



Premier's Department

Type:

Premier's Memorandum

Identifier:

M2024-07

Status:

Active

M2024-07 Paid Parental Leave – Parent with responsibility for care associated with the birth, adoption, altruistic surrogacy or ongoing placement of a child or young person subject to a legal order

Description

The NSW Government is committed to attracting and retaining a high performing, diverse workforce in the NSW public sector.

The Government will provide an enhanced paid parental leave policy to take effect on and from 2 August 2024 for all eligible NSW government Sector employees, ensuring that all employees providing ongoing care will have access to paid parental leave entitlements.

The enhanced entitlements will help families to better balance work and family life, enable both parents to be involved in raising children, and provide support to carers at the time a child is placed in their care.

Detailed Outline

1. Paid Parental Leave – Parent with responsibility for care associated with the birth, adoption, altruistic surrogacy or ongoing placement of a child or young person subject to a legal order

(a) An employee who has, or will have completed not less than 40 weeks' continuous service (at the expected date of birth, time of adoption, time of altruistic surrogacy or the ongoing placement of a child) is entitled to up to 14 weeks paid parental leave if the leave is associated with:

(i) the birth of a child (or children from a multiple birth) of the employee, the employee's partner or the employee's legal surrogate, the adoption of a child (or children) under 18 years of age by the employee or the employee's partner, or the ongoing placement of a child or young person (or children or young persons) under 18 years of age with the employee or the employees' partner; and

(ii) the employee has or will have responsibility for the care of the child or young person.

(b) Paid parental leave must be taken in a single continuous period within the first 24 months from the date of birth, adoption, altruistic surrogacy, or ongoing placement. For birth-related leave, paid parental leave may commence prior to the time of birth as provided in the industrial instrument which applies to the employee.

2. Bonus Paid Parental Leave

(a) An employee who has, or will have, completed not less than 40 weeks' continuous service (at the expected date of birth, time of adoption, time of altruistic surrogacy, or ongoing placement) is entitled to an additional two-week bonus paid parental leave where each parent has exhausted any paid parental leave offered by their employer.

(b) Employees who are single parents or whose partners do not have access to or are ineligible for employer paid parental leave will receive the full two weeks of bonus paid parental leave.

(c) The two weeks bonus parental leave is in addition to the 14 weeks paid parental leave outlined in clause 1.

3. Notice Requirements

(a) To access paid parental leave, including bonus paid parental leave, the employee must provide notice in accordance with the industrial instrument which applies to the employee, stating:

(i) the period of leave being sought, including the anticipated date of return to duty; and

(ii) that the employee will have responsibility for the care of their child for the period during which they are seeking the paid parental leave.

(b) The employee must notify the employer as soon as possible of any changes to their circumstances that will or are likely to affect their eligibility for paid parental leave prior to, or throughout, the period of payment.

4. Evidence Requirements

(a) To access paid parental leave, the employee must provide evidence of the birth, adoption, altruistic surrogacy, or the ongoing placement arrangement:

(i) for birth-related leave - a medical certificate or birth certificate showing the expected or birth date of the child; or

(ii) for adoption-related leave - an integrated birth certificate, or certificate of adoption; or

(iii) for altruistic surrogacy-related leave -provision of documentary evidence of the altruistic surrogacy agreement and a statutory declaration advising of the intention to make application for a parentage order as required under the *Surrogacy Act 2010*. A copy of the parentage order must be provided as soon as it is obtained; or

(iv)for ongoing placement related leave -provision of a confirmation of placement letter from the Department of Communities and Justice (DCJ) or their accredited designated agency. A copy of the legal order must be also provided as soon as it is obtained. The confirmation of placement letter should confirm:

a. the employee is an authorised foster carer or relative/kinship carer who is or will be providing continuous care on an ongoing basis for a child or young person who is subject to a legal order allocating parental responsibility to the Minister; or

b. the employee is an authorised relative/kinship carer, authorised foster carer or other suitable person who is or will be providing continuous care on an ongoing basis for a child or young person for whom they hold parental responsibility under a legal order, including a guardianship order; and

c. the start date of the placement.

