

Fact sheet: Parental leave — if you are an employer

An employee can take unpaid parental leave from the workplace when they are having a baby or taking on the permanent care of a child under six years old, providing the employee meets the eligibility criteria.

If the employee is eligible for parental leave and takes this leave, they are also entitled to government-funded parental leave payments of up to 26 weeks.

Employees' eligibility for parental leave

To be eligible for parental leave from the workplace an employee must have worked for the same employer for at least an average of 10 hours a week for either:

- 12 months up to the expected due date or assumption of care, OR
- 6 months up to the expected due date or assumption of care.

Employees must apply to their employer for parental leave. There is a presumption (absolute, except in cases of genuine redundancy) that a job can be kept open for one month. There is a similar presumption that a job can be kept open for longer periods of leave, and this is only displaced by genuine redundancy or by the employer proving that the position cannot reasonably be filled by a temporary replacement.

There are different unpaid leave entitlements available to employees depending on whether they meet the 12- or 6-month criteria:

Type of unpaid leave	12 months	6 months
<u>Primary Carer Leave</u> Available to birth mother or her spouse or partner and to person assuming permanent care of child under six years of age	26 weeks' leave	26 weeks' leave
<u>Partner's Leave</u> Available to spouse or partner	Up to 2 weeks (additional to the extended leave entitlement)	Up to 1 week
<u>Extended Leave</u> Available to one of the two parents or it can be shared between them	Up to 52 weeks (includes the 26 weeks for any primary carer leave and paid parental leave). If shared, the total leave taken between both partners cannot exceed 52 weeks	Up to 26 weeks' leave

Each type of leave must be taken in one continuous period.

It is possible to have more than one period of parental leave, but 6 months must have elapsed between the return-to-work date after the parental leave period for the last child and the expected due date of the next child.

There is also an additional special leave of up to 10 days available to pregnant employees which can be taken before the primary carer leave for reasons connected to the pregnancy. It is additional to the 52 weeks' maximum of combined primary carer and extended leave.

In addition to taking unpaid parental leave, employees may also opt to use their paid leave (e.g. annual leave, alternative days, special leave, or time off in lieu) first.

Eligibility for paid parental leave

Paid parental leave is a government-funded entitlement for eligible parents when they take parental leave from their job to care for their newborn or for the child under 6 years they have assumed the care of. The paid leave must be taken at the same time as the unpaid parental leave.

Where employees opt to use paid leave (e.g. annual leave, alternative days, special leave or time off in lieu) in addition to taking unpaid parental leave, their parental leave payment period can start at the end of their leave, even if it is later than the child's arrival or due date.

Paid parental leave is available for workers who have worked for any employer for any 26 of the 52 weeks prior to becoming the primary carer to a child, and therefore may include:

- casual and seasonal workers
- people with more than one employer
- a person who has recently changed jobs.

The mother or primary carer of the child is eligible to be paid for up to 26 weeks' parental leave, provided they have qualified for parental leave from their job.

They can then, however, transfer some or all of their entitlement to their spouse or partner provided their spouse or partner is also eligible as an employee or self-employed person.

Parental leave payments are administered through Inland Revenue. To receive the payments, the employee must first apply to their employer for parental leave and then to Inland Revenue for the parental leave payment.

Employees who do not qualify for primary carer leave can request a period of leave from their employment to enable them to receive parental leave payments, which they are entitled to if they take leave for the period of the payments. This leave is called 'negotiated carer leave' and, as its name suggests, is granted at the employer's discretion.

Keeping-in-touch days

While an employee is on parental leave, they may want to use 'keeping-in-touch' days to stay connected with the business. While on parental leave, an employee can choose to work from time to time (if the employer agrees). An employee can do up to 64 hours, although this is not allowable within the first 28 days after the baby is born. If an employee works more than 64 hours during parental leave or within the first 28 days after the birth of your child, they are considered to be back at work. They won't receive any more parental leave payments, and any payments received after that are treated as an overpayment.

Keeping-in-touch days don't apply to paid work performed while the employee is receiving or able to receive a preterm baby payment.

If the employee does not return to work at the end of parental leave (not including keeping-in-touch days), their employment is deemed to have ended when she or he first went on parental leave (not the last day worked on a keeping-in-touch day). This means that any payment for any keeping-in-touch days worked is not included in the calculation of 8% gross earnings for annual holidays' payment in their final pay.

Employers' obligations under the parental leave legislation

As an employer you are obliged to:

- inform your employee of their entitlements
- consider, then approve or decline, your employee's request for leave
- confirm the arrangements with your employee.

See the table at the end for more detail.

Keep in mind

Your employee's employment agreement may allow for extra provisions regarding parental leave. It is

important to check these provisions and discuss them with your employee.

You should also review your health and safety procedures to ensure any issues that may arise due to the pregnancy are considered and managed.

Should any problems or queries arise regarding your employees' parental leave entitlements we recommend that you contact the Ministry of Business, Innovation and Employment (0800 20 90 20) to resolve these.

The Ministry of Business, Innovation and Employment [website](#) contains other useful information regarding parental leave.

Employers' obligations under the parental leave legislation

Your obligations:

- inform your employee of their entitlements
- consider, then approve or decline, your employee's request for leave
- confirm arrangements with your employee

Inform employees of their entitlements

Obtain a fact sheet with this information from the Ministry of Business, Innovation and Employment [website](#).

Sample forms for employer responses are available from the Ministry of Business, Innovation and Employment [website](#).

Consider your employee's request

Your employee's responsibilities are to:

- approach you to apply for the leave
- give notice at least three months before the expected delivery date, except where
 - you agree to allow the employee to give less notice, or
 - the employee is in the process of assuming the permanent care of a child under six years, when they need to give notice within 14 days of their intended assumption of care
- apply to you in writing, stating what type of leave they want to take, when they plan to start their leave and the period of leave they intend to take
- include a medical certificate (or copy of) verifying the pregnancy and stating the expected delivery date

What if they're sharing leave?

If the employee is sharing leave with their spouse/partner, their application must also state:

- the dates the employee and their spouse or partner plan to start and finish each period of leave
- their spouse/partner's name, and the name and address of their employer
- they are both eligible for the leave they are applying for
- the total amount of leave they are taking will not be more than their maximum entitlement
- they and their partner are going to share the care of the child

Timeline	← 7 days →	← 14 days →		← 21 days →
application received	request further information required	employee to provide required information	information received	reply to employee

Respond to the application

Your response must state:

- whether the employee is entitled to take parental leave and, if not, why
- their rights and obligations regarding parental leave, especially those relating to when they can start their leave, and

- whether their job can be kept open. If not, your letter must explain that they are entitled to dispute this and have preference for similar jobs for six months after the end of their leave

Verify application details

When the employee receives your response, they should apply to Inland Revenue for paid parental leave.

It is up to the employee to send the completed application form to Inland Revenue.

Confirm the arrangements within 21 days of the date your employee starts their parental leave

Write to confirm the arrangements, including the date your employee is to return to work and a reminder that they are required to write to you 21 days before their leave ends.

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Important: Clients should not act solely on the basis of the material contained in this article. Items herein are general comments only and do not constitute nor convey advice per se. Changes in legislation may occur quickly. We therefore recommend that our formal advice be sought before acting in any of the areas. This article is issued as a helpful guide to our clients and for their private information. Therefore it should be regarded as confidential and should not be made available to any person without our prior approval.