



EMPLOYEE INFORMATION

Parental leave

Including:

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Employee Guidelines for Parental Leave

The information and advice contained in these Guidelines is correct as at March 2010. As the Fair Work Act (FWA) 2009 will lead to the phasing out of state Awards at the end of 2010, some conditions may change for 2011. At this stage these Guidelines reflect state Award conditions except where the National Employment Standards (NES) 2009 provide for greater benefits to employees. NES overrides current conditions for parental leave where they are more generous than current Award conditions.

This document provides information largely for teaching and school support employees who represent the majority of employees who access parental leave. Should specific advice be required for employees working in other occupations and Awards, further advice may be sought from Employment Relations.

Frequently Asked Questions

1. ***What are maternity leave, paternity leave and parental leave?***

Parental leave is a statutory entitlement to 12 months unpaid leave. Each eligible member of an employee couple may take a separate period of up to 12 months of unpaid parental leave. However, if only one person is taking leave, or if one member of an employee couple wishes to take more than 12 months leave, the employee may request a further period of up to 12 months, from their employer.

In the terms of the Fair Work Act an 'employee couple' is where two employees are in a spousal or de facto relationship.

Maternity leave refers to a period of paid leave for female employees as a consequence of the birth of a child. Within the period of leave eligible full-time employees are paid 14 weeks maternity leave, or the appropriate pro rata payment for part-time employees.

Paternity leave is a period of paid leave for male employees whose spouse is due to give birth or has just done so. This leave is deducted from an employee's personal leave.

2. ***Who is eligible for parental leave?***

All full-time and part-time permanent employees who have completed 12 months continuous service (or who will have completed 12 months at the expected date of birth) in schools or offices of the Diocese of Parramatta or with other Catholic Diocesan employers or Catholic Independent Schools, and who have or will have responsibility for the care of a child, have a statutory entitlement up to 12 months unpaid parental leave.



Any female employee who is eligible for parental leave also has an Award entitlement to 14 weeks paid maternity leave.

A temporary employee may also have an entitlement to maternity leave, depending on the length of service at the expected date of confinement. However the maternity leave would cease at the end of the existing temporary contract.

Long term casual employees who have worked within the Parramatta Diocese, who can demonstrate a pattern of working for a reasonable period of time, in exceptional circumstances may be eligible for parental leave. Further enquiries should be directed to Employment Relations.

3. ***What entitlements are available?***

An employee who is entitled to parental leave can take any length of unpaid leave up to 52 weeks, and with a further option of an additional 52 weeks of unpaid parental leave following the original 52 week period (provided the other parent does not choose to take up this leave). Employer confirmation may be required to confirm that the partner is not taking parental leave for Diocesan employees.

The maximum period of paid maternity leave is 14 weeks.

A permanent employee who takes parental leave is entitled to return to their permanent position at the conclusion of the leave.

See also Question 10.

4. ***What is paternity leave?***

Paternity leave refers to Award based paid leave taken by a male employee in connection with the birth of his child. Paternity leave includes:-

- 1 day's paid leave on the date of birth
- up to 10 days continuous paid leave at any time in the 4 week period before the date or expected date of birth, & no later than 4 weeks after the birth, deducted from carer's leave entitlements
- unpaid paternity leave where a male employee is the primary care giver of the child.

Written notice of four (4) weeks must be provided before commencing paternity leave.

A principal in exceptional circumstances may request that a teacher take leave at a time outside the period specified above. If the teacher agrees to take leave outside the normal time period this variation must be confirmed in writing.

The father of a child also now has the right to 12 months unpaid parental leave.

5. **What is adoption leave?**

An employee is entitled to payment of adoption leave under the same conditions as those set out in Clause 12.1 (Teachers Award) for maternity leave, and this is referenced in Adoption leave (Clause 12.2) of the Teachers Award. Adoption leave is payable for one adopting parent of a child.

One day's paid leave is paid for the purpose of adopting any child provided that he or she is not also entitled to payment of adoption leave as per the above.

