

## Principals Kit – Parental Leave

### 1. Purpose

The purpose of this part of the principals' kit is to give principals an overview of school employees' parental leave entitlements. Please note that parental leave entitlements can be a rather challenging and technical field, so please do not hesitate to contact NZEI Te Riu Roa for advice that is tailored to your specific circumstances.

### 2. Background

Parental leave is an entitlement that is conferred to eligible employees under the Parental Leave and Employment Protection Act 1987 (“**the Act**”). However, some of the Collective Agreements that govern school employees provide superior conditions to those employees. Whilst the Support Staff in Schools' Collective Agreement (“**SSCA**”) follows the Act exactly, the collective agreements that cover primary and area school teachers and principals contain some additional benefits.

This resource is set out in three parts:

- **Part one** deals with the parental leave entitlements for teachers, principals and support staff
- **Part two** clarifies the entitlements to paid parental leave
- **Part three** sets out the specific additional benefits available to teachers and principals
- **Part four** outlines some of the most common misunderstandings around entitlements

## Part 1: Parental Leave

### 3. Parental Leave

#### The 6 month employment test and the 12 month employment test

Under the Parental Leave and Employment Protection Act 1987, there are two main tests that govern whether an employee can take parental leave.

***Note** that these tests differ from the test that is applied to determine whether an employee can access paid parental leave payments, so it is a good idea to consider eligibility for parental leave and eligibility to paid parental leave payments separately.*

The following two tests determine whether an employee is eligible for parental leave:

An employee meets the **6 month employment test** if the employee has been employed by the same employer for at least an average of 10 hours per week in the 6 months preceding the expected date of birth of the child (or assumption of responsibility i.e. in cases of adoption).

An employee meets the **12 month employment test** if the employee has been employed by the same employer for at least an average of 10 hours per week in the 12 months preceding the expected date of birth of the child (or assumption of responsibility).

When applying the 6 month employment test and the 12 months employment test to teachers, please note that the reference to 10 hours of employment is a reference to hours of work and not a reference to the five daily contact hours that a teacher's pay is linked to.

***Note** further that the Act contains a special rule that applies only to teachers (and principals): Section 2AC of the Act deems teachers who are (or have been) employed in multiple teaching positions in state or state integrated schools over the past 6 or 12 months to be employed in one job for the purposes of benefits conferred by the Act. This means that teachers moving between schools or working part-time across different schools have an easier route to eligibility under the 6 month employment test or the 12 month employment test. **However, we emphasise that this statutory exception applies to teachers/principals in state or state integrated schools only - it does not apply to support staff or other school employees.***

#### 4. Parental Leave entitlements under the Act (and under the SSCA)

In terms of parental leave entitlements, the SSCA follows the Act exactly, so the entitlements under the Act and the SSCA are identical.

The Act describes several types<sup>1</sup> of parental leave, but the two most important ones to understand are **primary carer leave** and **extended leave**.

##### a. **Primary carer leave**

In somewhat simplified terms, primary carer leave is the leave an employee can access first when becoming a primary carer and it usually coincides with the paid parental leave payment period.

To be eligible for primary carer leave you must be the **primary carer** of a child and you must meet either the 6 month employment test or the 12 month employment test. In most

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<sup>1</sup> See Parental Leave and Employment Protection Act 1987, s 2(1).

circumstances, the primary carer is the biological mother of a child. However, the Act also provides for some circumstances where the primary carer can be –

- i. the biological mother's partner, or
- ii. another person who takes on permanent primary responsibility for a child under the age of 6 years.

So long as the primary carer meets either the 6 month employment test or the 12 month employment test, the primary carer can take up to **26 weeks of primary carer leave**<sup>2</sup>.

### ***b. Extended leave***

Extended leave is additional, unpaid leave that is available to a primary carer or the primary carer's partner. It is important to note that under the Act any primary carer leave taken in respect of a child reduces the extended leave entitlement that is available to be taken.<sup>3</sup>

If an employee meets the 12 month employment test, the employee and the employee's partner can access a combined 52 weeks of extended leave. However, this entitlement is reduced by any primary carer leave taken. As a result, the support staff employee meeting the 12 month employment take can take up to 52 weeks of parental leave in total - 26 weeks of primary carer leave and 26 weeks of extended leave.

An employee who meets the 6-month employment test but not the 12 months employment test, is eligible to take 26 weeks of extended leave under the Act. However, again this entitlement reduces by any primary carer leave taken.

In circumstances where a couple's eligibility for extended leave is evaluated and one person meets the 12 months test and the other "only" meets the 6 months test, the overall extended leave period that can be taken is 52 weeks (minus any primary carer leave taken). However, the person who meets only the 6-month tests can only take up to 26 weeks extended leave.

## **5. Pregnancy-related leave and partner's leave**

Under the Act, a pregnant employee is entitled to take 10 days of unpaid **pregnancy-related special leave**. However, school employees are in practice often better off using their accrued sick leave entitlements to attend medical appointments etc.

