

Changes to Paid Parental Leave Pay - What are your obligations?

The new Parental Leave Pay provisions are not widely understood by employers. Michael Sing Lawyers provides a reality check on the scheme.

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

An eligible employee is:

1. A person who will be the primary carer of a child born or adopted after January 1, 2011;
2. 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. Who earns an individual adjusted taxable income of \$150,000 or less;
4. Is an Australia-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 January 1 to July 1 this year, Parental Leave Pay has been paid by the Family Assistance Office.

As of July 1, 2011, employers are responsible for paying Parental Leave Pay to employees who are eligible, who give birth or adopt a child after July 1, 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.

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.

Should an employer disagree 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.

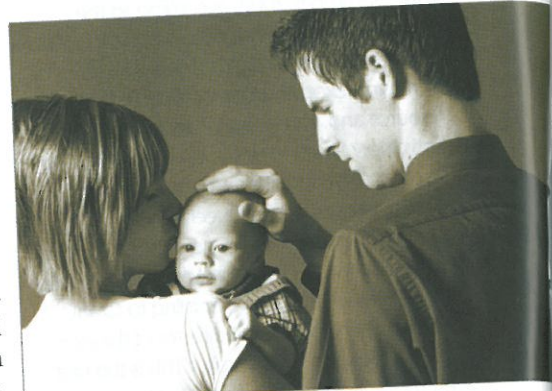
Parental Leave Pay does not attract:

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 businesses are compliant with the new requirements, it is essential that they:

1. Have registered the business with Centrelink using the Business



Employers have new responsibilities too.

Online Services at:

- <http://www.centrelink.gov.au/internet/internet.nsf/businesses/index.htm>;
2. Provide Centrelink with the business's relevant bank details, once the employee is accepted as eligible;
 3. Pay the employee in accordance with their regular pay cycle;
 4. Withhold the relevant tax;
 5. Provide the employee with a pay slip for Paid Parental Leave payments;
 6. Keep proper written records to reflect payments made to employees and those received by Centrelink;
 7. Ensure that the business notifies Centrelink of any changes, such as:
 - a. If and when the employee returns to work prior to or during their Paid Parental Leave period;
 - b. If and when the employee ceases to be employed by the business;
 - c. If any details change, for example bank details or pay cycle; and
 - d. If an incorrect amount of money is received in respect of Paid Parental Leave funds;
 8. Ensure overpaid money is returned immediately to Centrelink; and
 9. Ensure that Centrelink is immediately notified if the 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.

Michael Sing Lawyers suggests business owners and managers seek advice about their obligations to employees, review employment contracts or review processes to employ, performance manage or change an employees work arrangements.

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