

31 When a person is *eligible* for parental leave pay

- (1) This section sets out when a person is eligible for parental leave pay for a child on a day.

Eligible

- (2) First, a person is *eligible* for parental leave pay for a child on a day if, on that day:
- (a) the person satisfies the work test (see Division 3); and
 - (b) the person satisfies the income test (see Division 4); and
 - (c) the person satisfies the Australian residency test (see Division 5); and
 - (d) the person is the primary carer of the child (see Division 6); and
 - (e) the person has not returned to work (see Division 7).
- (3) Second, a person is *eligible* for parental leave pay for a child on a day if:
- (a) the child is stillborn or has died before that day; and
 - (b) on that day, the person would be eligible under subsection (2) for parental leave pay for the child, if paragraphs (2)(d) and (e) were disregarded; and
 - (c) the person would have been the child's primary carer on that day had the child not been stillborn or died.
- (4) Third, a person is *eligible* for parental leave pay for a child on a day if, on that day:
- (a) if the person is the primary claimant:
 - (i) the person satisfies the work test (see Division 3); and
 - (ii) the person satisfies the income test (see Division 4); and
 - (iii) the person satisfies the Australian residency test (see Division 5); and
 - (iv) the person satisfies the conditions prescribed by the PPL rules; and
 - (b) if the person is a secondary claimant or tertiary claimant—the person satisfies the conditions prescribed by the PPL rules.

Not eligible—overlap with DAPP period

- (4A) If there is in force a payability determination that dad and partner pay is payable to a person for a child for the person's DAPP period, then, despite subsections (2), (3) and (4), the person is not *eligible* for parental leave pay for the child on a day that is in the DAPP period.

Not eligible—excess days

- (4B) Despite subsections (2), (3) and (4), if:
- (a) there is in force a payability determination that dad and partner pay is payable to a person for a child for the person's DAPP period; and
 - (b) combined, the total days in the DAPP period and the reference period for the person's claim for parental leave pay for the child exceed 126;

then:

- (c) the Secretary must exclude from the reference period the excess number of days; and
- (d) the person is not **eligible** for parental leave pay for the child on a day excluded by the Secretary.

Not eligible—claimant deceased

- (5) Despite subsections (2), (3) and (4), a person is not **eligible** for parental leave pay for a child on a day if, on that day, the person is deceased.

Not eligible—newly arrived resident’s waiting period

- (6) Despite subsections (2), (3) and (4), a person is not **eligible** for parental leave pay for a child on a day in a newly arrived resident’s waiting period for the person (see section 31A).

(Paid Parental Leave Rules 2010)

Subdivision 2.3.1.1 When a primary claimant is eligible for parental leave pay

2.1 When primary claimant is eligible for parental leave pay

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

Note Under paragraph 31 (4) (a) of the Act, a primary claimant must satisfy the work test, the income test and the Australian residency test in addition to the conditions prescribed by this Subdivision.

2.2 Conditions — primary claimants

- (1) The conditions are that:
 - (a) the person:
 - (i) is the primary carer of the child; or
 - (ii) satisfies the requirements of rule 2.3 or rule 2.4; or
 - (iii) satisfies the requirement of rule 2.6; and
 - (b) the person:
 - (i) has not returned to work, unless paragraph 2.6 (b) applies; or
 - (ii) if the person satisfies the requirements of rule 2.4 — has returned to work only for the period the child is not in the person’s care; or
 - (iii) satisfies the requirements of rule 2.5; and
 - (c) the person is covered by subrule (2).
- (2) 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.

2.3 Care requirements for primary claimants — temporary inability to care

For subparagraph 2.2 (1) (a) (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 2.4 (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.

2.4 Care requirements for primary claimants — loss of care for child

For subparagraph 2.2 (1) (a) (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.

2.5 Work requirements for primary claimants — recall to duty

For subparagraph 2.2 (1) (b) (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.

2.6 Birth mother relinquishing child

For subparagraph 2.2 (1) (a) (iii), the requirement is that, on a day that is within 18 weeks of the child's birth, the person is the birth mother of the child and is not caring for the child because:

- (a) the person relinquished the child:
 - (i) as part of the process for the adoption of the child; or

	<ul style="list-style-type: none">(ii) because the child was born of a surrogacy arrangement; or(iii) because the child was removed from the person’s care by a State or Territory child protection agency; or <p>(b) both the following apply:</p> <ul style="list-style-type: none">(i) the child is stillborn or has died before that day;(ii) the person would have relinquished the child in the circumstances mentioned in paragraph (a) had the child not been stillborn or died.
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