**Partner's leave** is the leave available to a partner of a primary carer. It is either one or two weeks in duration, dependent on whether or not the employee meets the 6 month employment test or the 12 month employment test. **Partner's leave is unpaid.**

## **6. Notice periods under the Act and under the SSCA**

Under the Act, an employee must usually give 3 months' notice to go on parental leave. The notice period should be accompanied by a letter from the midwife or medical practitioner confirming pregnancy. A medical practitioner or midwife is able to mandate that a pregnant

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<sup>2</sup> There are some circumstances where an employee can take more than 26 weeks of primary carer leave. For further information on this, please contact NZEI Te Riu Roa directly.

<sup>3</sup> Parental Leave and Employment Protection Act 1987, s26(3).

employee goes on parental leave even in circumstances where no or insufficient notice is given. When this happens, the usual 3-month notice period does not apply.

Once an employer receives notification from an employee to take parental leave, the employer must respond to the employee within 21 calendar days. When an employee has locked in a period of parental leave, it can usually only be changed with the employer's consent. However, there are limited exceptional circumstances when an employee can give an employer notification to return to work early. These include someone suffering a miscarriage, stillbirth or death of the child, or the employee or the employee's spouse not becoming primary carers.<sup>4</sup>

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<sup>4</sup> For further information about employee entitlements for a miscarriage or stillbirth, please contact NZEI Te Riu Roa directly.

## Part 2: Paid Parental Leave

### 7. Paid parental leave payments

So far, we have discussed eligibility for leave under the Act. On the school's end, parental leave is an entitlement to unpaid leave. However, the IRD provides eligible employees with 26 weeks of paid parental leave payments.

There is a separate statutory test that determines whether an employee is eligible to paid parental leave payments. To be eligible for paid parental leave payments, an employee needs to have been employed as an employee for an average of 10 hours or more in any 26 out of the 52 weeks prior to the expected date of birth of the child (or the date the employee becomes the primary carer).

***Note** that this test is more lenient than the 6-month employment test or the 12-month employment test in that all employment across the previous year is considered and the 26 weeks most advantageous to the employee are used. As an example, someone whose fixed term contract has come to an end without ever taking any parental leave may still be eligible for paid parental leave payments.*

The IRD form that needs to be used to apply for paid parental leave payments is an **IR880** and you can access the form [here](#). Note that paid parental leave payments are capped at an upper limit. At the time of writing, this limit is set at \$606.46 per week but this amount has changed several times over the past years and it is probably reasonable to expect that it will continue to do so. Any employee earning more than \$606.46 per week will just receive the capped maximum amount of weekly paid parental leave payments. Any employee who earns less than this, will instead get the greater of her/his normal pay and her/his average weekly earnings over the previous year.

**Note** that employees who give birth before the 36<sup>th</sup> week of gestation to a live baby are entitled to up to 13 weeks of extra preterm baby payments. Please do not hesitate to contact NZEI TRR directly if you have any questions about this.

## Part 3: Additional Conditions for Teachers and Principals

### 8. Primary Teacher and Primary Principals

#### a. Leave

The Primary Teachers' Collective Agreement ("PTCA") and Primary Principals' Collective Agreement ("PPCA") provide primary teachers and principals with superior parental leave conditions than are provided under the Act. More specifically, these Collective Agreements specify that any primary carer leave taken will not count against the teacher's entitlement to extended leave. Accordingly, a teacher meeting the 6-month employment test will be able to take up to 52 weeks<sup>5</sup> of parental leave and a teacher meeting the 12 month employment test will be able to take up to 78 weeks of parental leave<sup>6</sup>.

Under these Collective Agreements, the notice period to go on primary carer leave is one month minimum - not three months as would be the case in a straightforward application of the Act.

The Collective Agreements further specify that employees with less than one year of service must also be granted 26 weeks of parental leave (irrespective of whether they meet the statutory 6-month employment test.)

#### b. Parental grant

The parental grant is a lump sum payment available to teachers and principals who are eligible to primary carer leave and who either takes some (or all) of this leave or resign on the grounds of pregnancy. In cases of stillbirths, the grant is payable, however the Collective Agreement does not provide for the payment of the grant in case of a miscarriage. The parental grant is usually<sup>7</sup> paid out as a lump sum of 6 weeks of the employee's full salary that would have been applicable at the date of birth of the child (or placement in case of an adoption). It is crucial that the school gets proof of pregnancy or confirmation of suitability for adoption placement when parental leave is booked (or the employee resigns on the grounds of pregnancy).

The school applies for the grant by using a **Novo27** form and the principal will need to make a certified copy of the child's birth certificate or proof of approved adoption placement.

