

### **Subdivision 2.3.1.2 When a secondary claimant is eligible for parental leave pay**

#### **2.7 When a secondary claimant is eligible for parental leave pay**

This Subdivision is made for paragraph 31 (4) (b) of the Act and prescribes the conditions that a person who is a secondary claimant must satisfy to be eligible for parental leave pay for a child.

#### **2.8 Conditions — secondary claimants in normal circumstances**

- (1) The conditions in this rule apply to a person:
  - (a) who is the partner of a primary claimant; or
  - (b) who:
    - (i) is a parent of the child; and
    - (ii) is not the primary claimant; or
  - (c) who is a partner of a person covered by paragraph (b).
- (2) The conditions are that:
  - (a) the person satisfies the work test; and
  - (b) the person satisfies the income test; and
  - (c) the person satisfies the Australian residency test; and
  - (d) the person:
    - (i) is the primary carer of the child; or
    - (ii) satisfies the requirements of rule 2.9 or rule 2.10; and
  - (e) the person:
    - (i) has not returned to work; or
    - (ii) if the person satisfies the requirements of rule 2.10 — has returned to work only for the period the child is not in the person's care; or
    - (iii) satisfies the requirements of rule 2.11; and
  - (f) the person is covered by subrule (3).
- (3) A person is covered by this subrule if both of the following are satisfied:
  - (a) the person and the person's partner are not entitled to baby bonus for the child;
  - (b) a former partner of the person was not entitled to baby bonus for the child when he or she was the person's partner.

*Note* The conditions that apply to a person who makes a secondary claim in exceptional circumstances are set out in rule 2.12.

#### **2.9 Care requirements for secondary claimants — temporary inability to care**

For subparagraph 2.8 (2) (d) (ii), the requirements are as follows:

- (a) the person will be, or previously was, the primary carer of the child;

- (b) the person is temporarily unable to be the primary carer of the child due to circumstances beyond the person's control, other than a circumstance mentioned in paragraph 2.10 (b);
- (c) the period of the temporary inability is likely to be less than 26 weeks;
- (d) there is no determination in force under the Act that parental leave pay is payable for the child to another person for the same day;
- (e) the Secretary is satisfied that the person would have been the child's primary carer except for the person's temporary inability to be the child's primary carer.

## **2.10 Care requirements for secondary claimants — loss of care for child**

For subparagraph 2.8 (2) (d) (ii), the requirements are that:

- (a) the person previously was the primary carer of the child; and
- (b) an event occurs in relation to the child without the person's consent that prevents the child being in the person's care; and
- (c) the person takes reasonable steps to have the child again in the person's care; and
- (d) the person, or the person's partner, is the child's legal parent or is otherwise legally responsible for the child; and
- (e) if the child is in the care of another legal parent — the person, or the person's partner, has a court order or a parenting plan to the effect that the child is to live with the person or the person's partner; and
- (f) there is no determination in force under the Act that parental leave pay is payable for the child to another person for the same day.

## **2.11 Work requirements for secondary claimants — recall to duty**

For subparagraph 2.8 (2) (e) (iii), the requirements are that the person:

- (a) is a defence force member; and
- (b) has performed paid work on a day because the person has been compulsorily recalled to duty.

## **2.12 Conditions — secondary claimants in exceptional circumstances**

- (1) The conditions in this rule apply to a person who satisfies the exceptional circumstances prescribed by Subdivision 2.4.1.2 for making a secondary claim.
- (2) The conditions are that:
  - (a) the person satisfies the Australian residency test; and
  - (b) the person:
    - (i) is the primary carer of the child; or
    - (ii) satisfies the requirements of rule 2.13 or rule 2.14; and
  - (c) the person:
    - (i) has not returned to work; or

- (ii) if the person satisfies the requirements of rule 2.14 — has returned to work only for the period the child is not in the person's care; or
  - (iii) satisfies the requirements of rule 2.15 or rule 2.16; and
  - (d) the person is covered by subrule (3).
- (3) A person is covered by this subrule if both of the following are satisfied:
- (a) the person and the person's partner are not entitled to baby bonus for the child;
  - (b) a former partner of the person was not entitled to baby bonus for the child when he or she was the person's partner.

### **2.13 Exceptional circumstances care requirements for secondary claimants — temporary inability to care**

For subparagraph 2.12 (2) (b) (ii), the requirements are as follows:

- (a) the person will be, or previously was, the primary carer of the child;
- (b) the person is temporarily unable to be the primary carer of the child due to circumstances beyond the person's control, other than a circumstance mentioned in paragraph 2.14 (b);
- (c) the period of the temporary inability is likely to be less than 26 weeks;
- (d) there is no determination in force under the Act that parental leave pay is payable for the child to another person for the same day;
- (e) the Secretary is satisfied that the person would have been the child's primary carer except for the person's temporary inability to be the child's primary carer.

### **2.14 Exceptional circumstances care requirements for secondary claimants — loss of care for child**

For subparagraph 2.12 (2) (b) (ii), the requirements are that:

- (a) the person previously was the primary carer of the child; and
- (b) an event occurs in relation to the child without the person's consent that prevents the child being in the person's care; and
- (c) the person takes reasonable steps to have the child again in the person's care; and
- (d) the person, or the person's partner, is the child's legal parent or is otherwise legally responsible for the child; and
- (e) if the child is in the care of another legal parent — the person, or the person's partner, has a court order or a parenting plan to the effect that the child is to live with the person or the person's partner; and
- (f) there is no determination in force under the Act that parental leave pay is payable for the child to another person for the same day.

**2.15      Exceptional circumstances work requirements for secondary claimants — recall to duty**

For subparagraph 2.12 (2) (c) (iii), the requirements are that the person:

- (a) is a defence force member; and
- (b) has performed paid work on a day because the person has been compulsorily recalled to duty.

**2.16      Exceptional circumstances work requirements for secondary claimants — working while care arrangements being settled**

For subparagraph 2.12 (2) (c) (iii), the requirements are that:

- (a) the person performed paid work, other than for a permissible purpose, on a day or days during the period commencing immediately after the primary claimant stopped caring for the child and ending when the care arrangements for the child were settled; and
- (b) care arrangements for the child were settled within a reasonable time after the primary claimant stopped caring for the child.