



Parental leave toolkit



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Updated February 2014

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Acknowledgements

The Minerals Council of Australia would like to thank the members of the 2011 and 2013 Parental Leave Toolkit Reference Groups for their contribution to the development of this document:

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- **Ms Lucy Stocker**
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The Minerals Council of Australia would also like to thank **Lisa Croxford** and **Eleni Stamboulakis** from Herbert Smith Freehills for their enthusiasm and expertise in developing this document.

Foreword

The minerals industry understands that equitable and effective parental leave arrangements are an essential element of the modern workplace.

Over recent years, there have been a number of regulatory changes and broader developments that have shaped the policy environment for minerals companies.

These include the introduction of the *Fair Work Australia Act 2009* and the *Paid Parental Leave Act 2010*, followed by subsequent amendments to parental leave legislation and the commitment from the new Coalition Government to introduce a new Paid Parental Leave Scheme.

There have also been developments in knowledge and best practice around Long Distance Commuting.

It is for this reason that the Minerals Council of Australia has revised this Toolkit, first published in May 2011.

It is intended that this guide be used by human resources practitioners, line managers, supervisors, employees and others in minerals industry organisations to assist them to understand their rights and obligations, and how parental leave and flexible work can be effectively and successfully managed.

As well as information on obligations and entitlements, the guide provides tips for employees, supervisors and organisations navigating parental leave and flexible work, together with case studies, sample letters, checklists and frequently asked questions.

We hope this guide will be of practical assistance to you.

Brendan Pearson
Chief Executive Officer
Minerals Council of Australia

February 2014

Contents

| | | |
|-----------|--|-----------|
| 3 | Key terms | 6 |
| 4 | Parental leave - what is provided? | 7 |
| 4.1 | Unpaid parental leave | 7 |
| 4.2 | Government- funded parental leave | 8 |
| 4.3 | Proposed changes to government-funded parental leave | 9 |
| 4.4 | Employer-provided benefits | 9 |
| 5 | Working during pregnancy | 10 |
| 5.1 | Workplace risks | 10 |
| 5.2 | Working safely during pregnancy | 10 |
| 5.3 | Unpaid special maternity leave | 12 |
| 6 | During parental leave | 13 |
| 6.1 | Varying parental leave | 13 |
| 6.2 | Extending parental leave | 13 |
| 6.3 | Keeping contact during leave | 14 |
| 6.4 | Working during leave | 14 |
| 6.5 | Updating benefits during leave | 14 |
| 7 | Returning to work | 15 |
| 7.1 | Right to return to work | 15 |
| 7.2 | Requesting flexible work | 16 |
| 7.3 | Breastfeeding or expressing breast milk at work | 17 |
| 8 | Protections against discrimination | 18 |
| 9 | Making parental leave work: practical tips | 20 |
| 9.1 | Employees | 20 |
| 9.2 | Supervisors | 21 |
| 9.3 | Organisations | 22 |
| 10 | Making flexible arrangements work: practical tips | 23 |
| 10.1 | Employees | 23 |
| 10.2 | Supervisors | 24 |
| 10.3 | Organisations | 26 |
| 10.4 | Spotlight on alternative work arrangements in mining | 26 |
| 11 | Frequently asked questions | 29 |
| 11.1 | Job interviews | 29 |
| 11.2 | During pregnancy | 29 |
| 11.3 | Taking parental leave | 29 |
| 11.4 | Returning from parental leave | 31 |
| 11.5 | Flexible work | 31 |
| 12 | Who to contact for further information? | 33 |
| 12.1 | Employees | 33 |
| 12.2 | Supervisors | 33 |
| 12.3 | Links | 33 |
| | Appendix 1 - Sample letters | 35 |
| | Appendix 2 - Checklist for employees | 37 |
| | Appendix 3 - Checklist for employers | 38 |

3

Key terms

This guide uses some key terms. These are defined below:

Carer is a person on whom another person is totally or substantially dependent for ongoing care and attention.

FAO is the Family Assistance Office.

NES are the National Employment Standards. These are the 'safety net' terms and conditions of employment that apply to all Australian employees. They are set out in the *Commonwealth Fair Work Act 2009*.

Non-primary carer is the person who does not have the principal role of providing care and attention to a child. A person may be a non-primary carer for some period of leave and a primary carer for another period.

Parent may be a male or female biological parent, a step-parent, adoptive parent, foster parent, guardian, or the spouse or domestic partner of a parent.

Parental or carer responsibilities relate to the employee's role as a parent or carer – to their care and attention of a child, or of another person (such as a parent, spouse, domestic partner, relative, friend) who is totally or substantially dependent on the employee for care.

Primary carer is the person who has assumed the principal role of providing care and attention to the child. This person may not necessarily be the same individual for the total period of parental leave.

4

Parental leave

What is provided?

4.1 Unpaid Parental Leave

The National Employment Standards (NES) (made under the *Fair Work Act 2009*) give eligible employees an entitlement to 12 months of unpaid parental leave for the birth or expected birth of a child, or the placement or expected placement of a child (under the age of 16) in the case of adoption.

Eligible employees can also ask to take a further 12 months unpaid parental leave. This is discussed in Section 7.2: Extending parental leave.

Who is eligible?

Eligible employees are employees who have completed at least 12 months continuous service with their employer, immediately before the child's date of birth (or date of placement in the case of adoption).

Casual employees are not entitled to unpaid parental leave unless they are a long term casual employee, with a reasonable expectation of continuing employment with their employer.

An employee can be the mother or father of a child and be eligible to take 12 months unpaid parental leave. They must however have the primary responsibility for the care of the child.

When can leave be taken?

Leave can start up to 6 weeks before the expected date of birth of the child. If the employee is not giving birth to the child e.g. they are the father of the child or the child is being adopted, leave starts from the date of birth or placement of the child.

If an employee is to give birth to a child but wants to continue to work in the 6 week period before the birth, an employer can ask the employee to provide a medical certificate which states whether the employee is fit for work.

Generally, leave must be taken in a single, unbroken period.

Leave for spouses

Spouses (including de facto spouses) can take unpaid parental leave of up to 8 weeks. This leave can be taken at the same time their primary-carer spouse is on unpaid parental leave (concurrent leave). Leave should commence on the date of birth or placement of the child, but employers and employees can agree for leave to start at a different time. Leave may be taken in separate periods of 2 weeks or more at a time, unless the employer agrees to a shorter period of leave.

Parents can also alternate primary responsibility for a child and share the total period of unpaid parental leave. For example, one spouse may give birth to the child and take 6 months unpaid leave and return to work. At which time the other spouse can commence unpaid leave. Both spouses would need to notify their employer of their intention to take leave.

Applying for unpaid parental leave

An employee applying for parental leave must provide their employer with:

- Written notice of the intention to take unpaid parental leave, including the anticipated start and end dates of leave. This notice must be provided at least 10 weeks before leave starts, or if that is not possible, as soon as practicable. For concurrent leave, notice must also be provided 10 weeks before the first period of leave starts. If an employee has already taken a period of concurrent leave, any subsequent periods of leave require only four weeks' written notice;
- Confirmation of the leave dates or changes of dates at least four weeks before the intended start date of leave (unless it is not practicable to do so e.g. in an adoption where short notice has been provided); and
- Further evidence of the date of birth or expected date of birth (or placement) if the employer

requests it. This may include a medical certificate if required by the employer.

For practical tips on requesting parental leave, and receiving requests for parental leave, see Section 10: Making parental leave work: practical tips.

Not eligible for unpaid parental leave?

If an employee is not eligible for unpaid parental leave e.g. because the employee does not have 12 months service with their employer, the employer and employee can agree on what arrangements will apply.

This could include, for example, the employee utilising accrued unused annual leave, or some unpaid leave being provided by the employer.

4.2 Government-funded Parental Leave

Under the provisions of the *Paid Parental Leave Act 2010*, the Federal Government provides up to 18 weeks of parental leave, at federal minimum wage, to eligible employees.

Who is eligible?

In order to be eligible for a parental leave payment, an employee must:

- satisfy a 'work test' (that is, have performed qualifying work during the work test period. Usually this test will be met if the employee has worked at least 330 hours in the 10 months before the birth);
- satisfy the income test (that is, individual adjusted taxable income for the tax year prior to the birth must be less than \$150,000 per annum indexed);
- satisfy the Australian residency test;
- be the child's primary carer;
- not have returned to work; and
- not be entitled to (nor their partner be entitled to) the baby bonus (which is restricted to parents whose joint earnings are less than \$75,000 in the six month period following the birth).

