



Australian Government

Department of Families, Housing,
Community Services and Indigenous Affairs

Paid Parental Leave Act 2010 – interactions with other legislation

The operation of the Paid Parental Leave scheme is legislated under the *Paid Parental Leave Act 2010* (PPL Act). Amendments made to other Acts as a consequence of the PPL Act are contained in the *Paid Parental Leave (Consequential Amendments) Act 2010*. Amendments to the *Fair Work Act 2009* (Fair Work Act) are contained in the *Paid Parental Leave and Other Legislation Amendment (Dad and Partner Pay and Other Measures) Act 2012*.

This factsheet summarises the key interactions between the Parental Leave Pay aspects of the PPL Act and the Fair Work Act, and the key consequential amendments associated with the enactment of the PPL Act. All legislation may be found on the ComLaw website at www.comlaw.gov.au

The Fair Work Act 2009

The provisions in the PPL Act complement those in the Fair Work Act.

The National Employment Standards (NES) in the Fair Work Act provide as a minimum standard that all employees in Australia are eligible for 12 months unpaid parental leave if they have completed at least 12 months of continuous service with their employer immediately before the birth or adoption of the child. This includes casual employees if they have been employed by the employer on a regular and systematic basis for at least 12 months, and but for the birth or adoption would have had a reasonable expectation of continuing employment with the employer on a regular and systematic basis. An employee does not have to work a minimum number of hours to be eligible.

To be eligible for Parental Leave Pay, a person must have worked approximately 10 of the 13 months prior to the expected date of birth or adoption and have completed at least 330 hours of work in the 10 month period (just over 1 day per week), and had no more than an eight week gap between consecutive working days. Work with multiple employers may contribute to the work test. Full-time, part-time, casual, contract and self-employed workers may be eligible.

Parental Leave Pay provides a payment related to employment, but does not include an entitlement to leave. An estimated 20 per cent of Parental Leave Pay recipients will not be entitled to unpaid parental leave under the NES. Employees who do not qualify for unpaid parental leave under the NES are able to negotiate unpaid leave directly with their employer.

Employers are required to provide Government-funded Parental Leave Pay to their eligible employees who have worked for them for at least 12 months prior to the birth or adoption. This means that an employer is only required to provide Parental Leave Pay to an employee who has an entitlement to unpaid parental leave under the NES. Employers may opt-in to provide Parental Leave Pay to employees they are not required to pay.



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An employer's obligation to provide Parental Leave Pay to an employee is in addition to any other obligation the employer may have in relation to the employee (for example, the payment of employer-funded paid parental leave under a current industrial agreement or law). The provisions in the PPL Act that relate to the usual employer responsibilities to their employees, such as providing payments and payslips, not making unauthorised deductions and keeping records of payments, are consistent with the provisions in the Fair Work Act. An employer who does not comply with these usual types of employer obligations when providing Parental Leave Pay, may be referred to the Fair Work Ombudsman.

Under the PPL Act an employee can take a maximum of 10 keeping in touch days between becoming the child's primary carer and the end of their Paid Parental Leave period without it affecting their eligibility for Parental Leave Pay. Under the NES unpaid parental leave must be taken in a single continuous period. The Fair Work Act has been amended to include keeping in touch days to ensure that accessing a keeping in touch day will not break an employee's single continuous period of unpaid parental leave under the NES.

The Social Security Act 1991

Parental Leave Pay does not count as income for social security purposes, including for assessing entitlement to income support payments such as Parenting Payment. Parental Leave Pay is not a leave payment for the purpose of social security income maintenance periods.

A New Tax System (Family Assistance) Act 1999 and A New Tax System (Family Assistance) (Administration) Act 1999

Eligibility for Family Tax Benefit (FTB) and Baby Bonus is based on a family's combined adjusted taxable income. Parental Leave Pay counts as taxable income for the FTB and Baby Bonus income tests.

Parental Leave Pay and Baby Bonus cannot both be paid for the same child. Working parents who are eligible for both may choose which payment is the best option for their family.

FTB Part B cannot be received by a person or their partner during the person's Paid Parental Leave period.

FTB and Baby Bonus may be claimed up to three months prior to the expected date of birth or adoption, in line with claim arrangements for Parental Leave Pay and Dad and Partner Pay.

Tax Acts

The PPL Act interacts with a number of tax acts, the most significant being: the *Fringe Benefits Tax Assessment Act 1986*, the *Income Tax Assessment Act 1936*, the *Income Tax Assessment Act 1997* and the *Taxation Administration Act 1953*.

A taxpayer is not entitled to the dependent spouse, child-housekeeper or housekeeper rebate for the period when Parental Leave Pay was payable to the taxpayer or their spouse.

Employees can salary sacrifice their Parental Leave Pay provided by their employer where that arrangement is offered by the employer, including through voluntary superannuation contributions.

Child Support (Registration and Collection) Act 1988

Deductions may be made from Parental Leave Pay to meet a child support maintenance liability or recover a child support debt.

Veterans' Entitlements Act 1986

Payments under the Paid Parental Leave scheme are excluded from the general definition of income for veterans' entitlements purposes.