



Changes to Paid Parental Leave Pay – What are your Obligations?

As of 1 January 2011, all employees working as full-time, part-time, casual, seasonal, contract, or self-employed are entitled to apply for up to 18 weeks of Parental Leave Pay at the National minimum wage (currently \$609.35). An eligible employee is:

- 1) A person who will be the primary carer of a child born or adopted after 1 January 2011;
- 2) A person who has worked 10 months of the 13 months prior to the birth, with the employee having worked at least 330 hours during that 10 month period;
- 3) A person who earns an individual adjusted taxable income of \$150,000.00 or less;
- 4) An Australian based employee; and
- 5) An Australian resident.

An employee can be eligible for Parental Leave Pay through the Government scheme while also being eligible for any paid parental leave already provided by their employer. Parental Leave Pay under the Government scheme can be taken before, during or after any paid maternity or parental leave, or other employer-funded leave entitlements (such as annual leave or long service leave).

The Parental Leave Pay scheme does not impact the parental leave entitlements provided to employees under the National Employment Standards detailed in the Fair Work Act 2009 (Cth) or the relevant Modern Award.

From 1 January 2011 to 1 July 2011, Parental Leave Pay will be paid by the Family Assistance Office.

As of 1 July 2011, employers will be responsible for paying Parental Leave Pay to employees who are eligible, who give birth or adopt a child after 1 July 2011, and have been employed for at least 12 months. If an employee has been employed for less than 12 months, the employer can elect to pay Parental Leave Pay or alternatively, the Family Assistance Office will pay the employee.

The process for Parental Leave Pay will commence with the employee discussing their intention to seek Parental Leave Pay with the employer. The employee will then lodge their claim with the Family Assistance Office. This claim will provide all employment details of the employee and will also detail a proposed start and finish date for the Parental Leave Pay. The Family Assistance Office will then take steps to confirm that the employee is an eligible employee and Centrelink will establish whether the employee has been employed for 12 months to confirm if the employer is obligated to provide Parental Leave Pay or whether the Family Assistance Office will be paying the Parental Leave Pay.

Once the employee has been positively assessed as an eligible person, Centrelink will then provide the employer with the Parental Leave Pay and the employer will provide the Parental Leave Pay to the employee. The employer is required to withhold tax from the Parental Leave Pay under the usual PAYG withholding arrangements. Centrelink will provide the Parental Leave Pay to the employer in either fortnightly or six weekly instalments for payment to the employee.

In the event that an employer does not agree with an assessment by Centrelink that it is required to pay Parental Leave Pay then the employer is entitled to seek a review of the decision by Centrelink within 14 days of the initial decision.

Parental Leave Pay does not attract the following:

- 1) Superannuation contributions;
- 2) Additional workers compensation premiums;
- 3) Additional payroll tax; or
- 4) Accrual of additional leave entitlements.

An employer is required to inform Centrelink if an employee returns to work prior to the conclusion of the Parental Leave Pay period nominated by the employee. The employer will then be required to return any Parental Leave Pay to Centrelink that has not been paid to the employee.

In order to ensure that your business is compliant with the new requirements, it is essential that you:

- 1) Have your business registered with Centrelink using the Business Online Services <http://www.centrelink.gov.au/internet/internet.nsf/businesses/index.htm>;
- 2) Provide Centrelink with your business' relevant bank details, once the employee is accepted as an eligible employee and your business is deemed liable to make Parental Leave Payments;
- 3) Pay the employee in accordance with their regular pay cycle;
- 4) Withhold the relevant tax;
- 5) Provide the employee with a pay slip reflecting Paid Parental Leave payments;
- 6) Keep proper written records to reflect payments made to employees and payments received by Centrelink;
- 7) Ensure that your business notifies Centrelink of any changes that may occur, such as:
 - a. If/when the employee returns to work prior to or during their Paid Parental Leave period;
 - b. If/when the employee ceases to be employed by the business;
 - c. If any details change, i.e. bank details or pay cycle; and
 - d. If an incorrect amount of money is received in respect of Paid Parental Leave funds;
- 8) Ensure that any overpaid money is returned immediately to Centrelink; and
- 9) Ensure that Centrelink is immediately notified if your business is ceasing to trade, being sold or ownership is being transferred or merged.

All businesses holding an Australian Business Number ("ABN") may be exposed to obligations under the Parental Leave Pay Scheme. Given the obligations that may arise for your business, this is an opportune time to contact **Michael Sing Lawyers Pty Ltd** to seek advice about your obligations to employees, review your Employment Contracts or review your processes to employ, performance manage or change an employee's work arrangements. If you would like employment law advice, please contact our Gold Coast team on (07) 5597 8888 or our Brisbane team on (07) 3229 6099.



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