These eligibility tests are stipulated by legislation. For more information and whether an employee may qualify, go to www.familyassist.gov.au.

Example

Eligibility for unpaid parental leave

ALEX commenced employment with his employer 6 months ago. His partner, Sarah, is due to give birth to their first child in 2 weeks.

Alex has asked whether he can take 3 weeks leave following the birth, one week will be annual leave, but two weeks will be unpaid.

As Alex has not yet served 12 months service with his employer, he is not entitled to unpaid leave. However, Alex and his manager agree that a total of 2 weeks leave will be taken.



Parental leave payments

The parental leave payment is paid for the 'Paid Parental Leave (PPL) Period'.

The Paid Parental Leave Period starts on either:

- the date of birth of the child (if the claim is made either before or within 28 days after the birth) (or otherwise the date the claim is made); or
- the date nominated by the primary claimant (typically the mother).

Payments are then made from the start date for a maximum period of 125 days (18 weeks) subject to the individual's ongoing eligibility for the payment.

The government's parental leave payment will be due to an employee regardless of any other paid leave they might receive from their employer during the parental leave period.

Applying for government-funded parental leave

To receive the payment, employees must apply to the Family Assistance Office (FAO).

Until 30 June 2011, employees will receive the payment directly from the FAO. From 30 June 2011, in most cases, the payment will be made via the employer's payroll.

Further information can be obtained from the Family Assistance Office at: www.familyassist.gov.au

4.3 Proposed changes to government-funded Parental Leave

In August 2013, the Coalition released its Paid Parental Leave policy outlining its proposed changes to the government-funded parental leave scheme currently in place. Under the Coalition's proposed scheme, women earning up to \$150,000 a year will be provided with 26 weeks of paid parental leave. This will be paid at their actual wage or the national minimum wage (whichever is greater), plus superannuation.

Under the proposed scheme, fathers will also be eligible for two out of the 26 weeks for dedicated paternity leave. This will be paid at their actual wage or the national minimum wage (whichever is greater), plus superannuation. If the father nominates as the primary carer rather than the mother, he will be able to access paid parental leave. This will be paid at the lower of his actual wage or

the mother's actual wage, or the national minimum wage (whichever is greater).

The Coalition's paid parental leave scheme is proposed to commence from 1 July 2015, however as at the date of this publication no legislation has been tabled for Parliamentary consideration.

4.4 Employer-provided benefits

Unpaid parental leave and government-funded parental leave are 'safety net' benefits. That is, they are the minimum entitlements available to eligible employees.

However, many employers supplement these benefits with other benefits.

This can include employer-funded paid parental leave or bonuses, which can be paid at the same time as any government-funded benefit an employee may be entitled to.

Employees should check with their employer to see what benefits are provided. This can be done by contacting the human resources representative of the employer, or alternatively, many employers place human resources policy information on their intranet.

Example

Interaction of parental leave benefits

APPLE CO has a paid parental leave scheme in place for its employees, set out in its enterprise agreement, which provides 12 weeks paid leave to the primary carer of a child, to be taken within one year of the child's birth or adoption.

An Apple Co employee would be entitled to 12 weeks paid leave plus any benefit they may be entitled to under the government's paid leave scheme.

5

Working during pregnancy

5.1 Workplace risks

Mining workplaces can contain exposure hazards, including to chemicals, materials such as lead and radiation, and in some cases these can impact on the safety of a pregnant worker and her unborn child.

Exposure to these hazards can occur well before an employee is required to inform her employer of her pregnancy.

Employers should therefore consider any risks in their workplace and ensure employees, contractors and visitors to the site are aware of the risks. Employers should also consider providing this information in site safety briefings.

Employees should also be aware of specific risks on site and speak to their employer's occupational health and safety officer for detailed information. This should be done as early as possible in the pregnancy so that exposure to potential hazards can be avoided.

5.2 Working safely during pregnancy

Employers must provide and maintain a safe working environment for their employees, including pregnant employees, without a risk to their health and safety, so far as this is reasonably possible.

Transfer to a safe job

A pregnant employee who provides her employer with evidence (such as a medical certificate) that she is fit for work, but that it is inadvisable for her to continue in her current position for a period (the risk period) because of:

- illness or risks due to the pregnancy; or
- hazards connected with that position must be transferred to a safe job for the risk period.

The safe job must have the same ordinary hours of work as the employee's current position, unless the employee agrees otherwise.

If the employee is transferred to a safe job for the risk period, the employer must pay the employee for the safe job at the employee's full rate of pay (for the position she was in before the transfer) for the hours that she works in the risk period.

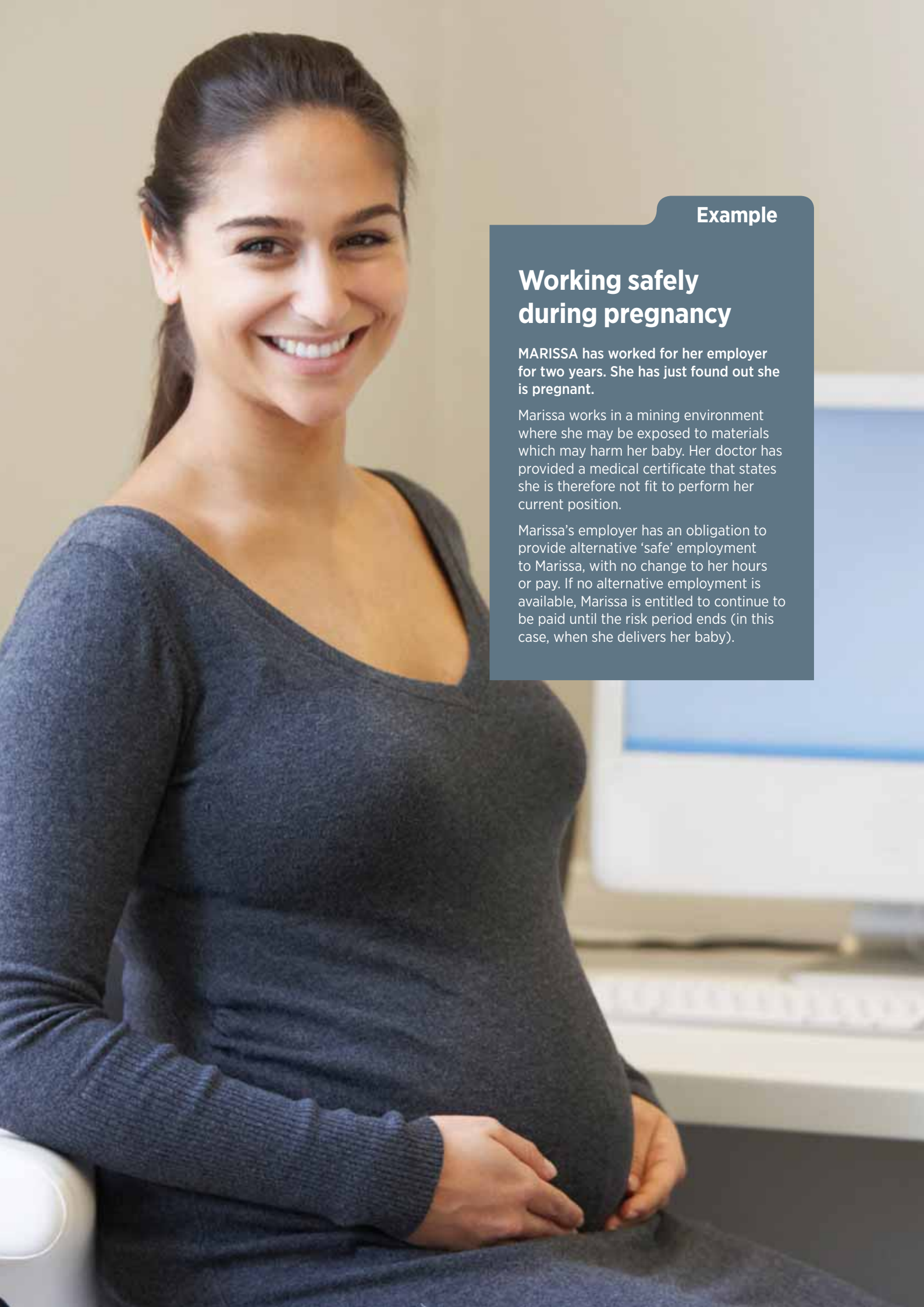
Paid no safe job leave

If there is no safe job available, but the employee is entitled to unpaid parental leave (e.g. the employee has 12 months service), and has provided their employer with the notice and evidence required to take unpaid parental leave, the employee must be paid 'no safe job' leave for the risk period. This must be paid at the employee's base rate of pay for the employee's ordinary hours of work in the risk period.

