

72 The period of leave—members of an employee couple who each intend to take leave

Application of this section

- (1) This section applies to an employee couple if each of the employees intends to take unpaid parental leave.

Leave must be taken in single continuous period

- (2) Each employee must take the leave in a single continuous period.

Note 1: An employee may take a form of paid leave at the same time as he or she is on unpaid parental leave (see section 79).

Note 2: For provisions affecting the rule in this subsection, see:

- (a) subsection (6) (concurrent leave); and
- (b) subsection 72A(11) (flexible unpaid parental leave); and
- (c) subsection 73(4) (pregnant employee may be required to take unpaid parental leave within 6 weeks before the birth); and
- (d) paragraph 78A(2)(b) (permitted work periods while child is hospitalised); and
- (e) subsection 79A(1) (keeping in touch days).

When birth-related leave must start

- (3) If the leave is birth-related leave other than flexible unpaid parental leave:
- (a) one employee's period of leave must start, in accordance with the following rules:
 - (i) if the employee is a female employee who is pregnant with, or gives birth to, the child—the period of leave may start up to 6 weeks before the expected date of birth of the child, or earlier if the employer and employee so agree, but must not start later than the date of birth of the child;
 - (ii) if subparagraph (i) does not apply—the period of leave must start on the date of birth of the child; and
 - (b) any period of unpaid parental leave (other than flexible unpaid parental leave) that the other employee takes must start immediately after the end of the first employee's period of leave taken in accordance with paragraph (a) (or that period as extended under section 75 or 76).

When adoption-related leave must start

- (4) If the leave is adoption-related leave other than flexible unpaid parental leave:
- (a) one employee's period of leave must start on the day of placement of the child; and
 - (b) any period of unpaid parental leave (other than flexible unpaid parental leave) that the other employee takes must start immediately after the end of the first employee's period of leave taken in accordance with paragraph (a) (or that period as extended under section 75 or 76).

Limited entitlement to take concurrent leave

- (5) If one of the employees takes a period (the **first employee's period of leave**) of unpaid parental leave in accordance with paragraph (3)(a) or

- (4)(a), the other employee may take a period of unpaid parental leave (the **concurrent leave**) during the first employee's period of leave, if the concurrent leave complies with the following requirements:
- (a) the concurrent leave must not be longer than 8 weeks in total;
 - (b) the concurrent leave may be taken in separate periods, but, unless the employer agrees, each period must not be shorter than 2 weeks;
 - (c) unless the employer agrees, the concurrent leave must not start before:
 - (i) if the leave is birth-related leave—the date of birth of the child; or
 - (ii) if the leave is adoption-related leave—the day of placement of the child.

(6) Concurrent leave taken by an employee:

- (a) is an exception to the rule in subsection (2) that the employee must take his or her leave in a single continuous period; and
- (b) is an exception to the rules in subsections (3) and (4) about when the employee's period of unpaid parental leave must start.

Note: The concurrent leave is unpaid parental leave and so comes out of the employee's entitlement to 12 months of unpaid parental leave under section 70.

(7) To avoid doubt, if the other employee takes flexible unpaid parental leave during the first employee's period of leave, the other employee's leave is taken not to be concurrent leave.

Note: The combined effect of this subsection, paragraph (5)(a) and subsection 72A(9) is that members of an employee couple cannot take longer than 8 weeks of unpaid parental leave at the same time, whether the leave is taken under this section (including as concurrent leave) or as flexible unpaid parental leave.

(Fair Work Act 2009)

73 Pregnant employee may be required to take unpaid parental leave within 6 weeks before the birth

Employer may ask employee to provide a medical certificate

- (1) If a pregnant employee who is entitled to unpaid parental leave (whether or not she has complied with section 74) continues to work during the 6 week period before the expected date of birth of the child, the employer may ask the employee to give the employer a medical certificate containing the following statements (as applicable):
- (a) a statement of whether the employee is fit for work;
 - (b) if the employee is fit for work—a statement of whether it is inadvisable for the employee to continue in her present position during a stated period because of:
 - (i) illness, or risks, arising out of the employee's pregnancy; or
 - (ii) hazards connected with the position.

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

Employer may require employee to take unpaid parental leave

- (2) The employer may require the employee to take a period of unpaid parental leave (the **period of leave**) as soon as practicable if:

- (a) the employee does not give the employer the requested certificate within 7 days after the request; or
- (b) within 7 days after the request, the employee gives the employer a medical certificate stating that the employee is not fit for work; or
- (c) the following subparagraphs are satisfied:
 - (i) within 7 days after the request, the employee gives the employer a medical certificate stating that the employee is fit for work, but that it is inadvisable for the employee to continue in her present position for a stated period for a reason referred to in subparagraph (1)(b)(i) or (ii);
 - (ii) the employee has not complied with the notice and evidence requirements of section 74 for taking unpaid parental leave.

Note: If the medical certificate contains a statement as referred to in subparagraph (c)(i) and the employee has complied with the notice and evidence requirements of section 74, then the employee is entitled to be transferred to a safe job (see section 81) or to paid no safe job leave (see section 81A).

When the period of leave must end

- (3) The period of leave must not end later than the earlier of the following:
 - (a) the end of the pregnancy;
 - (b) if the employee has given the employer notice of the taking of a period of leave connected with the birth of the child (whether it is unpaid parental leave or some other kind of leave)—the start date of that leave.

Note: The combined effect of this subsection and subsection 72A(1) is that the employer cannot require the employee to take any part of the period of leave as flexible unpaid parental leave.

- (4) The period of leave is an exception to the rules in sections 71 and 72 about:
 - (a) taking the employee's unpaid parental leave in a single continuous period; and
 - (b) when the employee's period of unpaid parental leave must start.
- (5) The employee is not required to comply with section 74 in relation to the period of leave.