

72A Flexible unpaid parental leave

Taking up to 30 days' leave during 24 months starting on date of birth or day of placement

- (1) An employee may take up to 30 days of unpaid parental leave (***flexible unpaid parental leave***) during the 24-month period starting on the date of birth or day of placement of the child if the requirements of this section are satisfied in relation to the leave.

Note 1: The flexible unpaid parental leave is unpaid parental leave and so comes out of the employee's entitlement to 12 months of unpaid parental leave under section 70.

Note 2: The number of days of flexible unpaid parental leave that the employee takes must not be more than the number of flexible days notified to the employer under subsection 74(3C) (subject to any agreement under subsection 74(3D)).

- (2) Flexible unpaid parental leave is available in full to part-time and casual employees.

How flexible unpaid parental leave may be taken

- (3) The employee must take the flexible unpaid parental leave as:
- (a) a single continuous period of one or more days; or
 - (b) separate periods of one or more days each.

Effect of taking unpaid parental leave under other provisions

- (4) The employee may take the flexible unpaid parental leave whether or not the employee has taken unpaid parental leave under another provision of this Division in relation to the child.
- (5) However, the employee may take flexible unpaid parental leave after taking one or more periods of unpaid parental leave under another provision of this Division only if the total of those periods (disregarding any extension under section 76) is no longer than 12 months, less the employee's notional flexible period.

Meaning of notional flexible period

- (6) An employee's ***notional flexible period*** is the period during which the employee would be on flexible unpaid parental leave if the employee took leave for all the employee's flexible days in a single continuous period.
- (7) For the purposes of subsection (6), assume that:
- (a) the employee ordinarily works each day that is not a Saturday or a Sunday; and
 - (b) there are no public holidays during the period.

Entitlement to take unpaid parental leave under other provisions ends on taking flexible unpaid parental leave

- (8) The employee's entitlement to any unpaid parental leave in relation to the child that is not flexible unpaid parental leave ends on the first day the employee takes flexible unpaid parental leave.

Note: This means that if the employee is to take unpaid parental leave under another provision of this Division, the leave must be taken before the employee takes the flexible unpaid parental leave.

Members of employee couples

- (9) A member of an employee couple (the **first employee**) may take flexible unpaid parental leave on the same day as the other member of the couple (the **other employee**) is taking unpaid parental leave only if the total of all periods of unpaid parental leave the first employee takes at the same time as the other employee is no longer than 8 weeks.

Note: The unpaid parental leave making up the first employee's total could be leave the first employee has taken under section 72 (including concurrent leave) or flexible unpaid parental leave.

Multiple births

- (10) An employee is not entitled to take flexible unpaid parental leave in relation to a child if:
- (a) the child and another child:
 - (i) are born during the same multiple birth; or
 - (ii) are both placed with the employee for adoption and have the same day of placement; and
 - (b) the employee takes flexible unpaid parental leave in relation to the other child.

Interaction with sections 71 and 72

- (11) Flexible unpaid parental leave taken by an employee 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.