce a doctor's certificate confirming the pregnancy and the expected date of birth. For long parental leave, the employee must also produce a statutory declaration stating the periods of leave to be taken by their spouse and confirming the employee intends to be the child's primary care giver.

An employee intending to adopt a child must give the employer:

- a statement from the adoption agency stating the expected date of placement; and
- a statutory declaration stating the period of any adoption leave sought by the employee's spouse and

stating that the employee intends to be the child's primary care giver.

## Can the period of parental leave be extended?

Yes. Two types of application to extend parental leave can be made.

The total period of leave must not extend:

- beyond 1 year after the child was born or adopted (even if the employee is having twins or triplets). The employer's agreement is not necessary for this extension; or
- beyond 2 years after the child was born or adopted. The employer's agreement is necessary to take this longer extension of parental or adoption leave.

## Can an employee shorten the period of leave?

Leave can only be reduced with the employer's agreement. The employee must give at least 14 days written notice of their wish to reduce the leave.

## Can an employee take other types of leave together with parental leave?

Paid annual leave or long service leave can be taken together with unpaid parental leave. However, the total period of leave must not exceed 52 weeks or 104 weeks where a leave extension is granted.

While on unpaid parental leave there is no entitlement to other paid leave which is authorised by law or an industrial instrument, unless the employer agrees. e.g. paid sick leave.

An employee who is seeking to adopt a child is entitled to up to 2 days unpaid leave (special adoption leave) to attend compulsory interviews or examinations as part of the adoption procedure.

## Can parental leave be cancelled?

Parental leave applied for, but not started, is automatically cancelled if the pregnancy terminates other than by the birth of a living child, the adoption does not proceed or the employee withdraws their application for leave by written notice.

If parental leave has begun and the pregnancy is terminated other than by the birth of a living child or the child dies or the adoption does not take place, the employee may give their employer written notice that they wish to resume work and the reason for resumption. The employee is then entitled to resume

work at a time nominated by the employer within 2 weeks after the notice is given.

## Interruption of parental leave by return to work

The *Industrial Relations Act 1999* provides that an employee and employer may agree to interrupt a period of parental leave by allowing that an employee may temporarily return to work on either a full-time, part-time or casual basis without cancelling the leave. This allows for parental leave to be resumed after it is interrupted by the employee returning to work.

The period of parental leave cannot be lengthened by the return to work period. The total period of leave can not extend beyond the normal period of 52 weeks or 104 weeks where the leave extension provisions are used.

At the expiration of parental leave, an employee is entitled to return to the same position and status held immediately prior to the commencement of parental leave.

## Do other types of leave continue to accumulate during parental leave?

Long service leave and sick leave do not accumulate during parental leave.

Annual leave accumulates only during the first three months of parental leave.

Parental leave does not break the continuity of an employee's service.

## Can an employee be terminated while they are on parental leave?

An employee can be terminated while on parental leave provided that the dismissal is not unfair. However, it is an invalid reason to dismiss an employee for any of the following specific reason:

- The employee or their spouse is pregnant or has applied to adopt a child,
- The employee or their spouse has given birth to or adopted a child,
- Applying for, or being absent on parental leave.

An employee can resign while on parental leave by giving the period of notice required under their award. If an employee resigns because of a domestic or other pressing necessity they may be entitled to pro rata long

service leave having completed 7 but less than 10 years continuous service.

### **Can an employee be dismissed because she is pregnant, taking maternity leave or breastfeeding?**

No. An employer cannot dismiss an employee because she is pregnant, taking maternity leave or breastfeeding.

If an employee has been dismissed, they can seek advice and assistance from the Queensland Industrial Relations Commission (to lodge for application for reinstatement), the Anti-Discrimination Commission Queensland (to lodge a complaint for discrimination), The Queensland Working Women's Service Inc., or their union.

### **What is an employee entitled to if they have been with their employer for less than 12 months?**

An employer may grant an employee annual leave in advance or unpaid leave. Unless eligible, there is no legislative entitlement to unpaid parental leave, however, an employer and employee can negotiate and agree upon a period of unpaid absence.