(b) To access bonus paid parental leave, the employer needs to be satisfied that an employee's partner has or will have either exhausted paid parental leave provided by their employer or does not have access to employer paid parental leave. An agency may require evidence such as:

(i) a letter from the partner's employer confirming paid parental leave has or will have been exhausted or confirming the partner does not have an entitlement to employer funded paid parental leave; or

(ii) a statutory declaration from the employee confirming their partner has or will have exhausted paid parental leave or the partner does not have an entitlement or access to employer funded paid parental leave.

5. Concurrency of Paid Parental Leave

(a) All paid parental leave may be taken concurrently except in circumstances where both parents are employed in the same NSW Government Sector workplace and operational requirements may prevent concurrent leave.

(b) Employees where both parents are employed at the same NSW Government Sector workplace may take up to four weeks paid parental leave concurrently with their partner. Employees may request to take more than four weeks of paid parental leave concurrently with their partner, which the employer will consider and may reject in accordance with clause 6(c) of this Determination.

6. Flexibility for Taking Paid Parental Leave

(a) While an employee's eligibility for paid parental leave is determined at the time of birth, adoption, altruistic surrogacy or ongoing placement, the employee and employer may agree

for the employee to use paid parental leave entitlements at any time within the first 24 months from the date of birth, adoption, altruistic surrogacy, or ongoing placement.

(b) An employee may request:

(i) to use their paid parental leave entitlement in a manner other than a single continuous period; or

(ii) to take more than four weeks of paid parental leave concurrently;

(c) The employer will consider their operational requirements and the employee's personal and family circumstances in considering requests and may refuse the request on reasonable business grounds related to the impact on the employer's workplace including but not limited to excessive cost, lack of adequate replacement staff, loss of productivity or impact on service delivery. The employer will provide their response to the employee's request within 21 days.

(d) Should the employer agree to paid parental leave in a manner other than a single continuous period, the period of leave must not extend beyond the first 24 months from the date of birth, adoption, altruistic surrogacy, or ongoing placement and will not be extended by any periods of public holidays that fall within the paid parental leave period.

7. Additional Provisions for Altruistic Surrogacy and Ongoing Placement Arrangements

(a) Employees in altruistic surrogacy arrangements and ongoing placement arrangements have an entitlement to take 12 months unpaid parental leave, similar to entitlements available to employees who give birth to or adopt a child (12 months' leave of which up to 16 weeks is paid leave available in accordance with this Determination and the remainder unpaid).

(b) The right to request extended parental leave and return to work on a part time basis is available to employees granted parental leave for altruistic surrogacy and ongoing placement arrangements.

(c) Where an employee takes paid parental leave in respect of an ongoing placement arrangement and later adopts, becomes the legal guardian or cares for the child (or children) or young person/s under a different legal order, the employee is not entitled to access a further period of paid parental leave in connection with the adoption, guardianship order or other legal order of the same child.

(d) In the event that an ongoing placement arrangement ceases, and the employee no longer had responsibility for the care of the child/children, the employee must notify the employer as soon as practicable. At the cessation of an ongoing placement, the remaining period of Paid Parental Leave ceases, and the employee should speak to their employer about alternative leave arrangements and/or a return-to-work date.

8. Other Rights

An employee should refer to the industrial instrument, legislation and policies which apply to their employment for all other provisions relating to parental leave.

9. Definition of “Partner”

For the purposes of this Determination, “partner” includes a spouse, de facto partner, former spouse, or former de facto partner. De facto partner means a person who is the employee’s partner, who lives with the employee on a bona fide domestic basis although not legally married to the employee.

10. Definition of “Ongoing Placement Arrangement”

For the purposes of this Determination, “ongoing placement arrangement” means the placement of a child or young person who is subject to a legal order of the Children’s Court of NSW or Federal Circuit and Family Court of Australia with an authorised foster carer, authorised relative/kinship carer or suitable person on an ongoing basis.