Under the National Employment Standards, access to unpaid parental leave in the case of adoption is the same as for the birth of a child.

6. **What information do I need to provide, and when do I need to provide this?**

The required notice for maternity and paternity leave is outlined below.

An employee may also need to provide a Statutory Declaration to their supervisor that they intend to be the primary care giver for the duration of the leave, details of any paternity leave to be taken by the father, and that they will not engage in conduct inconsistent with their contract of employment whilst on leave.

Notice for parental leave

Period	Maternity leave	Paternity leave
10 weeks	<ul style="list-style-type: none">Written notice before commencing leave of intention to take leave, including medical certificate confirming the pregnancy and due date	<ul style="list-style-type: none">10 weeks before commencing unpaid parental leave
4 weeks	<ul style="list-style-type: none">Written confirmation of commencing and finish dates	<ul style="list-style-type: none">Advice about 1 day absence around birth of child, and/or 2 weeks paid paternity leaveWritten confirmation of commencing and finish dates

7. **What conditions are required in applying for maternity leave?**

- paid maternity **leave must commence** no earlier than 1 term prior to the expected date of birth (clause 12.1(f) but may commence any time up to the due date providing medical certification is provided in later weeks to certify continuing fitness to work.

- employee must **not be on unpaid leave** at the time they commence the new maternity leave (clause 12.1(j) of the Teachers' Award) to receive a new period of paid maternity leave (subject to Clause 13)
- must provide **written notice** at least 10 weeks prior of intention to take parental leave, and 4 weeks before starting leave, give written notice of the specific parental leave dates
- must have **12 months continuous service** at the time of commencing the parental leave, unless in exceptional circumstances the employee is a long term casual (see Question 2).

8. ***What happens if my planned maternity leave varies from my leave application?***

If the baby is born earlier than the leave commencement date, the 4 weeks notice is waived, and the employee must give written notice, no later than 2 weeks after the birth confirming that she is now on maternity leave, and the anticipated date of return to work.

9. ***When do I have to start my maternity leave?***

Teachers and school support employees can work until the expected date of birth as long as medical certification close to the date confirms that they are physically able to do so. For teachers maternity leave cannot start earlier than 1 term prior to the expected date of birth.

10. ***What are my rights and options in returning to work after parental leave?***

An employee returning to work after a period of maternity leave is entitled to be employed in:

- a. the position held by the employee immediately before proceeding on that leave; or
- b. if the position no longer exists but there are other positions available that the employee is qualified for and is capable of performing, the employee is entitled to be employed in a comparable position to that of the employee's former position; or
- c. an employee may request flexible work arrangements based on specified carer responsibilities in relation to part-time or job share arrangements until their child reaches school age or 18 years where their child has a disability.

Where organisational changes occur to their appointed position during their maternity leave, an employee's existing employment entitlements will be maintained, including the application of relevant Diocesan policies which may include redeployment and redundancy policies.



11. ***How can I return on a flexible (part-time) basis after parental leave?***

An employee may seek to return on a part-time basis **after parental leave or at any time** where they have a child under school age or a disabled child under 18 years for whom they provide care.

If an employee wishes to return on a part-time basis after parental leave they should contact their supervisor at least 4 weeks before their resumption date, and by the start of Term 4 if the request relates to the following year's staffing. A request for flexible working should be made in writing. A supervisor should respond in writing within 21 days to a request to extend parental leave for a further 12 months, or for flexible work arrangements such as part-time work.

Reasonable business grounds for refusing a request may include:

- the effect on the workplace and the employer's business of approving the request, including the financial impact of doing so and the impact on efficiency, productivity and customer service
- the inability to organise work among existing staff
- the inability to recruit a replacement employee or the practicality or otherwise of the arrangements that may need to be put in place to accommodate the employee's request.

A supervisor may only refuse a request for flexible working if there are reasonable business grounds to do so, and must detail their reasons in writing.

See also question 32.

