

7 MAY 2010

## Federal Government's Paid Parental Leave Bill Released

The Paid Parental Leave Bill 2010 (**Bill**) has now been released and seeks to provide the first government-funded paid parental leave scheme in Australia.

If the Bill is passed, on or after 1 January 2011 parents who can satisfy work, income and residency tests may be eligible to receive parental leave pay of up to 18 weeks at the national minimum wage (which is currently \$543.78 a week).

Paid parental leave will complement existing parental entitlements. Thus, permanent full-time, part-time and eligible long-term casual employees who have completed 12 months' continuous service with their employer immediately before the birth or adoption of a child are still entitled to access the unpaid parental leave provisions under the National Employment Standards in the Fair Work Act 2009.

### ELIGIBILITY

In order to be eligible for parental leave pay, claimants will need to meet

the following:

1. the Work Test;
2. the Income Test; and
3. residency requirements.

### The Work Test

The primary carer must have:

- been engaged in work for a total period spanning at least 10 of the 13 months prior to the expected birth or adoption of the child with a break of no greater than eight weeks between any two consecutive work days; and
- undertaken at least 330 hours of paid work during the 10-month period (an average of around one day of paid work a week).

A working day is calculated as a day on which the primary carer worked for at least one hour.



Importantly, employees who have resigned from work or finished a contract may still claim the payment, provided they meet the eligibility requirements – the Family Assistance Office would provide the payments instead of the employer in this situation.

## The Income Test

To be eligible for parental leave pay, the primary carer must have an adjusted taxable income of \$150,000 or less in the financial year prior to the date of birth or adoption of the child or the date of their claim, whichever is earlier.

## Residency requirements

The residency requirements are aligned with other types of family assistance. In order to qualify for parental leave pay, the primary carer must be living in Australia and be:

- an Australian citizen;
- the holder of a permanent visa;
- a New Zealand citizen who arrived in Australia on a New Zealand passport; or
- the holder of a specified temporary visa.

## WHAT BUSINESSES NEED TO KNOW

- The role of the employer is being phased in over the first 6 months of the scheme. Employers will not be required to administer the payments until 1 July 2011 (eligible parents until this time are able to claim the payment from the Family Assistance Office).
- It is anticipated that in most cases the primary carer will receive the payment through their employer and it will be taxable.

The only other deductions permitted will be for child support obligations and deductions authorised by the recipient.

- Employers will not be required to provide parental leave pay to their employees until they have received a sufficient funding amount from the Family Assistance Office (note the government has committed to pre-pay employers to avoid causing them cash-flow problems).
- Parents can nominate the period over which they wish to receive their parental leave pay. However the start date cannot be before the child's birth or date of placement for adoption. Furthermore, parental leave pay must be taken in one continuous 18 week period and all of the parental leave pay must be received before the child's first birthday, or within 12 months of the date of placement for adoption.
- Parental leave pay will complement parents' entitlements to unpaid parental leave under the NES.
- The government-funded parental leave pay can be received before, after, or contemporaneously with existing entitlements, such as employer-provided paid leave including annual leave and employer-provided maternity leave.

## FAILURE TO COMPLY

The Bill proposes that the Fair Work Ombudsman (**FWO**) will have the power to investigate employers who fail to make parental leave payments to eligible employees. The FWO will also be empowered to investigate delays and other issues regarding parental leave payments.

## Want to republish any of this article?

If you would like to republish any part of this article in your staff newsletter or elsewhere please contact our Marketing Team on **+61 3 9608 2168**

## Disclaimer

This Article is intended to provide general information on legal issues and should not be relied upon as a substitute for specific legal or other professional advice.



For further information  
please contact:

**Louise Houlihan**, Partner

Phone (direct) **+61 3 9608 2273**

Mobile **+61 409 835 809**

Email **[l.houlihan@cornwalls.com.au](mailto:l.houlihan@cornwalls.com.au)**

**Virginia Sadler**, Senior Associate

Phone (direct) **+61 3 9608 2106**

Mobile **+61 413 276 444**

Email **[v.sadler@cornwalls.com.au](mailto:v.sadler@cornwalls.com.au)**