If an employee is on paid no safe job leave during the 6 week period before the expected birth date of the child, the employer can ask the employee to provide a further medical certificate stating whether the employee is fit for work. The employer may then require the employee to take a period of unpaid parental leave as soon as practicable if, within 7 days after the medical certificate is requested, the employee does not provide a medical certificate or the certificate states that the employee is not fit for work. The employee's entitlement to unpaid no safe job leave will end if such a period of unpaid parental leave starts.

Unpaid no safe job leave

If there is no safe job available, and the employee is not entitled to unpaid parental leave (e.g. they have less than 12 months' service), the employee must be provided with unpaid no safe job leave. If required by the employer, the employee may also need to provide their employer with evidence that would satisfy a reasonable person of the employee's pregnancy (such as a medical certificate).



Example

Working safely during pregnancy

MARISSA has worked for her employer for two years. She has just found out she is pregnant.

Marissa works in a mining environment where she may be exposed to materials which may harm her baby. Her doctor has provided a medical certificate that states she is therefore not fit to perform her current position.

Marissa's employer has an obligation to provide alternative 'safe' employment to Marissa, with no change to her hours or pay. If no alternative employment is available, Marissa is entitled to continue to be paid until the risk period ends (in this case, when she delivers her baby).

5.3 Unpaid special maternity leave

Unpaid special maternity leave is available to women where:

- They suffer from a pregnancy-related illness; or
- The pregnancy has ended within 28 weeks before the due date without the birth of a living child.

To be eligible for unpaid special maternity leave, the employee must also be eligible for unpaid parental leave.

Any unpaid special maternity leave taken by an employee will not reduce the amount of unpaid parental leave she is entitled to take.

Applying for special maternity leave

An employee must apply to their employer for special maternity leave by providing:

- Notice of the intention to take special maternity leave. This must advise the employer of the period or expected period of leave and be provided as soon as possible; and
- (If the employer requires) evidence of a pregnancy-related illness or that the pregnancy ended within 28 weeks before the due date without the birth of a living child. An employer can also require that a medical certificate be provided.

Example

Special maternity leave

SONIA has worked for her employer for 6 years. She is 38 weeks pregnant with twins.

She is suffering from a pregnancy-related medical condition that could jeopardise her health and the health of her babies. Her doctor has advised that she be admitted to hospital immediately.

Because of her medical condition and her length of service, Sonia qualifies for 'special maternity leave' and she can apply to her employer for this leave. Any unpaid special maternity leave she takes before the birth of her children will not reduce her overall unpaid parental leave entitlement.



6

During parental leave

6.1 Varying Parental Leave

Eligible employees are entitled to take up to 12 months unpaid parental leave.

If an employee takes less than 12 months unpaid parental leave in the first instance, they are entitled to extend the period of leave once (provided the extension does not take the total unpaid parental leave over 12 months). Four weeks' notice of the change of leave dates must be provided to the employer. Further extensions of leave within the 12 months from the birth of the child are subject to the employer's agreement.

An employee can reduce the agreed period of unpaid parental leave if the employer agrees.

6.2 Extending Parental Leave

Employees are also entitled to request an extension to their unpaid parental leave, beyond the 12 month entitlement, for up to an additional 12 months.

This extended leave can be taken by either parent, provided they will be the primary carer for the leave period. The extension can also be shared between two parents. The request must be made in writing, and given to the employer at least four weeks before the end of the original leave period.

An employer is not required to agree to the request. Rather, the employer must reply in writing to the employee's request within 21 days and may refuse only on reasonable business grounds. Where an employer refuses a request, the written response must include the reasons for the refusal.



Example

Extending parental leave

MICHELLE has been on parental leave for 5 months. Her original plan was to be away for 6 months.

Her employer has temporarily filled her role by recruiting a replacement, Terence, on a 6 month fixed term contract. Michelle has now asked if she can extend her parental leave for a further 8 months, taking the total time she has been away from work to 14 months (she is entitled to extend her leave for another 6 months).

Michelle's manager speaks to Terence. He is happy to stay on for the extra 8 months. Michelle's manager agrees to her request.

6.3 Keeping contact during leave

It is very important for both the employer and employee to keep in contact during the unpaid parental leave period.

Employees should agree with their employer prior to taking leave how this contact will be maintained.

Employers also have an obligation to consult with employees whilst they are on unpaid parental leave if they make a decision that will have a significant effect on the employee's status, pay or location of the employee's pre-leave role. This includes where there has been a business restructure and the employee's role may be redundant.

See also Section 9: Protections against discrimination.



For tips for employees, supervisors and organisations on taking parental leave, see **Section 10: Making parental leave work – practical tips.**

6.4 Working during leave

An employer and employee can agree whether the employee will work for their employer during a period of unpaid leave.

Before doing so, the employer and employee should agree in writing whether the original parental leave return date still applies, or is to be extended.

Employees should also check with the Family Assistance Office whether their work will affect eligibility for the government's paid parental leave.

Employees who wish to work for someone other than their employer should check with their employer to ensure that engaging in this work does not breach a term of their employment contract.

6.5 Updating benefits during leave

An employee on parental leave generally has the same entitlements to have their pay reviewed and receive a bonus as employees who are at work. This means that salary should be reviewed in the normal course, and any eligibility for bonus calculated in accordance with the employer's bonus plans.

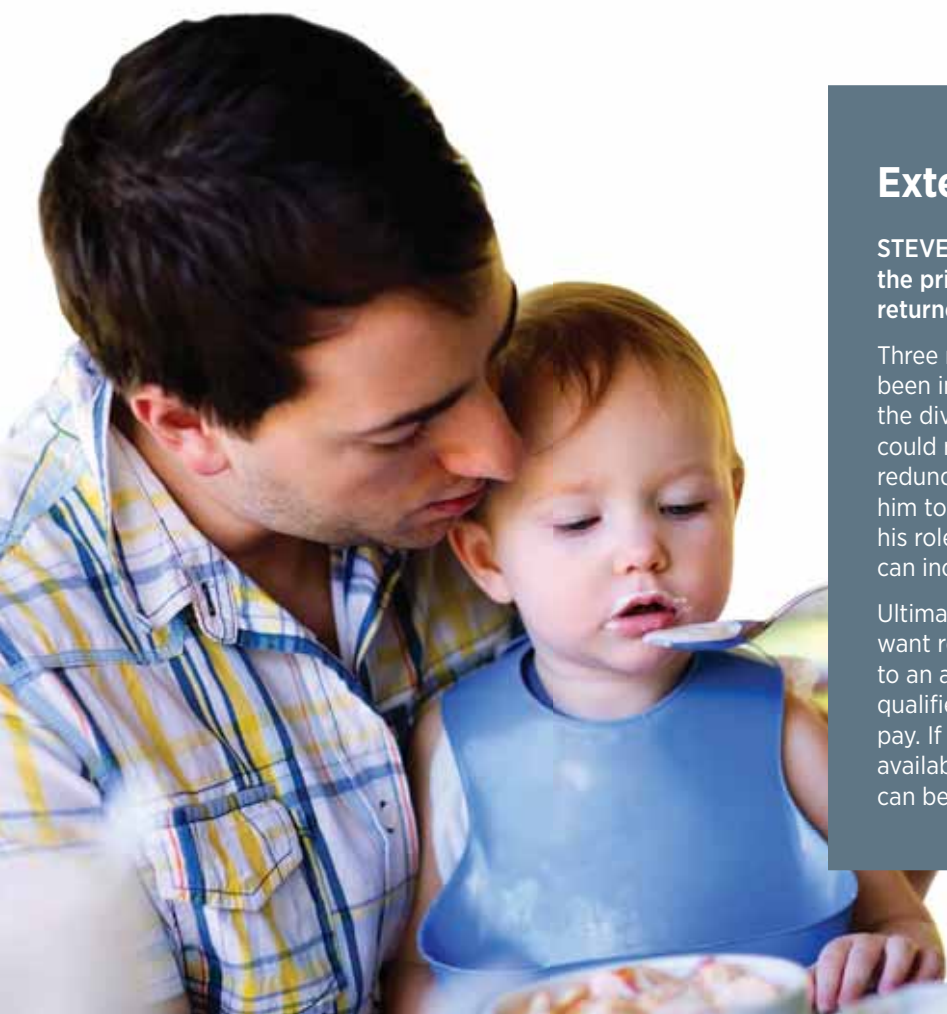
Example

Extending parental leave

STEVE took 6 months parental leave to be the primary carer of his son when his wife returned to work after the birth.

