• The parental leave payment period increased to 18 from 16 weeks on 1 April 2016

• The Parental Leave and Employment Protection Amendment Act came into force on 1 April 2016

PARENTAL LEAVE AND EMPLOYMENT PROTECTION AMENDMENT ACT

Main new features:

• Provision for an additional payment (a ‘pre-term baby’ payment) for a child born alive before the end of the 36th week of gestation
• The introduction of a ‘primary carer’ concept - anyone chiefly responsible for caring for a new-born child or an adopted child under the age of 6. (The term replaces words such as ‘maternity’ and ‘paternity’.) A primary carer is the person entitled to parental leave payments if the employment and/or the payment threshold is met
• Provision for an employee - other than a parent - who meets the parental leave threshold test, to take on the primary carer role and receive the leave payment
• Provision for ‘negotiated carer leave’ and receipt of the parental leave payment if an employee, not employed by the same employer for 26 weeks prior to the expected date of delivery, has been in paid work for an average of 10 hours a week in 26 of the last 52 weeks. The current employer must consent to a negotiated carer leave request
• Separation of the leave entitlement from the payment entitlement. This allows primary carers who wish to resign to tell their employer they are leaving, without losing their parental leave payment
• The introduction of keeping-in-touch days

How long must the employee have worked for the employer for?

• 6 months with the same employer for at least an average of 10 hours a week immediately preceding the expected date of delivery where the child is born to the employee or the employee’s spouse or partner (26 weeks’ leave in total), or
• In the case of adoption, not necessarily a formal adoption, 6 months with the same employer for at least an average of 10 hours a week immediately before becoming responsible for the child's care (26 weeks’ leave in total)
• 12 months with the same employer for at least an average of 10 hours a week immediately preceding the expected date of delivery for where the child is born to the employee or the employee’s spouse or partner (52 weeks’ leave in total), or
• 12 months with the same employer for at least an average of 10 hours a week immediately preceding assumption of responsibility for the child’s care (52 weeks’ leave in total)

What is the earning threshold for entitlement to paid parental leave?

• At least an average of 10 hours a week for any 26 of the 52 weeks immediately preceding the expected date of delivery, where the child is born to the employee or the employee’s spouse or partner, or
At least an average of 10 hours a week for any 26 of the 52 weeks immediately preceding the first date on which some other person, or his or her spouse or partner, becomes the primary carer.

Who is the primary carer?

The primary carer is the employee entitled to a parental leave payment (the ‘eligible employee’):

- The child’s mother, or
- The mother’s spouse or partner - but only if the spouse or partner has succeeded to all or part of the mother’s leave payment entitlement or the mother has transferred all or part of her payment entitlement to the spouse or partner, or
- Someone other than the mother who takes permanent primary responsibility for the care, development and upbringing of a child under 6 years of age i.e. not merely someone who minds the child during the day while the parents work.

‘Negotiated carer’ leave

- Leave may be available for the leave payment period to an employee not entitled to primary carer leave (because not employed by the same employer for the previous 6 months), who meets the payment threshold and with the employer’s agreement, is able to take leave from his or her current employment.
- Whether an employee has been employed for any period of time by the same employer or has resumed service with the same employer is to be determined as currently where a business or undertaking has changed hands.

Negotiated carer leave requests must be made:

- At least 3 months before the expected date of delivery if the child is to be born to the employee or the employee’s spouse or partner, or
- 14 days prior to the date on which the employee becomes the primary carer in any other case where someone else is to assume care of the child.

A request must state:

- the employee’s name
- the date when the request is made
- that the request is made under Part 3A of the Act
- the proposed leave start date and how long the leave will last
- that during the period specified the employee will be the primary carer
- that if the request is approved, the employee will be entitled to receive parental leave payments, and
- what changes, if any, the employee believes the employer might have to make if the request is approved.

The employer must reply to a leave request as soon as possible, but not later than one month after receiving it, telling the employee whether or not the request has been approved. If not approved, the employer must explain why not. Grounds for refusal are:

- inability to reorganise work among existing staff
- inability to recruit additional staff
- detrimental impact on quality
• detrimental impact on performance
• planned structural changes
• burden of additional costs
• detrimental effect on ability to meet customer demand

An employee cannot challenge a refusal but can challenge a failure to respond to a leave request or to respond adequately i.e. to provide a convincing explanation. The employee can either first seek help from a Labour Inspector or go directly to mediation. Unsuccessful mediation can be followed by an application to the Employment Relations Authority where the maximum penalty is $2,000. Authority applications must be made within the 12–month period that begins either one month after the employee receives the refusal request or, if there has been no response, within one month after the employer received the request.

Pre-term baby payment

The pre-term baby payment is available to an employee who is the primary carer and entitled to the parental leave payment. If the baby arrives before the end of the 36th week of gestation, the payment is payable in one continuous period for the number of weeks (up to a maximum of 13) from:

• the date on which the baby is born, to
• the date when the 36th week of gestation would have ended but for the premature birth

Preterm baby payments are additional to parental leave payments. Therefore if, for example, a primary carer employee takes leave early for medical reasons (as the Act allows) she will, if the baby is born prematurely at 24 weeks, be entitled to a 12-week preterm payment as well as the 18 weeks’ payment. Should a child arrive before the end of the 36th week of gestation and the primary carer is already on parental leave and receiving the parental leave payment, that payment will be suspended and a preterm payment made instead.

The preterm payment will end if the employee returns to work, although she may work up to three hours multiplied by the number of weeks the preterm payment is received - 36 hours in the case of someone entitled to 12-week preterm payment. These hours are additional to the number of hours that can be worked as ‘keeping-in-touch’ days (see below) and are referred to as ‘additional keeping in touch days’. The employee will be treated as having returned to work if more than the permitted number of hours is worked.

Preterm baby payments can be made to whoever is the child’s primary carer, whether the child’s mother, an eligible partner or spouse, or some other person eligible to take leave under the Act. Transfer to an eligible partner or spouse is also possible.

Keeping-in-touch-days

With the employer’s agreement, an employee on parental leave can work for up to 40 hours during the paid leave period. Days on which the employee works are called ‘keeping-in-touch days’.

A keeping-in-touch day:

• allows the employee to perform one hour or more hours of paid work without losing the parental leave payment
• must not be worked within the 28-day period following the child’s birth
An employee who works:

- within the first 28 days of a baby’s birth, or
- for more than 40 hours

will be treated as having returned to work and any subsequent payments will be treated as overpayments recoverable as a debt by IRD.