12. ***Can I work in a job share position after commencing my maternity leave?***

Yes – employees who have carer's responsibilities have the option to request a job share arrangement while on leave from their permanent position following maternity leave. The requirements for a job share are outlined in the Job Share Policy (2009).

13. ***How do I vary my leave application once I have started parental leave?***

Extension of leave

The NES allows an employee taking 12 months parental leave to request an extension of a further 12 months leave (up to 24 months in total), unless they are a member of an employee couple and the other member has already taken 12 months of leave. The right to request an extension of existing parental leave falls under the provisions of the NES.

Variation of approved parental leave

Parental leave may be varied within the two (2) year maximum period, in accordance with the extension of leave above and as follows:-



Maternity leave can be shortened only **with the consent of the employer**, and the request must be in writing with at least two term weeks notice.

Maternity leave can be lengthened **once only without employer consent up to a maximum of 52 weeks** by giving two weeks written notice in relation to the existing period of leave.

Maternity leave may be **further extended with employer consent** on one or more occasions.

Any request for further extension or variation beyond a 2 year period would be a discretionary matter for the employer.

14. ***How can I extend my period of unpaid parental leave once I have started parental leave?***

In accordance with Award provisions relating to the right to request a variation to existing employment, an employee is entitled to request to:-

- (i) extend the period of unpaid parental leave for a further continuous period of leave not exceeding 12 months
- (ii) return from a period of parental leave on a part-time basis until the child reaches school age.

The employer is obliged to consider the request on reasonable grounds and to inform the employee in writing of the decision.

15. ***Am I eligible for a new maternity leave period if I have not returned to my permanent full time position when I apply for a new maternity leave period? (for example when expecting another child)***

Yes. Subject to the conditions already outlined regarding eligibility for maternity leave, the Fair Work Act provides another 52 weeks **unpaid parental leave** in relation to subsequent pregnancies.

The CEO pays a second payment of 14 weeks maternity leave to an employee who falls pregnant within the period of the first 12 months parental leave, without requiring a resumption from maternity leave. However, after the first 12 months, an employee must have resumed work for a reasonable period to be eligible for another maternity payment, even though a new period of 52 weeks of maternity leave will be triggered.

A “reasonable” resumption period is a minimum of 4 weeks. The timing and circumstances should be negotiated with the principal. The period of work may be in an employee’s normal permanent position or in a temporary position. A full term (approximately 10 weeks) or equivalent period of working prior to a new period of maternity leave is desirable.

Where an employee’s due date **during the first 4 weeks of Term 1** may not allow for a reasonable resumption period prior to starting a new period of parental leave, the



requirement to resume work in Term 1 may be waived by the principal. In this case the new period of paid maternity leave would commence from the start of Term 1.

Subsequent maternity leave periods will be paid at the rate an employee was paid immediately prior to the start of the new maternity period.

Eligibility of long term casual employees for parental leave will be assessed on an individual basis by Employment Relations, including the applicable rate of pay.

If a subsequent pregnancy occurs after the original 12 month period and an employee is unable to resume work before starting a new period of maternity leave, the period of 14 weeks maternity leave will be unpaid, even though a new period of unpaid parental leave will commence.

16. ***What paid leave can I take together with my parental leave payment?***

Non teachers may apply for any accrued entitlements including long service leave and annual leave in addition to, paid maternity leave. The sum of all paid leave will be included in the original 52 week period of leave. Teachers may access long service leave, but their annual leave will always fall in the December/ January pupil vacation period.

17. ***Can I lose my position whilst I am on parental leave?***

An employer cannot terminate employment on the basis that an employee is, or has been, pregnant or is absent on maternity leave. An employee on maternity leave may resign at any time during the period of leave, by providing notice in accordance with the appropriate Award under which she is employed.

18. ***What happens if I need to take a long period of sick leave before I start my maternity leave?***

If an employee has not commenced parental leave 4 calendar weeks prior to the expected due date, any paid sick leave taken in that 4 weeks will be deducted from the 14 weeks paid maternity leave.

Sick leave taken prior to the last 4 calendar weeks as above will be in accordance with standard sick leave provisions.

