

Your responses suggest that you have satisfied the statutory requirements for taking unpaid special maternity leave.

(Fair Work Act 2009)

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).