

Subdivision 2.3.1.2 When a secondary claimant is eligible for parental leave pay

2.7 When a secondary claimant is eligible for parental leave pay

This Subdivision is made for paragraph 31 (4) (b) of the Act and prescribes the conditions that a person who is a secondary claimant must satisfy to be eligible for parental leave pay for a child.

2.8 Conditions — secondary claimants in normal circumstances

- (1) The conditions in this rule apply to a person:
 - (a) who is the partner of a primary claimant; or
 - (b) who:
 - (i) is a parent of the child; and
 - (ii) is not the primary claimant; or
 - (c) who is a partner of a person covered by paragraph (b).
- (2) The conditions are that:
 - (a) the person satisfies the work test; and
 - (b) the person satisfies the income test; and
 - (c) the person satisfies the Australian residency test; and
 - (d) the person:
 - (i) is the primary carer of the child; or
 - (ii) satisfies the requirements of rule 2.9 or rule 2.10; and
 - (e) the person:
 - (i) has not returned to work; or
 - (ii) if the person satisfies the requirements of rule 2.10 — has returned to work only for the period the child is not in the person's care; or
 - (iii) satisfies the requirements of rule 2.11; and
 - (f) the person is covered by subrule (3).
- (3) 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.

Note The conditions that apply to a person who makes a secondary claim in exceptional circumstances are set out in rule 2.12.

2.9 Care requirements for secondary claimants — temporary inability to care

For subparagraph 2.8 (2) (d) (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 2.10 (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.

2.10 Care requirements for secondary claimants — loss of care for child

For subparagraph 2.8 (2) (d) (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.

2.11 Work requirements for secondary claimants — recall to duty

For subparagraph 2.8 (2) (e) (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.

2.12 Conditions — secondary claimants in exceptional circumstances

- (1) The conditions in this rule apply to a person who satisfies the exceptional circumstances prescribed by Subdivision 2.4.1.2 for making a secondary claim.
- (2) The conditions are that:
 - (a) the person satisfies the Australian residency test; and
 - (b) the person:
 - (i) is the primary carer of the child; or
 - (ii) satisfies the requirements of rule 2.13 or rule 2.14; and
 - (c) the person:
 - (i) has not returned to work; or

- (ii) if the person satisfies the requirements of rule 2.14 — has returned to work only for the period the child is not in the person's care; or
 - (iii) satisfies the requirements of rule 2.15 or rule 2.16; and
 - (d) the person is covered by subrule (3).
- (3) 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.

2.13 Exceptional circumstances care requirements for secondary claimants — temporary inability to care

For subparagraph 2.12 (2) (b) (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 2.14 (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.

2.14 Exceptional circumstances care requirements for secondary claimants — loss of care for child

For subparagraph 2.12 (2) (b) (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.

2.15 Exceptional circumstances work requirements for secondary claimants — recall to duty

For subparagraph 2.12 (2) (c) (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.

2.16 Exceptional circumstances work requirements for secondary claimants — working while care arrangements being settled

For subparagraph 2.12 (2) (c) (iii), the requirements are that:

- (a) the person performed paid work, other than for a permissible purpose, on a day or days during the period commencing immediately after the primary claimant stopped caring for the child and ending when the care arrangements for the child were settled; and
- (b) care arrangements for the child were settled within a reasonable time after the primary claimant stopped caring for the child.