19. ***What is special maternity leave?***

Special maternity leave is available to employees where:-

- a. a pregnancy terminates before the expected time of birth (other than by the birth of a living child); or where
- b. illness occurs which is related to the pregnancy and the employee has not commenced maternity leave

The period of unpaid leave taken in these circumstances is an amount of time certified as necessary by a medical practitioner. As an alternative, paid sick leave may be claimed and would need to be certified as relating to the pregnancy by an appropriate medical practitioner

20. ***What happens if I am fit for work but my doctor says that it is not advisable for me to continue in my present position? (eg. a student has an infection that my doctor says is a risk to the well being of my unborn child or my work involves a potential hazard to me.)***

Genuine efforts will be made to find an alternate placement at an appropriate workplace. If this transfer is not feasible the Fair Work Act states that you may be placed on paid “no safe work leave” until your parental leave commences. This leave is not debited from an employee’s existing sick leave balance.

Additionally, in these circumstances your employer can require you to commence parental leave up to 6 weeks before the expected date of delivery.

21. ***How does parental leave impact on my employment service?***

Continuity of service continues during any period of paid leave including maternity leave, and this will include salary increases, leave accrual, and holiday pay. **Accrual of ongoing benefits** during periods of unpaid leave ceases until paid employment recommences.

22. ***Can I work casually while I am on maternity leave?***

Teachers/employees may work casually during the **unpaid** component of a parental leave period. As such, employees cannot work casually during the paid component of parental leave or during any associated long service leave period.

23. ***Can maternity leave be cancelled***

Pending maternity leave applications are automatically cancelled if the employee withdraws the application in writing, or the pregnancy terminates other than by the birth of a living child.

If after starting maternity leave, the pregnancy of an employee terminates other than by the birth of a living child, or the child in respect of whom an employee is then on maternity leave dies, the following would apply.

The employee is entitled to resume work at a time nominated by her employer within 2 weeks after the date on which the employee gives her employer written notice stating that she intends to resume work and the reason for the intended resumption.

24. ***Can I work on a temporary basis for a school other than my own during the parental leave period from my permanent position?***

Yes – an employee can work for another school within the Diocese during a period of unpaid leave. This temporary arrangement should be documented including an employee letter, Change of Notice form, and Memorandum of Agreement form for



either a specific temporary engagement or for a Job Share arrangement.

In working on a temporary basis during her leave, an employee may continue her existing maternity leave from her permanent position.

25. ***What are the notice requirements if I work in a temporary position during my parental leave?***

Placement in a temporary arrangement as part of a job share for the following year must usually be negotiated by the end of Term 3, or with 2 terms notice before the leave resumption date.

Placement in a temporary arrangement which is not job share related should be negotiated with reasonable notice directly with the principal

26. ***What are the provisions for extending maternity leave during the second and third year of absence from my permanent position?***

Requests to extend parental leave into the second year will be considered by the employer in accordance with NES requirements.

Extensions of leave into a third year following maternity leave will not normally be approved, but in exceptional circumstances may be considered and treated as leave without pay. If such circumstances exist in relation to a request by a teacher, consideration would only be given to a request for leave timed to conclude at the end of a school term.

27. ***What are the entitlements and conditions for taking paternity leave?***

A male employee is entitled to 1 day's paid leave on the date of his wife's confinement or on the day she leaves hospital following confinement. He is also entitled to take up to 2 week's paid leave in one period within 4 week's of the birth of the baby. This leave is taken from his carer's leave entitlements. The leave can be taken prior to, around the time of, or following confinement.

An employee may also request a further period of unpaid (paternity) leave, concurrent with his spouse's leave, provided the total of all his leave periods do not exceed 8 weeks.

The NES gives the option for each parent to take 12 months unpaid parental leave (not at the same time) or for one parent to take 12 months leave and then exercise the right to request the second 12 month period.

28. ***What are the entitlements and conditions for taking adoption leave?***

The NES entitlements in the case of adoption are the same as those applying to a birth of a child.