For the purposes of this definition, a legal order made by the Children’s Court of NSW under the *Children and Young Persons (Care and Protection) Act 1998* (NSW) includes:

- a) Parental Responsibility to the Minister (PRM), Relative/Kin (PRR) or Non-Relative (PNR) Interim Orders,
- b) Short Term Court Order (STCO) allocating parental responsibility to the Minister, Relative/Kin or Non-Relative for a period of at least 12 months,
- c) Parental Responsibility to the Minister (PRM), Relative/Kin (PRR) or Non-Relative (PNR) Long Term Care to 18 years Final Order, or
- d) Guardianship Order.

For the purposes of this definition, a legal order made by the Federal Circuit and Family Court of Australia under the *Family Law Act 1975* (Cth) includes a final order allocating parental responsibility to relative/kin or suitable person to 18 years provided that the Department of Communities and Justice intervened as a party to the proceedings and the employee is an authorised carer eligible for the out-of-home care carer allowance.

For the purposes of this definition, ongoing placement arrangements do not include informal arrangements or emergency, respite care or short-term care with a specified end date.

APPLICATION

For public servants, the leave provisions are provided for in Industrial Relations Secretary Determination No. XX of 2024 made under s.52 of the *Government Sector Employment Act 2013*.

These leave provisions are to be adopted by all Public Service departments and agencies, and other Government Sector agencies and State-Owned Corporations are strongly encouraged to provide the same leave provisions to their employees.

It is intended that a maximum of two employees (if both are working in the NSW Government Sector) can access paid parental leave per birth, adoption, altruistic surrogacy, or ongoing placement.

The provisions in this Determination supersede the provisions in *M2022-08 - Paid Parental Leave – Parent with responsibility for care associated with the birth, adoption, altruistic surrogacy or permanent out-of-home care placement of a child* for children born to or coming into the care of the employee through adoption, altruistic surrogacy or permanent out-of-home care from 1 October 2022.

For children born to or coming into the care of the employee through adoption, altruistic surrogacy or permanent out-of-home care prior to 1 October 2022, reference should continue to be made to the provisions available in *M2021-12 Paid Parental Leave and Determination No. 1 of 2018 Leave for Employees engaged in Altruistic Surrogacy and Permanent Out of Home Care Arrangements*.

For children born to or coming into the care of the employee through ongoing placement arrangements prior to [DATE[A1]], excluding permanent out of home care arrangements, reference should continue to be made to the provisions available under the relevant industrial instrument.

DATE OF EFFECT

The above arrangements apply to children born on or after 1 October 2022 (regardless of the expected date of birth).

In the event of adoption, the above arrangements apply where the date of the adoption order is on or after 1 October 2022.

In the event of permanent out-of-home care, the above arrangements apply where the date of the guardianship or permanent placement order is on or after 1 October 2022.

In the event of ongoing placement arrangements (excluding where permanent out-of-home care provisions applied), the above arrangements will apply where the date of the ongoing placement arrangement is on or after 2 August 2024.

Chris Minns MP

Premier

Overview

Who needs to know and/or comply with this?
Departments
Executive agencies related to Departments
Separate agencies
State Owned Corporations
Statutory Authorities/Bodies

Compliance

Mandatory

AR Details

Date Issued	Aug 26, 2024
Review Date	Jan 1, 1970
Replaces	<p><u>M2022-08 - Paid Parental Leave – Parent with responsibility for care associated with the birth, adoption, altruistic surrogacy or permanent out-of-home care placement of a child</u></p> <p><i>(https://arp.nsw.gov.au/m2022-08-paid-parental-leave-parent-with-responsibility-for-care-associated-with-the-birth-adoption-altruistic-surrogacy-or-permanent-out-of-home-care-placement-of-a-child/)</i></p>
Replaced By	

Contacts

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