Three months into his leave a plan has been implemented which will restructure the division he works in. The restructure could result in his position becoming redundant. Steve's employer must contact him to discuss the potential redundancy of his role and his options going forward. This can include redundancy if Steve prefers.

Ultimately however, if Steve does not want redundancy, he is legally entitled to an available position for which he is qualified and suited, nearest in status and pay. If after investigation there is no other available (or suitable) position, redundancy can be the outcome.



7

Returning to work

7.1 Right to return to work

On returning to work from unpaid parental leave, an employee is entitled to return to their pre-parental leave position.

If the pre-parental leave position no longer exists, the employee is entitled to an available position for which they are qualified and suited, nearest in status and pay to the pre-parental leave position.

If there is no other available (or suitable) position, redundancy will apply.

Example

Right to return to work

SOPHIE is a mine manager who is pregnant with her first child. She asks to take 3 months parental leave following the birth of her child.

A new manager is appointed to temporarily fill the role in Sophie's absence. On return from parental leave, Sophie is entitled to return to the role of mine manager.

A failure of her employer to do so will amount to a breach of the National Employment Standards, and her employer could be fined.



7.2 Requesting flexible work

When an employee returns from unpaid parental leave, they do not have an automatic right to flexible work e.g. to move from a full-time to a part-time position.

Employees do however have a right to request flexible work arrangements. This is provided for in Federal legislation, the *Fair Work Act 2009*, and applies to all Australian employees. Victorian legislation also provides this entitlement, although it is limited in application to Victorian employees.

'Flexible work' is not defined under legislation, but can include a broad range of working arrangements. These include:

- Part time work or working agreed hours over fewer days
- Job share
- Working from home
- Revised shift patterns
- Starting and finishing earlier or later
- Changing hours of work, break times, rosters or timing of meetings
- Changing the need for work travel and the need for overnight stays

Federal law

Under the *Fair Work Act 2009*, certain employees may make a request for a flexible working arrangements, including an employee who is the parent or has responsibility for the care of a child who is school age or younger.

An employer may only refuse a flexible working arrangement request on 'reasonable business grounds'. The employer must also give a written response to the employee's request within 21 days, setting out any reasons for a refusal. 'Reasonable business grounds' are defined in the *Fair Work Act 2009* as including (but not limited to):

- that the requested working arrangements would be too costly for the employer;
- that there is no capacity to change the working arrangements of other employees to accommodate the requested working arrangements;
- that it would be impractical to change the working arrangements of other employees, or recruit new employees to accommodate the requested working arrangements;

- that the requested working arrangements would be likely to result in a significant loss in efficiency or productivity; or
- that the requested working arrangements would likely have a significant negative impact on customer service.

Victorian law

Under Victorian law, an employer may not unreasonably refuse to accommodate the responsibilities of an employee as a parent or carer.

Factors that will be taken into account when determining the reasonableness of any refusal include:

- the employee's circumstances, including the nature of his or her responsibilities as a carer;
- the nature of the employee's role and the nature of the arrangements required to accommodate the employee's responsibilities;
- the financial circumstances of the employer;
- the size and nature of the employer's business;
- the effect on the workplace and the employer's business of accommodating the request (including the financial impact of doing so, the number of persons who would benefit from or be disadvantaged, and the impact on efficiency and productivity of customer service);
- the consequences for the employer of making such accommodation; and
- the consequences for the employee of not making the accommodation.

Other considerations that might be relevant in a particular case include:

- the workload of other employees
- the occupational requirements of the job
- the impact on the budget, for example whether penalty or additional overtime rates would be payable
- the impact on customer service
- the physical layout of the building
- the need for additional equipment, such as providing a laptop to assist an employee working from home
- when the arrangements would start and how long they would be needed
- whether any legal or other constraints affect the feasibility of the request, such as occupational health and safety laws or enterprise agreements.

A recent tribunal decision on the Victorian provisions found that this provision:

‘does not require an employer to entirely subjugate its own interests to the interests of the employee as a parent or carer. Rather, it requires a reasonable accommodation to be reached between the two. This necessarily entails acceptance of the view that matters may be arranged in a manner which is less than ideal from the employer’s standpoint and also less than ideal from the employee’s standpoint’ (Richold v State of Victoria – Department of Justice [2010] VCAT 443).

Where it is not reasonable for an employee’s pre-leave position to be performed flexibly, alternate roles can then be considered.

Indirect discrimination

State and Federal discrimination laws require employers to consider request for flexible working arrangements where the reason for the request falls within the grounds of prohibited discrimination (such as family responsibilities, pregnancy, disability, or age). An unreasonable refusal of such a request may constitute unlawful indirect discrimination.

This means all requests for flexible work should be considered seriously, although some requests have more legal obligations attached.



For tips on flexible work, see **Section 10: Making flexible arrangements work – practical tips.**

7.3 Breastfeeding or expressing breast milk at work

It is unlawful to discriminate against an employee because they need to breast feed or express breast milk at work.

It could also be unlawful for an employer not to provide facilities to breastfeed or express breast milk at work where it is reasonable to do so. An assessment of ‘reasonableness’ in this case is usually one of cost, how expensive (or inexpensive) it is for an employer to provide the facilities, taking into account e.g. the size of the employer’s organisation.

Employers and employees should discuss whether there is a need for breastfeeding facilities for an employee on their return to work.

All that is typically required are:

- Separate room, which is private (no clear glass) and lockable;
- Chair
- Electric plug
- Water; and
- Small fridge (for safe storage of breast milk after it is expressed).

8

Protections against discrimination

It is against the law for an employer, or potential employer, to discriminate against an employee because of an actual, or presumed pregnancy or because they have taken, or may take parental leave. It is also against the law for an employer, or potential employer, to discriminate against an employee because they are breastfeeding, or because of their parental or carer status or responsibilities, disability or impairment or marital status.

This applies at all stages of employment, from recruitment, to terms and conditions of employment, and termination of employment.

It is therefore against the law to:

- Refuse to employ someone because they might become pregnant;
- Dismiss or demote an employee because they are pregnant;
- Impose requirements on an employee which are harder for them to meet because of their pregnancy;
- Refuse to train an employee because they are soon to take unpaid parental leave;
- Pay someone differently e.g. at a reduced rate, because of their gender or because they may ask to take parental leave; or
- Restructure an employee's role or make the employee's position redundant because they have taken parental leave.

An employer that treats an employee less favourably because of one of these protected attributes can be challenged for a breach of state or federal equal opportunity laws, or the adverse action provisions in the *Fair Work Act 2009*. More detail can be found in Section10: Making flexible arrangements work.



Example

Unlawful discrimination

MELISSA'S husband Phil, is about to start work at a remote mine. The family moves with Phil to stay together.

Melissa also has mining experience, and applies for a job with the mine employer. The manager decides not to employ Melissa, because he is concerned about the extra cost of hiring someone who may want to access parental leave in future.

This amounts to unlawful discrimination, and Melissa could bring a claim to a state or federal equal opportunity body, or to Fair Work Australia.

9

Making parental leave work

Practical tips

9.1 Employees

Requesting parental leave

To assist your request for parental leave, it is useful to first obtain from your employer a copy of any human resources policy they might have on parental leave.

This policy may set out a process for you to follow in making your request, and attach forms you may need to complete.

If your employer has no set form for employees making requests for unpaid parental leave, the example provided in **Appendix 1** can be used.

This letter should be provided to your employer at least 10 weeks before your leave starts. You should then confirm leave dates with your employer at least four weeks before the start of your leave.

Staying in touch

It is very important for you to maintain contact with your employer throughout the course of your leave.

This is not a legal requirement, but is one that will make your return to work easier. By maintaining contact with your workplace you stay across what is happening at work, avoid reduction of your skills, and the transition back to work is easier.

Before you depart for leave, it is a good idea to sit down with your direct manager and discuss ways in which you can keep in touch.

For example:

- Have you agreed a way you can keep in touch?
- Who will your primary point of contact be?
- How often would you and your employer like to stay in touch?
- Can you still access work emails so you can receive relevant work related information?