### **Can my partner take time off work when I go to hospital to have the baby?**

An employee's partner (spouse) is entitled to an unbroken period of up to 1 week's unpaid leave (short parental leave). However, an application can be made to extend short parental or short adoption leave to a maximum unbroken period of up to 8 weeks.

### **What happens when it is time for the employee to return to work?**

When the employee returns to work they are entitled to return to their former position.

If the position the employee held before going on leave no longer exists, the employer must offer the employee any other available position for which the employee is qualified and capable of performing. The employee is entitled to a position as nearly comparable in status and pay to that of their former position.

### **Can an employer hire a replacement employee?**

The employer may choose to employ a new employee or temporarily transfer an existing employee to replace a person who has taken parental leave. Before taking

this action the employer is required to inform the replacement employee of the temporary nature of the employment and of the parent's right to return to work.

### **What obligations does the employer have?**

#### **Parental Leave:**

When they become aware that an employee, or the employee's spouse, is pregnant or is adopting a child, the employer is required to inform the employee of his or her:

- entitlement to parental leave; and
- obligations to give notice and documents as outlined in the Act.

If the employer does not do this they cannot refuse to grant leave to an employee who has not given all notices and documents required.

#### **Significant workplace change:**

When an employer decides to implement significant workplace change including a decision about change that had not been implemented before 22 February 2006, the employer must:

- take reasonable action to advise an employee absent on parental leave about the proposed change before it is implemented,
- inform the employee of the change and any effect it will have on the position they held before starting parental leave, (e.g. status, leave of responsibility), and
- give the employee a reasonable opportunity to discuss any significant effect the change will have on their position

### **What happens if it is unsafe for the employee to continue working?**

If it is unsafe or unhealthy for a female employee to continue her current work because she is pregnant or breastfeeding, the employer must temporarily adjust her working conditions or hours of work to avoid exposure to the risk.

If this is not feasible or it is unreasonable, the employer must transfer the employee to other work that is as near as possible comparable in status and remuneration to her present work and will not expose her to the risk.

If this is not feasible or is unreasonable, the employer must grant the employee maternity leave or paid sick leave for as long as a doctor certifies it is necessary to avoid exposure to the risk. Payment of sick leave is

conditional upon the employee having the accumulated sick leave.

During the 6 weeks before the expected date of birth, the *Family Leave Award 2003* allows an employer to require the employee to produce a medical certificate stating that she is fit for her normal duties or transfer to a safe job.

### **Does an employee have any special leave entitlements?**

If an employee suffers illness due to her pregnancy, if there is a miscarriage or the child dies after giving birth, she is entitled to take either unpaid leave (special maternity leave) or paid sick leave (or a combination of the two). A pregnant employee may also use their sick leave entitlement or unpaid leave (special maternity leave) to attend prenatal check ups with their doctor. A doctor's certificate is necessary.

### **What happens if there is a miscarriage, the child dies or the adoption does not proceed?**

If the employee has not commenced parental leave, then the leave is automatically cancelled.

If the employee is on parental leave, the employee is entitled to resume work at a time nominated by the employer within 2 weeks after the day on which the employee gives his/her employer a written notice stating the employee intends to resume and the reason for the resumption.

### ***Carer's Leave***

#### **What is carer's leave?**

Carer's leave is leave for employees to give care and support to members of their immediate family or household when they are ill or because an unexpected emergency arises.

For carer's leave, members of the immediate family are defined under the Act as the employee's spouse, and a child, ex-nuptial child, step child, adopted child, ex-foster child, parent, grand parent, grand child or sibling of the employee or employee's spouse.

#### **How much carer's leave am I entitled to?**

Paid carer's leave allows full time and part-time employees to use their accumulated sick leave entitlements. Employees can use up to ten days (five days prior to 22 February 2006) of their accumulated

sick leave on full pay in each year as carer's leave. Carer's leave can be taken for part of a day.

If an employee has exhausted their entitlement to paid carer's leave, they may take up to an additional two days unpaid carer's leave each time they qualify to take carer's leave. Unpaid leave in excess of the two days can be taken if the employer agrees.

