

*Your responses suggest that you have complied with your statutory obligation to your employer.*

(Fair Work Act 2009)

## **74 Notice and evidence requirements**

### *General requirement to give notice of taking leave*

- (1) An employee must give his or her employer written notice of the taking of unpaid parental leave under section 71 or 72, or flexible unpaid parental leave, by the employee.

### *Notice requirements—leave to be taken under section 71 or 72*

- (2) If the leave is to be taken under section 71 or 72, the employee must give the notice to the employer:
  - (a) at least:
    - (i) 10 weeks before starting the leave, unless subparagraph (ii) applies; or
    - (ii) if the leave is to be taken in separate periods of concurrent leave (see paragraph 72(5)(b)) and the leave is not the first of those periods of concurrent leave—4 weeks before starting the period of concurrent leave; or
  - (b) if that is not practicable—as soon as practicable (which may be a time after the leave has started).
- (3) The notice must specify the intended start and end dates of the leave.

### *Notice requirements—flexible unpaid parental leave*

- (3A) If the leave is flexible unpaid parental leave, the employee must give the notice to the employer:
  - (a) in the case where the employee also takes unpaid parental leave (the **original leave**) under section 71 or 72:
    - (i) at the same time as the employee gives notice in accordance with subsection (2) in relation to the original leave, unless subparagraph (ii) applies; or
    - (ii) if the employee takes more than one period of leave under section 72—at the same time as the employee gives notice in accordance with subsection (2) in relation to the first of those periods of leave; or
  - (b) otherwise—at least 10 weeks before starting the flexible unpaid parental leave.
- (3B) However, the notice may be given at any later time if the employer agrees.
- (3C) The notice must specify the total number of days (**flexible days**) of flexible unpaid parental leave that the employee intends to take in relation to the child.
- (3D) If the employer agrees, the employee may:
  - (a) reduce the number of flexible days, including by reducing the number of flexible days to zero; or
  - (b) increase the number of flexible days, but not so as to increase the number of flexible days above 30.

*Taking leave under section 71 or 72—confirming or changing intended start and end dates*

- (4) If the leave is to be taken under section 71 or 72, then at least 4 weeks before the intended start date specified in the notice given under subsection (1), the employee must:
- (a) confirm the intended start and end dates of the leave; or
  - (b) advise the employer of any changes to the intended start and end dates of the leave;
- unless it is not practicable to do so.

- (4A) Subsection (4) does not apply to a notice for a period of concurrent leave referred to in subparagraph (2)(a)(ii).

*Taking flexible unpaid parental leave—notifying days on which employee will take leave*

- (4B) The employee must give the employer written notice of a flexible day on which the employee will take flexible unpaid parental leave:
- (a) at least 4 weeks before that day; or
  - (b) if that is not practicable—as soon as practicable (which may be a time after the leave has started).
- (4C) If the employer agrees, the employee may change a day on which the employee takes flexible unpaid parental leave from a day specified in a notice under subsection (4B).

*Evidence requirements*

- (5) An employee who has given his or her employer notice of the taking of unpaid parental leave must, if required by the employer, give the employer evidence that would satisfy a reasonable person:
- (a) if the leave is birth-related leave:
    - (i) of the date of birth, or the expected date of birth, of the child; and
    - (ii) that paragraph 77A(1)(a) (which deals with the stillbirth of a child) applies in relation to the employee, if relevant; or
  - (b) if the leave is adoption-related leave:
    - (i) of the day of placement, or the expected day of placement, of the child; and
    - (ii) that the child is, or will be, under 16 as at the day of placement, or the expected day of placement, of the child.

- (6) Without limiting subsection (5), an employer may require the evidence referred to in paragraph (5)(a) to be a medical certificate.

Example: If the application of paragraph 77A(1)(a) (which deals with the stillbirth of a child) is relevant—certification by a medical practitioner of the child as having been delivered.

*Compliance*

- (7) An employee is not entitled to take unpaid parental leave under section 71 or 72, or flexible unpaid parental leave, unless the employee complies with this section.

Note: Personal information given to an employer under this section may be regulated under the *Privacy Act 1988*.