- Ask that information such as operational plans or major proposed changes be sent to you
- Can you participate in training sessions that you would normally have been involved in had you been at work?
- Can you be sent invitations to employer events e.g. staff Christmas party, farewells, birthday lunches etc.?
- Are there regular planning meetings you can attend?
- Can you still receive the company newsletter / bulletin etc.?
- Are there any affinity networks that you can maintain contact with (e.g. company women's networks, engineering or technical networks)?

Transitioning back to work

Some employees find a gradual return to work is easier than an immediate return. For example, working three days a week, then four, then five (if full time work is what is desired by employee and employer). This can be something you discuss with your employer.

Requesting an extension to unpaid parental leave

You can request an extension to unpaid parental leave (beyond the 52 week entitlement) using the example provided in **Appendix 1**.

An employer is not obliged to grant your request, and may decline it on reasonable business grounds.

Your request should be made at least four weeks before the end of your previously agreed return date. The more notice you provide of your intention to request an extension of leave, the easier it is for an employer.

Checklist

The Requesting Parental Leave Checklist provided in **Appendix 2** will guide you through the process of applying for parental leave.

9.2 Supervisors

Handling requests for parental leave

Long term casual, part-time and full time employees, with at least 12 months continuous service, have a right to up to 52 weeks unpaid parental leave.

As an employer, you are entitled to know the period of leave an employee is taking, together with the start and end dates of leave. You can also request medical evidence of the pregnancy. You cannot however refuse the leave request.

Legislation requires that employers return eligible employees to their pre-parental leave role at the end of the unpaid parental leave period.

This means that the employee's role must be held open for them for their return to work.

What to do during parental leave – staying in touch

It is very important for you to maintain contact with parental leave employees throughout the course of their leave.

This is not a legal requirement (unless there is to be a significant change to the employee's role), but is one that will make the return to work easier. By maintaining contact with the workplace your employee can stay across what is happening at work, reduce any reduction in their skills, and the transition back to work is easier.

Before the employee departs for leave, it is a good idea to sit down with them and discuss ways in which you can keep in touch.

For example:

- Is there an effective communication strategy in place so that the employee is informed of developments that might take place while they are away?
- Can the employee be sent invitations to employer events e.g. staff Christmas party, birthday lunches, farewells?
- Has an agreement been reached on the level and type of contact? Employees should be given the choice as to whether they want to be contacted during this time. Who will the primary contact person be? How regularly will you keep in touch?
- Can the employee attend training sessions that they would have attended had they been at work during the leave period?
- Can the employee still receive the company newsletter / bulletin etc.?
- Are there any affinity networks that the employee can maintain contact with (e.g. company women's networks, engineering or technical networks)?
- Are there regular planning meetings the employee can attend?

Employers have an obligation to consult with employees whilst they are on unpaid parental leave if the employer makes a decision that will have a significant effect on the employee's status, pay or location of the employee's pre-leave role. This includes where there has been a business restructure and the employee's role may be redundant.

Considering requests for extended parental leave

Employees have a right to request an extension to their unpaid parental leave period beyond the 52 week entitlement, up to a total maximum of 104 weeks leave.

An employer is not required to agree to the request, and can refuse on reasonable business grounds. Although this term is not defined in legislation, things you can take into account when considering a request include:

- the employee's personal circumstances and responsibilities;
- the nature of the employee's role and the nature of the arrangements required to accommodate the employee's responsibilities e.g. if there is a replacement employee on a fixed term contract, can this contract be extended by another year;
- the financial circumstances of the employer;
- the size and nature of the employer's business;
- the effect on the workplace and the employer's business of accommodating the request (including the financial impact of doing so, the number of persons who would benefit from or be disadvantaged, and the impact on efficiency and productivity of customer service);
- the consequences for the employer of agreeing to the request; and
- the consequences for the employee of not agreeing to the request.

Acknowledging the challenges in returning to work

Returning from parental leave can be a challenging time for parents, particularly mothers. Some of the challenges faced by mothers returning to work include:

- A fear that they have lost their skills or that their skills have become outdated
- Relearning how to navigate technology e.g. computer systems, after a lengthy break
- Anxiety about separating from their child and how their child will settle in their childcare arrangements
- Sleep deprivation as a result of a child waking during the night
- Concerns about how they will juggle everything on a day to day basis
- Anxiety about how they will manage work if a child is sick
- Managing the need for regular breaks to express breast milk during the work day on work premises.

Employers and managers can assist employees returning to work by being cognisant of these challenges.

Consider whether additional training programs might be useful to the employee, and talk to them about their particular concerns in returning to work.

Checklist

The Receiving a Request for Parental Leave Checklist in **Appendix 3** will guide you through the process of receiving a request for parental leave.

9.3 Organisations

Managers and organisations who adopt best practice and policies can play a critical role in supporting and valuing staff who are considering or expecting a child or returning to work from parental leave.

These practices can have a significant impact on the retention rate of employees returning from parental leave, reducing recruitment and training costs, improving staff morale and productivity, and improving organisational efficiency through the benefits of long service e.g. institutional memory, industry knowledge, networks and contacts.

Strategies for managers and organisations to increase retention of staff following parental leave include:

- Having policies on parental leave and promoting these policies to managers and staff
- Ensuring effective strategies for keeping in touch with staff members during leave
- Encouraging flexible work arrangements
- Fostering a culture of acceptance and mutual support to encourage and support those taking or returning from parental leave – this includes encouraging men to take leave. For example, making it easy for men engaged on fly-in fly-out (FIFO) arrangements to take leave at short notice to attend the birth of their child; and
- Arranging regular department meetings to allow for useful information exchange, and ensure those returning to work are included in these meetings.

10

Making flexible arrangements work

Practical tips

10.1 Employees

Requesting flexible work

As a first step in considering flexible work, ask your employer for a copy of any policy they may have on working flexibly, and use this as a guide.

Employees with parental or caring responsibilities of a child who is school aged or younger have a right to request flexible work arrangements.

This can include job sharing, part time work, varied hours, changes to shift patterns and working from home. For more information see Section 7.2: Requesting flexible work.

Employers are however not required to agree to flexible work requests, and can reject a request where the arrangement is not reasonable in the circumstances. For a list of the factors employers can take into account, see Section 7.2: Requesting flexible work.

Spending some time thinking about the types of flexibility you require and how this will impact on your employers business is therefore very worthwhile.

Not only will you then understand your own personal parameters of what you can and cannot do due to your circumstances, you will also appreciate the business pressures of your employer and how these impact the role you wish to perform.

Although there is no set form for requesting a flexible work arrangement, the best requests will build a 'business case' to assist the manager considering the request.

Building your 'business case'

In requesting flexible work, you need to think about your 'business case'.

The following points should be addressed:

- The flexible work arrangement you seek
- The reasons for seeking the arrangement
- How long the arrangement will last for e.g. is it temporary or permanent?
- What impact you see this having on your terms and conditions of employment
- What challenges will you face in working flexibly and how you foresee these challenges being overcome
- How will the arrangement affect your team / client, how will this be addressed?
- How you see the arrangement affecting your career progression
- What assistance you need to make the arrangement work e.g. remote access to your employer's IT network, blackberry
- Whether you have any flexibility to meet urgent work needs
- The benefits for your employer in the arrangement

This should be set out in writing to your employer.

A sample format is provided in Appendix 1.

Generally, an employer is obliged to respond to your flexible work request, in writing, within 21 days.

Negotiating flexible work

Sometimes an employer may not immediately agree to (or refuse) your initial request, but may ask for further information or propose an alternative arrangement. As long as this is done in a timely manner, this is acceptable.

Your employer may also request a trial of the arrangement. Again this is acceptable and lawful.

Keep an open mind when considering the proposals. The best flexible work arrangements come from employers and employees having frequent open and honest discussions about the arrangements.

Documenting the arrangement

Whatever flexible work arrangement you agree, make sure it is recorded in writing. This should reflect the commencement date of the arrangement, any end date (if the arrangement is not permanent) and how the arrangement will affect your remuneration and other benefits (e.g. leave accrual). If the arrangement is to be a trial, document what is going to happen if the trial succeeds or fails (e.g. will you return to your pre-leave role?).

Checklist

This checklist provided in **Appendix 2** will guide you through the process of making a request for flexible work.

10.2 Supervisors

Receiving a request for flexible work

If you receive a flexible work request the first step is to obtain a copy of your company's policies on flexible work.

