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- General advice in relation to all employee-related issues
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Parental Leave Changes

This is the third of a series of 'The Advocate' dealing with the changes which came into force on 1 April 2016 to various pieces of employment law legislation.

This month's edition details the changes to the Parental Leave and Employment Protection Act which both extended the eligibility of employees who have an entitlement to parental leave and enhanced the entitlements to both payment and leave. The amendments to the Act also included a number of changes to the legislation which increases the flexibility around the taking of parental leave.

The Act provided for a number of terminology changes as follows:

Maternity Leave	→	Primary Carer Leave
Paternity Leave	→	Partner's Leave
Paid Parental Leave	→	Parental Leave Payments
Employee	→	includes, for the purpose of entitlement to paid parental leave, a person who was an employee.

Primary Carer

The amendment introduces the concept of "child's primary carer", which includes a female who is the biological mother (or a spouse or partner of the biological mother), or a person other than the biological mother, who takes permanent primary responsibility for the care, development and upbringing of a child who is not yet 6 years of age. As you will appreciate the change in this definition has broadened the eligibility to those who assume primary, non-temporary responsibility for raising a child. This does not include people providing day time and/or temporary childcare. It does cover those who are essentially raising the child.

The Act also provides a number of examples to aid in the interpretation of whether an individual falls within the definition of a primary carer:

1. A female (the biological mother) who is pregnant or has given birth to a child.
2. Spouse or partner of biological mother, only if:
 - i. The biological mother has died or the spouse or partner becomes the sole guardian of the child, to the exclusion of the biological mother.
 - ii. The biological mother may transfer entitlement to parental leave payment to spouse or partner.
3. A person, other than the biological mother or spouse or partner, who takes permanent primary responsibility for the care, development and upbringing of a child who is not yet 6 years of age.

A primary carer has the following entitlements:

- An employee who has been employed (for an average of 10 hours a week) for a continuous 6 month period:
 - Up to 18 weeks (currently 16 weeks) primary carer leave
 - An extension to 26 weeks (extended leave) which may be shared with the person's spouse.
 - Up to 18 weeks of parental leave payments and up to 13 weeks of pre-term baby payments.
- An employee who has been engaged (for an average of 10 hours a week) for a continuous the 12 month period has the same entitlements as an employee engaged for 6 months except that they will have an entitlement to 52 weeks extended leave.

Disclaimer:

This newsletter is not intended as legal advice but is intended to alert you to current issues of interest. If you require further information or advice regarding matters covered or any other employment law matters, please contact **Neil McPhail, Raewyn Gibson, or Peter Zwart.**

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Eligibility Test for Parental Leave Payment:

The definition of an employee has been changed (for the purposes of entitlement to parental leave payments) to include a person who “was” an employee. If the individual has been employed as an employee for at least an average of 10 hours a week for any 26 of the 52 weeks immediately preceding the expected date of delivery (or the first date on which the person becomes the primary carer in respect of the child) that individual may have an entitlement to a parental leave payment.

This means that employees engaged on a fixed term basis and/or employees who have changed jobs may still have an entitlement to parental leave payments.

“Negotiated Carer Leave”

An employee who is entitled to a parental leave payment however does not meet the eligibility criteria for parental leave may request a period of unpaid “*negotiated carer leave*”. Upon receipt of such a request an employer is required to respond as soon as possible, but not less than 1 month after receiving the request. An employer may refuse a request only if it cannot be accommodated on certain grounds:

- Inability to reorganise work amongst existing staff.
- Inability to recruit additional staff.
- Detrimental impact on quality or performance.
- Planned structural changes.
- Burden of additional costs.
- Detrimental effect on ability to meet customer demands.

Keeping-in-Touch Days

Keeping-in-Touch Days are defined as “A day that would otherwise be a day of parental leave, but on which an employee performs paid work for an employer.”

This amendment to the Act provides that an employee is not to be treated as having returned to work if they work 40 hours or less for their employer during the employee’s paid parental leave period (18 weeks), and if that work is performed on ‘*keeping-in-touch*’ days. Both the employee and employer must consent to the employee performing work. Keeping-in-Touch days cannot be taken for the first 28 days after the child is born (except for pre-term babies).



Pre-term Baby Payment

If an employee is entitled to parental leave payment and the child is born before the end of 36 weeks of gestation they may be eligible for:

- An additional payment of up to 13 weeks between the date of birth of child and date on which the 36 weeks of gestation would have ended had the child not been born prematurely
- Additional ‘*keeping-in-touch*’ hours for primary carer who are receiving pre-term baby payments (3 hours x number of weeks in the payment period)

A primary carer who intends to work during the pre-term payment period would only forfeit entitlement to pre-term baby payments and not their regular parental leave payments.

Resignation – Entitlement to Parental Leave Payments

An employee may now choose to resign (rather than take leave) and will still have an entitlement to parental leave payments.

Extended Leave

Under current law extended leave must be taken in one continuous period. The Act has been amended to allow for extended leave to be taken on dates agreed between the employee and employer, so that the leave can be taken over more than one period which would allow an employee to return to work between periods of extended leave.

If you have any questions regarding the changes to parental leave entitlements, please do not hesitate to contact the team at MGZ.