An employee can not take carer's leave if another person has taken leave to care for the same person.

#### **What documents does an employee need to produce to take carer's leave?**

An employee can be required by their employer to produce a doctor's certificate and/or statutory declaration stating that the person being cared for is ill and requires care by another person.

If practical, before leave is taken, otherwise at the first reasonable opportunity, an employee should give their employer:

- notice of their intention to take carer's leave,
- the name of person requiring care and their relationship to the employee,
- the reason for taking leave
- the estimated period of absence, and
- if the reason is for unexpected emergency, the nature of the emergency.

#### **Are casuals entitled to carer's leave?**

Long term casual employees are entitled to ten days (five days prior to 22 February 2006) unpaid carer's leave in each year.

A short term casual employee [link to definition] is entitled to leave work or be unavailable to attend work for up to two days each time they need to care for or support members of their immediate family or household who are ill or an unexpected emergency arises or because of the birth of a child. An employer can agree to longer periods of unpaid leave.

An employee can not take carer's leave if another person has taken leave to care for the same person.

#### **Can an employee take additional unpaid carer's leave?**

Yes, but only with the agreement of the employer.

## What other options are available?

Where the *Family Leave Award 2003* applies to the employment, other options are provided for an employee to provide care, these are:

- using up to five days annual leave taken in single day absences or part thereof;
- taking time off in lieu of overtime payment. All time taken is taken at the ordinary rate, that is an hour for each hour worked; or
- an employee can take time off and work those hours at a later date to repay the employer.

These options can be used only with the agreement of the employer.

## Bereavement Leave

### What is bereavement leave?

Bereavement leave (also known as compassionate leave) is leave to assist employees when there is a death in an employee's immediate family or household.

For bereavement leave, members of the immediate family are defined under the Act as the employee's spouse (includes de facto spouse and spouse of the same sex as the employee), and a child, ex-nuptial child, step child, adopted child, ex-foster child, parent, grandparent, grandchild or sibling of the employee or employee's spouse.

### How much bereavement leave can an employee take?

In addition to the stipulated entitlement to a number of days bereavement leave, all employees can take additional unpaid bereavement leave if they require extra reasonable time to travel to and from the funeral or other ceremony for the death of a member of their immediate family or household

A full time or part-time employee is entitled to two days leave on full pay for each bereavement.

There is no limit on the number of times an employee can take leave in any year.

### Are casuals entitled to bereavement leave?

A long term casual employee is entitled to at least 2 days unpaid bereavement leave for each death of a member of their immediate family or household. [from 1 April 2005].

A short term casual employee [link to definition] is entitled to be unavailable for work for up to 2 days

unpaid bereavement leave each occasion. [from 22 February 2006]

An employer must not fail to re-engage a casual employee only because they have taken bereavement leave.

Pieceworkers are excluded from any entitlement to bereavement leave.

### Can an employee take additional unpaid bereavement leave?

Yes, but only with the agreement of the employer.

An employee could also take unpaid leave on the death of a person who is not a member of the employee's immediate family or household - but only with the employer's agreement.

### Does the employee need to provide proof?

Yes. If required by the employer, the employee must produce a copy of the funeral notice or other evidence of the death.

## Cultural Leave

### Who is entitled to cultural leave?

People who are required by Aboriginal or Torres Strait Island tradition or custom to attend a ceremony can apply for cultural leave.

### What is the cultural leave entitlement?

If an employer agrees, an employee may take up to 5 days unpaid cultural leave in each year.

### What must an employee do to take cultural leave?

Before taking leave, an employee must give their employer reasonable notice of their intention to take cultural leave. An employee must advise their employer:

- the reason for taking the leave, and
- the estimated absence.

If it is not practical for an employee to give notice before taking leave, an employee must give their employer notice of:

- the reasons, and
- period at the first opportunity

## What must an employer consider?

An employer must not unreasonably refuse to grant leave.

An employer must consider:

- the employer's capacity to reorganise work arrangements to accommodate the employee's request;
- the impact of the employee's absence on the delivery of customer service; and the particular circumstances of the employee and
- the impact of refusal on the employee including the employee's ability to balance his or her work and family responsibilities.