An employee with certain circumstances such as having parental responsibilities or caring responsibilities have a right to request flexible work arrangements. This can include job sharing, part time work, varied hours, changes to shift patterns and working from home. For more information, see Section 7.2: Requesting flexible work.

Employers are however not required to agree to flexible work requests, and can reject a request where the arrangement is not reasonable in the circumstances.

Considering a request for flexible work requires managers to 'think outside the box' and the traditional way the job has always been done. This is not easy and it will be challenging.



You can however ask the employee to help you in this process by asking them to put together a 'business case' as to the flexible work they desire. For more information, see Section 10.1.

There are statutory time limits which apply to most flexible work requests (employers must respond in writing within 21 days to the request). This means you must be prompt in considering and replying to the request, even if this is to ask for more information or to arrange a meeting with the employee.

Considering a flexible work request

In considering a flexible work request there are a range of factors to take into account. An employer may only refuse the request on reasonable business grounds including (but not limited to):

- that the requested working arrangements would be too costly for the employer;
- that there is no capacity to change the working arrangements of other employees to accommodate the requested working arrangements;
- that it would be impractical to change the working arrangements of other employees, or recruit new employees to accommodate the requested working arrangements;
- that the requested working arrangements would be likely to result in a significant loss in efficiency or productivity; or
- that the requested working arrangements would likely have a significant negative impact on customer service.

There are also a range of factors set out in Victorian legislation, which employers must take into account in considering a flexible work request including:

- the employee's personal circumstances and responsibilities
- the nature of the employee's role and the nature of the arrangements required to accommodate the employee's responsibilities e.g. if there is a replacement employee on a fixed term contract, can this contract be extended by another year
- the financial circumstances of the employer
- the size and nature of the employer's business
- the effect on the workplace and the employer's business of accommodating the request (including the financial impact of doing so, the number of persons who would benefit from or be disadvantaged, and the impact on efficiency and

productivity of customer service)

- the consequences for the employer of agreeing to the request, and
- the consequences for the employee of not agreeing to the request.

It is not reasonable to refuse a request simply because:

- the job has never been performed that way before
- the employee's contract of employment provides it is a full time job
- it is a senior or managerial role, or
- it may set a 'precedent' or 'open the floodgates' for other employees requesting flexible work.

A reasonable and practical way of considering the request is to:

- list the requirements of the employee's role against the new arrangements requested
- consider the obstacles to the success of the arrangement
- consider solutions that may address the obstacles, and
- where there are obstacles that cannot be resolved, do these jeopardise the overall success of the arrangement and are these reasonable in the circumstances?

No two flexible work arrangements are the same, so each request must be considered on its individual facts.

Courts have held that a reasonable accommodation of both parties' interests may result in an arrangement that is less than ideal for the employer and employee.

It is reasonable and lawful to ask the employee to trial the arrangement for a period of time (e.g. 3 to 6 months) to allow you to assess how it is working. If you do so, this should be documented in writing. You should also document what will happen if the trial is unsuccessful e.g. will the employee return to their pre-leave role.

Agreeing to or refusing a request

Generally, a response to an employee's request for flexible work must be made in writing within 21 days of the request.

Where the request is agreed to, you should document in writing:

- the type of arrangement agreed to;
- when the arrangement commences and finishes (if applicable);

- how the arrangement affects the employee's terms and conditions of employment.

Where the request is refused, you must provide written reasons for the refusal.

Checklist

The checklist provided in **Appendix 3** will guide you through the process of responding to a request for flexible work.

10.3 Organisations

Achieving successful flexible work arrangements can have a significant impact on the retention rate of employees returning from parental leave, reducing recruitment and training costs, improving staff morale and productivity, and improving organisational efficiency through the benefits of long service e.g. institutional memory, industry knowledge, extensive experience in the field, networks and contacts.

Strategies for managers and organisations to promote flexible work arrangements and facilitate their success include:

- Having a policy and guidelines on flexible work
- Providing training to managers in how to manage flexible work requests
- Providing training to managers and employees on ways to maximise the benefits of flexible work
- Fostering a culture of acceptance of flexible work arrangements and a network for managers and employees to learn more about arrangements already in place at your organisation.

Organisations can also take steps to identify barriers to flexible work within their organisation, examining the issue both from the perspective of the employee, and the organisation.

10.4 Alternative work arrangements in the minerals industry

Types of alternative work arrangements

Although traditionally many roles have been classified as 'full time', with one person filling the role 5 days a week from the workplace, employers can also think about other ways the role could be performed.

This could include a job sharing arrangement where employees work together to complete the one role, part time work, modified start and finish times, or remote working arrangements. Some roles could be broken into discrete 'projects' that can be performed by one or more flexible workers.

'Fly-in fly-out' (FIFO) arrangements are also widely used in the minerals industry as an alternative to traditional 'full time' work. For some employers, many of their projects on remote locations can only be staffed by employees on a FIFO basis. Often, FIFO workers will have childcare responsibilities, although it is rare that such workers would also have the primary caring responsibilities. There are however examples in the industry where employees with primary childcare responsibilities have been engaged on a FIFO arrangement e.g. with the support of a full time nanny.

Some of the factors for employers and employees to consider in making alternative arrangements work are explored below.

Employer support

Having the support of your direct manager is essential in making alternative arrangements work successfully. Usually it is the manager who will be best placed to consider flexibility in working arrangements. Increasing an employer's understanding that childcare responsibilities exist for both parents and not only the primary carer at home is important for a successful flexible work arrangement.

Many larger employers in the industry provide support resources for FIFO workers, for example providing memberships to an internet support network known as 'FIFO Families'. Many Employee Assistance Programs (EAP) also provide in-person support on site, as well as phone support. The EAP services often extend to the FIFO worker's immediate family. Such resources are important for both the FIFO parent, who needs to remotely manage their family relationships back home, as well as the parent with the primary responsibility for childcare, who commonly report difficulties such as exhaustion towards the end of a FIFO cycle.

Child care

Childcare can be difficult to source, especially in remote regions. Some employers have worked with their employees to develop local childcare options. This can include becoming involved in council run family day care programs, to upskill people in the community to care for children, at hours which allow parents to continue their role.

It is also common for the families of FIFO workers to form informal social groups, to provide a reliable support network and assistance in emergency or day-to-day childcare situations.

Changes to shift arrangements

Just because shifts have always been worked in certain ways does not mean this must continue. Think about whether alternative shift arrangements might assist an employee to perform their role. For example, can some certainty be given as to the shifts an employee will be placed on over a 12 month period? Can shift hours be reduced, or the number of shifts performed altered, so that flexible work can be accommodated? Can shifts be altered to match school hours or to accommodate school holiday leave in the case of FIFO workers with school aged children? Examples of steps some employers in the mining industry have taken to assist the needs of employees with caring responsibilities include:

- offering shorter rosters for FIFO workers who have childcare responsibilities such as four days on and three days off, or four days on and four days off. A shorter roster cycle can enable FIFO workers to balance their childcare responsibilities and continue to progress their careers in the minerals industry;
- alternate partner rostering where one parent 'mirrors' the shifts of the other parent so that childcare needs are met;
- changing rosters to fit school hours where a family relocates to a remote location on a 'drive-in drive-out' (DIDO) arrangement.

Reducing travel

Travelling for work when you have the primary care of a child can be difficult to manage. Many roles can however still be performed with reduced travel, combined with remote working. Can travel be limited, for example, to one week in a month, or a day or two a week, to assist with an employee's caring responsibilities? Think also about why the travel is needed. Is it essential for the performance of the employee's role or is it for 'face time' and needing to be seen. If the latter, perhaps there are ways travel can be reduced and the employee's presence on site still felt?

Reducing time spent commuting to work is also an important factor in making FIFO arrangements work. Organisations are aware that FIFO workers often prefer to fly home immediately at the end of their shift and many large employers use software

to select the best flight times to suit the start and end of shifts. Some companies also provide direct bus transfers to accommodate various connecting flights. However, organisations need to manage reducing travel time with strict fatigue management rules if employees travel home immediately at the end of their shift.

Challenging assumptions, confronting biases and promoting culture of acceptance

Many organisations are now exploring whether hidden biases may be impacting upon decisions made in the course of an employee's employment. Courses are available to explore this issue in more detail.

Fostering a culture of acceptance towards flexible work is essential in normalising alternative work arrangements in the minerals industry. Job sharing in particular could be utilised more. To enhance the suitability of job sharing for a role, relevant considerations include:

- a strong business case for the arrangement. Often employees in these industry roles have highly sought after technical skills or extensive experience through long service;
- the benefits of full coverage in a role in a working environment where projects run 24 hours a day, 7 days a week;
- finding a job sharing partner accountable for the allocated responsibilities. Potential job sharers might negotiate an arrangement from their own initiative.