**Note that the grant is paid per pregnancy. So, whilst it is possible for an employee to get the parental grant more than once throughout a career, employees who have a multiple birth can only get one parental grant for this.**

It is financially prudent for the employee to delay applying for the parental grant until paid parental leave payments have finished as the employee will otherwise be charged secondary tax for the parental grant.

#### c. Returning to work after an absence for childcare reasons

If a teacher returns to the sector after up to 4 years away to care for pre-school children, they are able to apply for jobs and essentially receive preferential treatment in their application process. They still need to have the necessary skills to do the mahi but,

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<sup>5</sup> 26 weeks of primary carer leave plus 26 weeks of extended leave

<sup>6</sup> 26 weeks of primary carer leave plus 52 weeks of extended leave

<sup>7</sup> The exception would apply in circumstances where an employee had just temporarily reduced her hours prior to going on leave.

subject to them following the correct process, they must be provided with preferential treatment in the application process. Teachers can also get service credits for pay progression purposes for time that they had off work to care for their own children.<sup>8</sup> For more information on this subject, please contact NZEI Te Riu Roa directly.

## **9. Area School Teachers and Area School Principals**

Area school teachers and principals can also access leave entitlements that are superior to those in the Act. The Area School Teachers' Collective Agreement presumes a pregnant teacher's eligibility to parental leave.

A teacher/principal with 12 months or more of service can access 12 months of leave initially and can give notice to the employer within the first 9 months of going on leave to take another 12 months leave - bringing the overall entitlement to 24 months of parental leave.

**Note:** *If a teacher is specifically employed to cover a teacher who is on parental leave, the fixed term contract for the long term relieving should be tied to a specified event – the return to work of the teacher on parental leave - as the ASTCA gives teachers a right to return to their job subject to giving one month's notice.*

If a teacher intends to resign from her contract due to pregnancy, the teacher must be advised of her right to take parental leave.

The parental grant discussed in Part 8b of this resource is also available to area school teachers and principals. The same applies for the provisions related to childcare credits and preferential treatment on return to the teaching service. The notice period to go on parental leave is one month, which is in line with the notice period specified in the PTCA.

Partners of primary carers are entitled to two days of special paid leave to attend the birth of their child under the Area School teachers' Collective Agreement.

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<sup>8</sup> See PTCA Appendix 6, clause 8.

## **Part Four: Parental Leave - Some Common Misunderstandings to Avoid**

### ***a. 6 months' standdown***

An employee is not able to take parental leave within 6 months of another period of parental leave ending. Similarly, it is not possible for an employee to receive paid parental leave payments within 26 weeks of another round of paid parental leave payments ending. However, note that this rule is restricted to periods of parental leave.

### ***b. Keeping-in-touch hours***

The Act permits employees to work during parental leave. However, there are restrictions on working during the time when you are receiving paid parental leave payments:

- An employee usually<sup>9</sup> cannot work at all within the first 28 days after giving birth; and
- can only work for up to 64 hours total during the time when she/he receives paid parental leave payments.

If an employee violates either of these restrictions, the Act deems the employee to have returned to work and from this point onwards she/he will be ineligible for any parental leave payments. Working after the 26 weeks of paid parental leave payments have ceased (i.e. while an employee is on extended leave) is less problematic.

### ***c. Sliding from sick leave onto parental leave***

It is frequently tempting for school employees with large sick leave balances to try using these as a way to start parental leave early and be paid for the absence. Whilst an employee may be too sick to be at work while pregnant, an instruction from the midwife to start parental leave early, is an instruction to take parental leave - not sick leave. Processing this as sick leave can result in overpayments that Education Payroll may follow up.

### ***d. Cancelling NZEI Te Riu Roa membership***

NZEI Te Riu Roa members can retain membership for free while they are on parental leave. Just email [membership@nzei.org.nz](mailto:membership@nzei.org.nz) and ask the team to pause fee payments. In that way the employee retains full membership and can call us for advice when needed.

### ***e. Employing long term relievers to cover employees***

If a school is employing a long-term reliever to cover for an employee on parental leave it is frequently prudent to tie the fixed term contract to the occurrence of a specified event (i.e. the permanent employee's return from parental leave) as opposed to making the fixed term end at a predetermined date. This is particularly necessary in area schools, but it is also important in primary schools.

### ***f. Impact on holiday pay***

It is a good idea to seek advice from NZEI Te Riu Roa on the impact of parental leave on holiday pay as this can be a fairly tricky area and advice differs across different types of employees.

### ***g. Service-related benefits***

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<sup>9</sup> Exceptions apply to employees who give birth to preterm babies.



The Act prescribes that parental leave does not break service for the purpose of any rights and benefits that are conditional on unbroken service. A lot of benefits and entitlements across the Collective Agreements in the school sector are conditional on unbroken service and these are not always automatically processed correctly by Education Payroll. So, it is a good idea for employers and employees to keep a close an eye on entitlements such as employees' sick leave balances.