

80 Unpaid special maternity leave

Entitlement to unpaid special maternity leave

- (1) A female employee is entitled to a period of unpaid special maternity leave if she is not fit for work during that period because:
- (a) she has a pregnancy-related illness; or
 - (b) all of the following apply:
 - (i) she has been pregnant;
 - (ii) the pregnancy ends after a period of gestation of at least 12 weeks otherwise than by the birth of a living child;
 - (iii) the child is not stillborn.

Note 1: Entitlement is also affected by section 67 (which deals with the length of the employee's service).

Note 1A: If the child is stillborn, the female employee may be entitled to unpaid parental leave (see section 77A).

Note 2: If a female employee has an entitlement to paid personal/carer's leave (see section 96), she may take that leave instead of taking unpaid special maternity leave under this section.

Notice and evidence

- (2) An employee must give her employer notice of the taking of unpaid special maternity leave by the employee.
- (3) The notice:
- (a) must be given to the employer as soon as practicable (which may be a time after the leave has started); and
 - (b) must advise the employer of the period, or expected period, of the leave.
- (4) An employee who has given her employer notice of the taking of unpaid special maternity leave must, if required by the employer, give the employer evidence that would satisfy a reasonable person that the leave is taken for a reason specified in subsection (1).
- (5) Without limiting subsection (4), an employer may require the evidence referred to in that subsection to be a medical certificate.
- (6) An employee is not entitled to take unpaid special maternity leave unless the employee complies with subsections (2) to (4).