

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