There are many roles that can be performed flexibly in the minerals industry, with the imagination and support of employers.



11

Frequently asked questions

11.1 Job interviews

Can an applicant be asked if they plan to get pregnant?

It is unlawful to ask a job applicant if they plan to get pregnant, or discriminate against them based on their answer (or a recruiter's suspicion that an applicant might get pregnant). Questions about pregnancy should only be asked if they are relevant to the role and are being asked for a non-discriminatory reason e.g. if the role is for a specific project or time or if the role could adversely impact upon the applicant's health and safety.

Can an applicant ask for a role to be changed so it can be performed flexibly?

Yes, an applicant can ask for the role to be changed to accommodate flexible work. This request must be considered in the same way as if an employee made request for flexible work (with the exception that there is no requirement for the employer to respond in writing within 21 days).

11.2 During pregnancy

What if an employee's usual job is no longer safe for them?

If the employee's usual job is no longer safe for them due to their pregnancy the employer has an obligation to protect their health and safety at work, which includes considering ways their role can be made safe, or whether an alternate role can be provided to them.

If the employee qualifies for unpaid parental leave under the *Fair Work Act 2009*, then the employer is obliged to transfer the employee to a safe job for the risk period. If no safe job is available, the employee is entitled to paid 'no safe job' leave for the risk period.

If an employee does not qualify for unpaid parental leave, the employer is still obliged to transfer the employee to a safe job for the risk period. If no safe job is available, the employee is entitled to unpaid 'no safe job' leave for the risk period.

What if an employee is discriminated against because of their pregnancy?

If an employer treats an employee less favourably because they are pregnant, the employee may bring a claim for breach of state or federal equal opportunity laws, or the adverse action provisions in the *Fair Work Act 2009*. Outcomes can include compensation, a monetary penalty and, where the employee has been dismissed, reinstatement.

11.3 Taking parental leave

How can parental leave be applied for?

An employee can apply for unpaid parental leave by submitting a notice in writing to their employer at least 10 weeks before the intended start date, stating their intention to take parental leave and the anticipated start and end dates of leave. An employee must confirm these dates at least 4 weeks before the intended start date.

An employee can apply for paid parental leave through the Family Assistance Office up to 3 months before the birth or adoption of the child. Visit www.familyassist.gov.au for more information.

An employer may provide additional parental leave benefits to its employees. Employees should check any application requirements with their individual employer.

What if an employee does not meet the eligibility requirements?

If an employee does not meet the eligibility requirements for taking parental leave then they

are not entitled to take unpaid parental leave. An employer and employee can however reach agreement as to how other leave might be taken e.g. annual leave or unpaid leave.

In some cases (e.g. if an employee has recently changed employers), an employee may not be entitled to unpaid leave, but be entitled to a Government parental leave payment.

An employee may request flexible work arrangements as an alternative to parental leave to accommodate their caring responsibilities. An employer may only refuse a request for flexible work arrangements on reasonable grounds.

How can government funded parental leave be accessed?

Government funded parental leave can be accessed through the Family Assistance Office. Visit www.familyassist.gov.au for more information. Applications are made to the Family Assistance Office and, where approved, payments are then administered by the Family Assistance Office in fortnightly payments (up to 30 June 2011) and by the employer in the employee's usual pay cycle (from 30 June 2011).

Can parental leave be varied or extended?

Yes. Where the employee has taken less than 12 months unpaid parental leave the employee can extend their period of leave once (with four weeks' notice) without the approval of the employer. Additional extensions within the 12 month period, or a reduction in the period of leave, can only be made with approval of the employer.

In addition, an employee can request an extension of unpaid parental leave for up to an additional 12 months to be a child's primary carer. The employer can only refuse such a request on reasonable business grounds.

Can an employee change their carer status during parental leave?

Eligibility for unpaid parental leave is on the basis of an employee's carer status. The key is that the employee must be the child's primary carer.

Carer status can however change.

For example, an employee mother who was the primary carer may swap primary carer responsibilities with the father of the child (or vice versa). In this way, each parent will have eligibility to unpaid parental leave from their respective employers.

Can a male employee take leave as a primary carer?

Yes. Unpaid parental leave can be taken by either the mother or father of a child, provided they have primary responsibility for the care of the child.

Can an employee's employment be terminated during parental leave?

Yes. However, there are additional protections afforded to employees taking parental leave.

The most important of these is the return to work guarantee provided in the National Employment Standards. This provides that an employee has the right to return to their pre-leave role. If that role is no longer available, the employee is entitled to an available position for which they are qualified and suited nearest in status and pay.

In addition, there are protections afforded to employees to prevent them from being terminated because of their pregnancy or because of taking leave. A termination in these circumstances may amount to discrimination or adverse action, and an employee could bring a claim with state or federal equal opportunity bodies or Fair Work Australia.

What happens if an employee is not happy with the parental leave arrangements an employer is providing?

An employee can request alternative arrangements from the employer, although the employer is under no obligation to provide arrangements which are different from the statutory minimums provided by the National Employment Standards.

If an employee thinks that their employer is in breach of their parental leave obligations they may commence court proceedings or notify the Fair Work Ombudsman (which may conduct its own investigation). If the Fair Work Ombudsman finds that a breach has occurred, and the employer disputes that decision, the Fair Work Ombudsman may prosecute the employer in relation to that breach.

What if an employee's pregnancy ends or the baby dies?

An employee's period of parental leave can be reduced by agreement with their employer. The employee must give at least 4 weeks' written notice of their intention to return to work.

If an employee ceases to have responsibility for the care of the child, the employer may give the employee at least 4 weeks' written notice that the

employee must return to work. The return to work date must not be less than 6 weeks after the birth.

If an employee's pregnancy ends before the period of parental leave has commenced, the parental leave is cancelled. However, if the employee's pregnancy ends within 28 weeks before the due date, the employee may be entitled to unpaid special maternity leave.

Can both parents take parental leave?

Yes. 8 weeks' parental leave can be taken concurrently. Parents can also alternate primary responsibility for the child and share the total period of unpaid parental leave. Apart from the initial 8 week concurrent period, each parent must take their parental leave in a single continuous period.

Can an employee work for others during parental leave?

Yes. Depending on the terms of an employee's employment contract, an employee may work for another employer during unpaid parental leave. The employee will need to make sure that the work is not inconsistent with any terms of the employment contract, and the employee must remain responsible for the care of the child. Generally, it is best that the employee ask their employer if work is permitted under the terms of their employment agreement.

An employee should however check with the Family Assistance Office whether such work will affect their eligibility for the government's paid parental leave.

Can annual leave, long service leave, or the government's paid parental leave be taken at the same time as unpaid parental leave?

Yes. An employee is entitled to take paid annual leave, long service leave and the government's paid parental leave while on unpaid parental leave. An employee is not however entitled to take paid personal/carer's leave or compassionate leave while on unpaid parental leave.

As a practical matter, to maintain a steady income throughout the leave period, it may be preferable to take the leave consecutively, rather than at the same time.

11.4 Returning from parental leave

What position must be made available to an employee on their return from parental leave?

An employee's pre-parental leave position must be made available to an employee on their return. If that position is no longer available, the employee must be provided with an available position for which they are qualified and suited, nearest in status and pay to their pre-leave position.

What happens if an employee's role has been restructured or made redundant during their absence on parental leave?

If the employee's pre-parental leave position no longer exists, an available position for which the employee is qualified and suited nearest in status and pay to the pre-parental leave position must be made available to the employee.

The employer must also consult with the employee about the potential changes to their role, during the parental leave period.

What happens if an employer sells its business during an employee's parental leave?

An employer must take all reasonable steps to give an employee information about and the opportunity to discuss any decision it makes which will have a significant effect on the status, pay or location of the employee's pre-parental leave position.

An employee on parental leave must not be treated less favourably than the other employees, for example in the provision of a redundancy or the offers of new employment.

11.5 Flexible work

Who can make flexible work requests?

An employee with certain circumstances for example having parental responsibilities or caring responsibilities may request flexible working arrangements. These arrangements are also available under equal opportunity laws where needed to accommodate a disability. Some employers allow any employees to request flexible work. Employees should ask for a copy of their employer's policy.

