

*With the agreement of your employer, you may return to work for the period while your child is hospitalized. However, you need to come to an agreement about its effect on your UPL.*

(Fair Work Act 2009)

## **78A Hospitalised children**

*Agreeing to not take unpaid parental leave for a period while child remains in hospital*

(1) If:

- (a) a child is required to remain in hospital after the child's birth, or is hospitalised immediately after the child's birth, including because:
  - (i) the child was born prematurely; or
  - (ii) the child developed a complication or contracted an illness during the child's period of gestation or at birth; or
  - (iii) the child developed a complication or contracted an illness following the child's birth; and
- (b) an employee, whether before or after the birth of the child, gives notice in accordance with section 74 of the taking of a period of unpaid parental leave (the ***original leave period***) in relation to the child;

then the employee may agree with his or her employer that the employee will not take unpaid parental leave for a period (the ***permitted work period***) while the child remains in hospital.

Note: Section 344 prohibits the exertion of undue influence or undue pressure on the employee in relation to a decision by the employee whether to agree.

(2) If the employee and employer so agree, then the following rules have effect:

- (a) the employee is taken to not be taking unpaid parental leave during the permitted work period;
- (b) the permitted work period does not break the continuity of the original leave period;
- (c) the employee is taken to have advised the employer, for the purposes of subsection 74(4), of an end date for the original leave period that is the date on which that period would end if it were extended by a period equal to the permitted work period.

Note: One effect of paragraph (b) is that, if the employee takes periods of unpaid parental leave either side of the permitted work period, the periods are still treated as a single continuous period for the purposes of sections 71 and 72.

*When permitted work period must start*

(3) The permitted work period must start after the birth of the child.

*When permitted work period ends*

(4) The permitted work period ends at the earliest of the following:

- (a) the time agreed by the employee and employer;
- (b) the end of the day of the child's first discharge from hospital after birth;
- (c) if the child dies before being discharged—the end of the day the child dies.

*Only one permitted work period allowed*

- (5) Only one period may be agreed to under subsection (1) for which the employee will not take unpaid parental leave in relation to the child.

*Evidence*

- (6) The employee must, if required by the employer, give the employer evidence that would satisfy a reasonable person of either or both of the following:

- (a) that paragraph (1)(a) applies in relation to the child;
- (b) that the employee is fit for work.

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

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