One day's paid leave is also payable for an employee whose partner is accessing leave in relation to an adoption.



29. ***How does parental leave impact on my accreditation to teach (Institute of Teachers)?***

Accredited teachers may request a leave of absence from the NSW Institute of Teachers. Requesting a leave of absence from the Institute is not applicable where employees intend to work in a permanent, temporary or casual capacity as during a Leave of Absence it is illegal for teachers to teach in NSW.

Special provisions may be made by the Institute to address special circumstances such as sick and maternity leave for extended periods of absence from teaching. An application form is available on the Institute's website www.nswteachers.nsw.edu.au. Teachers should contact the Institute directly for advice.

The minimum period for Leave of Absence is six months or two terms, and the maximum period is five years. Accredited teachers must request Leave of Absence for the duration of this leave, using an application form from the Institute website.

Specific queries can be directed to the NSW Institute of Teachers on 1300 739 338, or to Kathleen Polo, Accreditation Officer, CEO on 9840 5728.

30. ***How does parental leave impact on my Child Protection clearance (employment screening)?***

Employment screening (Working with Children Background Check) is required following any absence longer than 12 months, or for any instance where a change of role occurs, irrespective of the length of absence from work.

31. ***How does parental leave impact on my superannuation?***

Employer contributions cease during the employee's period of maternity leave except for the 14 weeks of paid leave. The employee may continue to make contributions to their existing superannuation fund/s. Insurance coverage for total and permanent disablement and death cover remains operative for the full 12 months of maternity leave.

Where an employee intends to be on leave in excess of one year, this must be advised in writing to their superannuation fund.

Continuity of service is maintained during the period of maternity leave for the purposes of the superannuation fund.

32. ***What are my options if my principal does not approve my request for a part-time temporary position (flexible working) following my maternity leave?***

If a school is unable to accommodate a request for temporary part-time employment (flexible working) from an employee due to their carer's responsibilities flowing from a period of maternity leave, alternatives should be explored with the principal.



This may include alternate temporary part-time work, a further period of leave without pay or a return to the permanent full time position of the employee. Requests for flexibility in working should be considered within the broader context of flexible working and reciprocity of the employment relationship, in together with the teaching and learning needs of a school or workplace.

Following the above, an employee may apply to the Head of Staff Services in assisting with an employee's request for flexible working.

Refer also to Question 11.

33. ***Do school holidays form part of the 14 weeks of paid maternity leave?***

Where a teacher commences leave at the start of a term, the school holidays immediately before the leave do not form part of the 14 weeks of paid maternity leave. Additionally, the first 4 weeks of the Term 4 vacation period do not form part of the 14 weeks of paid maternity leave.

In other situations, school holiday periods within a period of paid maternity leave form part of the 14 weeks.

34. ***What does the Stay in Touch program provide for employees?***

The Stay in Touch program co-ordinated by Staff Services provides information, ongoing contact, professional learning opportunities, and assistance for re-entry after parental leave (2 casual days) to employees who take maternity leave.

35. ***If an employee extends their leave from their permanent position following their initial 12 month parental leave, is the new period of leave defined as a further period of parental leave or as leave without pay ?***

A second period of leave following the original 12 month parental leave period is deemed as parental leave if the circumstances comply with the "right to request" conditions of the NES.

Any period of leave in excess of two years, if granted (see Q. 26), or any leave sought which did not conform with the "right to request" provisions, would be defined as leave without pay.

For leave without pay, there is no employee option to vary existing leave dates during that leave as there is for parental leave.

Consequently, in any advertisement of vacancies which relate to a period of leave without pay as outlined above, the positions must be advertised and related letters for appointment processed as relating to leave without pay rather than parental leave.

36. ***What arrangements does my supervisor need to make if I want to continue breastfeeding after returning to work?***



Discrimination on the grounds of breastfeeding is unlawful discrimination. Accordingly accommodation must be made by a workplace in assisting an employee who wishes to continue breastfeeding after returning to work.