## Part-time Employment

### What is part-time employment?

Provisions relating to part-time employment are contained in the *Family Leave Award 2003*. No similar provision existed in the *Industrial Relations Act 1999* prior to 22 February 2006.

The conditions concerning part-time employment in the *Family Leave Award 2003* and the *Industrial Relations Act 1999* are separate from the conditions relating to part-time employment found in many State awards. These conditions relate to employees who are entitled to take parental leave.

### What is the entitlement to work part-time?

Under the Act:

- an employee on parental leave may apply to their employer to return to work on a part-time basis, and
- an employee may not make more than one application within any 12 month period, unless their employer agrees.

An employee's application to work part-time must be made in writing at least 7 weeks before their parental leave ends. An application can be made even if an employee started their parental leave before 22 February 2006. The application must include:

- the start and end dates proposed for a part-time return to work. This period can not extend beyond the day the child whom parental leave was taken is required to be enrolled for compulsory schooling.

[link compulsory schooling to the *Education (General Provisions) Act 1989*.

- the impact refusal of the application to work part-time might have on the employee and their dependants,
- include the employee's statutory declaration about seeking to work part-time so they can continue to be the child's primary caregiver when not at work.

Under the *Family Leave Award 2003*, with the agreement of the employer:

- an employee can work part-time in one or more periods at any time from the date of birth of the child until the second birthday;
- a female employee can work part-time in one or more periods while she is pregnant where part-time employment is seen to be necessary or desirable;
- an employee can work part-time in one or more periods at any time from the date of placement of an adopted child until the second anniversary of the placement with the parents;

### Can an employer refuse to grant an employee's application to work part-time?

An employer must not unreasonably refuse an application and must give proper consideration to an application to work part-time. An employer must give their written decision to the employee within 14 days. In deciding whether to agree to an employee's application, an employer must consider:

- the employee's circumstances particularly those relating to role of primary caregiver,
- the impact refusal of the application to work part-time might have on the employee and their dependants,
- the effect that agreeing to the application would have on the conduct of the employer's business. (e.g. any additional costs, reorganisation of work, replacement staff, any loss of efficiency, the impact on delivery of customer service)
- if the application is refused, that the employer must provide the employee with written reasons for the refusal.

### What happens when it is time to return to work?

After the completion of each period of part-time employment, the employee has a right to return to his or her former position.

## What happens to accumulated annual leave?

Employees working part-time may take any leave due to them for any period of full-time employment as if they were working full-time at the time of taking the leave. This leave should be paid at the current full-time rate.

Similarly, employees working full-time, but who previously worked part-time, are entitled to any annual leave accumulated as a part-time employee, as if they were working part-time at the time of taking such leave. That leave should be paid at the current part-time rate. However, by agreement between the employer and the employee, the period over which leave is taken may be shortened to the extent necessary for the employee to receive pay at the employee's current full-time rate.

## What happens to accumulated sick leave?

Employees working part-time have their entitlements to sick leave converted into hours.

## Should part-time arrangements be put in writing?

Yes. The following arrangements for part-time work need to be agreed to in writing:

- that the employee may work part-time;
- the hours, days starting and finishing times;
- the classification of the employee; and
- the period of part-time employment.

## Can the employment be terminated while on part-time work?

An employer can dismiss the employee for a lawful reason under the Act. It is not lawful to dismiss an employee solely because of their family responsibilities. An employee can resign by giving the required period of notice as specified in their award or agreement.

## Where can I get more information?

### Contact

- Wageline  
4<sup>th</sup> Floor, Centro Lutwyche  
543 Lutwyche Road, Lutwyche Q. 4030  
(or) PO Box 820, Lutwyche Q. 4030
- Wageline Information Centre: Ph: 1300 369 945\*

- Fax: (07) 3872 0519
  - Web site: [www.wageline.qld.gov.au](http://www.wageline.qld.gov.au)
  - Telephone Interpreter Service: Ph: 131 450
- \* Local call cost (mobiles & payphones may be extra)

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