

70 Entitlement to unpaid parental leave

An employee is entitled to 12 months of unpaid parental leave if:

- (a) the leave is associated with:
 - (i) the birth of a child of the employee or the employee's spouse or de facto partner; or
 - (ii) the placement of a child with the employee for adoption; and
- (b) the employee has or will have a responsibility for the care of the child.

Note: The employee's entitlement under this section may be affected by other provisions of this Division.

71 The period of leave—other than for members of an employee couple who each intend to take leave

Application of this section

- (1) This section applies to an employee who intends to take unpaid parental leave if:
 - (a) the employee is not a member of an employee couple; or
 - (b) the employee is a member of an employee couple, but the other member of the couple does not intend to take unpaid parental leave.

Leave must be taken in single continuous period

- (2) The employee must take the leave in a single continuous period.

Note 1: An employee may take a form of paid leave at the same time as he or she is on unpaid parental leave (see section 79).

Note 2: For provisions affecting the rule in this subsection, see:

- (a) subsection 72A(11) (flexible unpaid parental leave); and
- (b) subsection 73(4) (pregnant employee may be required to take unpaid parental leave within 6 weeks before the birth); and
- (c) paragraph 78A(2)(b) (permitted work periods while child is hospitalised); and
- (d) subsection 79A(1) (keeping in touch days).

Note 3: An employee is taken not to be on unpaid parental leave during a permitted work period that occurs while a child remains in hospital due to premature birth or a birth-related complication or illness (see section 78A).

- (3) If the leave is birth-related leave for a female employee who is pregnant with, or gives birth to, the child, the period of leave may start:

- (a) up to 6 weeks before the expected date of birth of the child; or
- (b) earlier, if the employer and employee so agree;

but must not start later than the date of birth of the child.

Note 1: If the employee is not fit for work, she may be entitled to:

- (a) paid personal leave under Subdivision A of Division 7; or
- (b) unpaid special maternity leave under section 80.

Note 2: If it is inadvisable for the employee to continue in her present position, she may be entitled:

- (a) to be transferred to an appropriate safe job under section 81; or
- (b) to paid no safe job leave under section 81A; or
- (c) to unpaid no safe job leave under section 82A.

Note 3: 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 as mentioned in paragraph (3)(b) of this section.

- (4) If the leave is birth-related leave but subsection (3) does not apply, the period of leave must start on the date of birth of the child.

When adoption-related leave must start

- (5) If the leave is adoption-related leave, the period of leave must start on the day of placement of the child.

Leave may start later for employees whose spouse or de facto partner is not an employee

- (6) Despite subsections (3) to (5), the period of leave may start at any time within 12 months after the date of birth or day of placement of the child if:
- (a) the employee has a spouse or de facto partner who is not an employee; and
 - (b) the spouse or de facto partner has a responsibility for the care of the child for the period between the date of birth or day of placement of the child and the start date of the leave.

Note: An employee whose leave starts under subsection (6) is still entitled under section 76 to request an extension of the period of leave beyond his or her available parental leave period. However, the period of leave may not be extended beyond 24 months after the date of birth or day of placement of the child (see subsection 76(7)).

72 The period of leave—members of an employee couple who each intend to take leave

Application of this section

- (1) This section applies to an employee couple if each of the employees intends to take unpaid parental leave.

Leave must be taken in single continuous period

- (2) Each employee must take the leave in a single continuous period.

Note 1: An employee may take a form of paid leave at the same time as he or she is on unpaid parental leave (see section 79).

Note 2: For provisions affecting the rule in this subsection, see:

- (a) subsection (6) (concurrent leave); and
- (b) subsection 72A(11) (flexible unpaid parental leave); and
- (c) subsection 73(4) (pregnant employee may be required to take unpaid parental leave within 6 weeks before the birth); and
- (d) paragraph 78A(2)(b) (permitted work periods while child is hospitalised); and
- (e) subsection 79A(1) (keeping in touch days).

When birth-related leave must start

- (3) If the leave is birth-related leave other than flexible unpaid parental leave:
- (a) one employee's period of leave must start, in accordance with the following rules:
 - (i) if the employee is a female employee who is pregnant with, or gives birth to, the child—the period of leave may start up to 6 weeks before the expected date of birth of the child, or earlier

if the employer and employee so agree, but must not start later than the date of birth of the child;

- (ii) if subparagraph (i) does not apply—the period of leave must start on the date of birth of the child; and
- (b) any period of unpaid parental leave (other than flexible unpaid parental leave) that the other employee takes must start immediately after the end of the first employee's period of leave taken in accordance with paragraph (a) (or that period as extended under section 75 or 76).

When adoption-related leave must start

- (4) If the leave is adoption-related leave other than flexible unpaid parental leave:
 - (a) one employee's period of leave must start on the day of placement of the child; and
 - (b) any period of unpaid parental leave (other than flexible unpaid parental leave) that the other employee takes must start immediately after the end of the first employee's period of leave taken in accordance with paragraph (a) (or that period as extended under section 75 or 76).

Limited entitlement to take concurrent leave

- (5) If one of the employees takes a period (the ***first employee's period of leave***) of unpaid parental leave in accordance with paragraph (3)(a) or (4)(a), the other employee may take a period of unpaid parental leave (the ***concurrent leave***) during the first employee's period of leave, if the concurrent leave complies with the following requirements:
 - (a) the concurrent leave must not be longer than 8 weeks in total;
 - (b) the concurrent leave may be taken in separate periods, but, unless the employer agrees, each period must not be shorter than 2 weeks;
 - (c) unless the employer agrees, the concurrent leave must not start before:
 - (i) if the leave is birth-related leave—the date of birth of the child; or
 - (ii) if the leave is adoption-related leave—the day of placement of the child.
- (6) Concurrent leave taken by an employee:
 - (a) is an exception to the rule in subsection (2) that the employee must take his or her leave in a single continuous period; and
 - (b) is an exception to the rules in subsections (3) and (4) about when the employee's period of unpaid parental leave must start.

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

- (7) To avoid doubt, if the other employee takes flexible unpaid parental leave during the first employee's period of leave, the other employee's leave is taken not to be concurrent leave.

Note: The combined effect of this subsection, paragraph (5)(a) and subsection 72A(9) is that members of an employee couple cannot take longer than 8 weeks of unpaid parental leave at the same time, whether the leave is taken under this section (including as concurrent leave) or as flexible unpaid parental leave.