Employees may seek part-time employment following maternity leave in relation to this need, and may also seek to continue breastfeeding after returning to work.

Workplaces should review the available working conditions for staff to enable them to continue to breastfeed or express following maternity leave. A workplace space which is made available for this purpose must be hygienic, comfortable and private.

Possible parental leave scenarios

Case 1

Anita is taking unpaid parental leave during a second year of absence from her permanent position, and is expected to return to work in June and will have her second child in December.

Is this employee entitled to paid maternity leave as well as a new period of parental leave?

Yes. Where Anita returns to work for at least 4 weeks **prior to** starting the new period of parental leave she will be paid 14 weeks paid maternity leave at the rate she worked immediately prior to the start of her new parental period.

In other words, an employee must work for a minimum period (4 term weeks) following resumption from parental leave to trigger eligibility for a new period of paid maternity leave (subject to parameters identified in Question 15).

Case 2

Casey is taking parental leave for a second period of 12 months after taking an original 12 months period of parental leave. She is expected to return to work in mid February and will have her second child in early March.

Is this employee entitled to paid maternity leave?

Yes. Whilst the specific arrangements would be negotiated between the principal and Casey, in accordance with the option outlined in Question 15, Casey would be eligible for a new period of paid maternity leave from the start of Term 1. Given the school resumption in late January, the employer minimum requirement for a 4 week resumption period and the due date of the baby, it is unreasonable to require Casey to resume work before commencing the new period of parental leave.

Case 3



Carol is currently taking parental leave during the original 12 month period of leave, and is not working any temporary part-time blocks during this leave. She is expected to return to her substantive fulltime position in June. However Carol is due to have her second child in May.

Is this employee entitled to paid maternity leave for the baby due in May?

Yes. In accordance with question 13, Carol is entitled to a new application of paid maternity leave without resuming at work as the subsequent pregnancy falls within the original 12 month period.

Case 4

Vicki is currently on parental leave for the second 12 month period) and seeks a further extension into a 3rd year of leave without pay based on her carer's responsibilities.

Can this leave be approved?

While Vicki's request to extend her leave into a third year will be considered by her employer, there is no obligation by the employer to approve this request.

Extensions of leave without pay into a third year following maternity leave may be approved in exceptional circumstances, and would be treated as leave without pay. If the leave is granted, (and Vicki is a teacher), the leave would be timed to conclude at the end of a school term.

Case 5

Jan who last worked in her full time position 12 months ago before starting maternity leave, and who has worked in a temporary block at 0.4FTE teaching for a period of 6 months until the end of the year, is due to commence a new period of maternity leave the following January.

What rate of pay will Jan receive for a subsequent period of paid maternity leave, where she is normally a fulltime teacher but has most recently worked in a 0.4FTE temporary block?

Jan will be paid at the part-time rate of 0.4FTE as this reflects her most recent employment hours.

Case 6

Sharon's baby is due in January during the school holidays. She has worked until the end of Term 4 in the previous year.

When does her maternity leave commence?



Sharon's maternity leave will start from the beginning of the next term – in this case from Term 1 of the new school year. The same principle would apply for other situations where an employee works until the end of a term – their new maternity leave period would start from the commencement of the next school term.

Case 7

Peter's wife is having a baby in mid January.

When can he take his paternity leave?

The Award allows Peter to take up to 2 weeks unpaid paternity leave during the last 2 weeks of Term 4 or in the first 2 weeks of Term 1. He can access 1 day of paid leave on the day of confinement or on the day of his wife's departure from hospital.

Under the NES, he is also entitled to 12 month's unpaid parental leave, but not at the same time as his wife.

Resources - StaffNET

- Relevant Awards
- Industrial Relations Act of NSW (1996)
- Fair Work Act (2009)
- National Employment Standards (2009)
- Family Provisions Test Case (2005)
- Guide to Parental Leave and Personal/Carer's Leave (IEU)
- *Managing Home and Work Responsibilities policies* for school and CEO based staff (2004).