An employer currently has flexible work operations in place; does this mean it must grant any flexible work application?

No. Each request will be considered in its individual circumstances, including the employee's personal circumstances and the effect on the workplace of accommodating the request.

What can an employee do if they are not happy with an employer's response to a flexible work request?

If an employee believes their employer has unreasonably refused their flexible work request because of their parental or carer responsibilities, the first step is to raise their issue with their employer. For example, if their manager has dealt with the request, the employee could bring the issue to the attention of the human resources department.

If the employee believes internal avenues with their employer have been exhausted, the employee can make a discrimination complaint to the relevant equal opportunity body. They could also notify the Fair Work Ombudsman of their concerns. Legal assistance is not necessary to take these steps.

Must an employer automatically grant an employee's request to work flexibly?

No. An employer may refuse the request on reasonable business grounds. An employer has 21 days within which to respond in writing to the employee's request.

Can an employer propose a different flexible work arrangement than the one the employee proposed?

Yes. If the employer refuses the employee's request on reasonable business grounds, they may propose alternative flexible work arrangements which the employer is able to accommodate.

Can a male employee ask for flexible work?

Yes. If the male employee has parental or caring responsibilities they can make a request for flexible working arrangements.

Can an employer ask for information about an employee's circumstances for which they have made a request for flexible work in assessing their request?

Yes. An employer can ask an employee to put together a business case and can ask for information required to help them make the decision about whether the circumstances for which they have made a request for flexible work can be met through the requested working arrangements.

Generally, an employer should only ask for information that is relevant to this decision. An employer should tell the employee why they are asking for the information, allow them to access it, and tell them who will receive copies of the information.

12

Who to contact for more information

12.1 Employees

Contacts for more information on parental leave and flexible work include:

- Your employer e.g. your manager, human resources representative, contact officer.
- Family Assistance Office
- Australian Human Rights Commission or the Human Rights Commission in your state
- Workplace Gender Equality Agency (formerly the Equal Opportunity for Women in the Workplace Agency)
- Fair Work Infoline or the Fair Work Ombudsman
- JobWatch or your Community Legal Centre
- Your union
- Private solicitor (referrals can be obtained through the Law Institute in your state)

12.2 Supervisors

Contacts for more information on parental leave and flexible work include:

- Human Resources representatives of your company
- Family Assistance Office
- Your company's legal advisors
- Australian Human Rights Commission or the Human Rights Commission in your state
- Workplace Gender Equality Agency (formerly the Equal Opportunity for Women in the Workplace Agency)

12.3 Links

- Australian Human Rights Commission
<http://www.hreoc.gov.au>
- Fair Work Infoline
<http://australia.gov.au/service/fair-work-infoline>
- Fair Work Ombudsman
<http://www.fairwork.gov.au/Pages/default.aspx>
- Family Assistance Office
<http://www.familyassist.gov.au>
- Workplace Gender Equality Agency (formerly the Equal Opportunity for Women in the Workplace Agency) <http://www.eowa.gov.au>



Appendix 1

Sample letters

Requesting parental leave

[Your name and address]

[Employer's name and address]

[Date]

Dear [name]

This letter is to let you know that I am pregnant and would like to take parental leave.

I wish to take [insert number weeks leave up to maximum of 52] weeks unpaid parental leave. [Optional: I note that under [employer's] policy, I am eligible to be paid [insert number] weeks parental leave during this time.] [Optional: I would also like to access my accrued untaken annual / long service leave of [insert number] weeks during this time.] I anticipate returning to work on [date] and look forward to returning to work in my role of [insert role title].

I will confirm these dates with you closer to my anticipated due date.

Yours sincerely

[name]

Requesting an extension to unpaid parental leave

[Your name and address]

[Employer's name and address]

[Date]

Dear [name]

This letter is to request an extension to my unpaid parental leave. As you know, I am due to return from parental leave on [date].

I would like to request an extension to this leave of [insert number to maximum of 52] weeks, so that my new return to work date will be [insert date].

I am happy to meet with you to discuss my request further.

Yours sincerely

[name]

Requesting flexible work

[Your name and address]

[Employer's name and address]

[Date]

Dear [name]

This letter is to request a flexible work arrangement following my return to work on [date]. As you know, I am due to return from parental leave on [date].

I would like to request [insert details of flexible work arrangement].

[Insert details of your 'business case' – you could use subheadings to cover each point.]

I am happy to meet with you to discuss my request further and [am free at the following times to do so / can come into meet with you to do so on [dates]]

Yours sincerely

[name]

Appendix 2

Checklist for employees

Requesting parental leave

This checklist will guide you through the process of applying for parental leave:

- Request a copy of your employer's parental leave policy and flexible work policy (if any)
- Inform your employer of your pregnancy, discuss with your employer if you are happy for them to communicate the news or whether you would like to do this yourself
- At least 10 weeks before your due date, prepare a letter (format above) to your employer confirming the pregnancy and your due date, and your leave dates
- Arrange a time to meet with your manager to plan your upcoming leave and to discuss how you'll stay in touch. You can also canvass flexible work options upon return to work if this is desired.
- Four weeks before leave, confirm your intended leave dates in writing
- Maintain contact with your workplace for the duration of your leave
- Consider whether you wish to request a flexible work arrangement or an extension to your unpaid parental leave, and take steps to make this request
- At least four weeks before your return to work date, check in with your employer about your plans to return to work. Consider: site inductions and security clearances, computer access and training to update skills (if required), facilities for expressing breast milk etc.

Requesting flexible work

This checklist will guide you through the process of making a request for flexible work:

- Obtain a copy of the employer's flexible work policy (if any)
- Consider your 'business case' for working flexibly
- Draft your request for flexible work and send it to your employer
- Telephone your manager to confirm your request and ask if a meeting to discuss the request would be useful
- If you are an eligible employee, the request should be responded to within 21 days
- If the request is agreed to, ensure it is documented

Appendix 3

Checklist for employers

Receiving a request for parental leave

This checklist will guide you through the process of receiving a request for parental leave:

- Obtain a copy of the company's parental leave policy and flexible work policy (if any)
- Check eligibility: will the employee have been continuously employed with the company for 12 months prior to the birth of the child in either a full time, part time, or long term casual role?
- Meet with the pregnant employee and discuss their leave plans. Make sure the employee is aware of formal notice requirements.
- Check if the employee wants to keep the pregnancy confidential or is happy for it to be more generally known
- Discuss and make any work adjustments needed to ensure health and safety during pregnancy
- Complete a performance review of the employee before they take parental leave, to assist with salary reviews during the leave and avoid discrimination risks
- Ten weeks before leave, check the employee has provided written notice of her intention to start parental leave, including start and end dates
- Four weeks before leave, check the employee has confirmed the intended dates in writing
- Arrange a time to meet with the employee to plan the upcoming leave and to discuss how you'll stay in touch
- Notify any replacement employee that their employment is temporary and that the pregnant employee has the right to return to their position.
- Maintain contact with the employee, as agreed, for the duration of the leave
- At least four weeks before the employee's return to work date, check in with the employee about their plans to return to work. Consider: site inductions and security clearances, computer access and training to update skills (if required), facilities for expressing breast milk etc.
- You must get in contact with the employee if there are any significant changes to the business or the employee's job e.g. a restructure or redundancy
- If the employee makes a request for extended leave, you must respond in writing within 21 days
- Provide the employee with their pre-parental leave role on return from parental leave, or if that position is no longer exists, an available position for which they are qualified and suited.
- Consider what assistance or facilities you can provide to the employee to assist them to settle back into their work role after a period of extended leave e.g. computer skills training, facilities to express milk etc

Receiving a request for flexible work

This checklist will guide you through the process of responding to a request for flexible work:

- Obtain a copy of the company's flexible work policy (if any)
- Check the employee's eligibility for requesting flexible work under the *Fair Work Act 2009*, if they are eligible, the request must be responded to within 21 days
- Consider all requests seriously and take into account all relevant facts and circumstances. A request cannot be refused unless it is reasonable to do so.
- Consider whether a meeting with the employee would help you in considering the request.
- Respond to the request within the time limit (if any) or as soon as reasonably possible if no time limit applies.
- If the request is agreed to, ensure it is documented
- If the request is refused, set out your reasons in writing to the employee
- If you agree to a trial period, ensure you follow up with the employee at the conclusion of the trial and document what is agreed
- Consider what assistance or facilities you can provide to the employee to assist them to settle back into their work role after a period of extended leave e.g. computer skills training, facilities to express milk etc



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