

# INDUSTRIAL RELATIONS



## PROPOSED CHANGES TO UNPAID PARENTAL LEAVE RULES WHAT YOU NEED TO KNOW

### *What you need to know:*

- *The Federal Parliament will soon consider changes to parental leave rules that will give workers ability to take existing unpaid parental leave entitlements on a more flexible basis;*
- *This will include taking up to 30 days of their existing unpaid parental leave in short blocks (including for a single day) instead of taking it all in one continuous block;*
- *Changes are also likely to the rules for parents returning to work who have experienced an infant death or stillbirth, including an extension to the period of available unpaid leave.*

### Background:

- The [Fair Work Amendment \(Improving Unpaid Parental Leave for Parents of Stillborn Babies and Other Measures\) Bill 2020](#) is likely to be debated by the Parliament before the end of 2020.
- The Bill will:
  - Increase the entitlement for unpaid parental leave for those who have experienced a stillbirth or infant death to a maximum of 12 months (up from 6 weeks).
  - Provide greater flexibility around returning to work for parents of premature babies, or babies that experience birth-related complications that result in immediate hospitalisation.
  - The Bill also seeks to provide the ability to take up to 30 days of their existing 12-month entitlement to unpaid parental leave flexibly (including on a single day basis), within 24 months of the birth or adoption of a child. This would complement the new flexible government-funded Paid Parental Leave scheme as amended by the [Paid Parental Leave Amendment \(Flexibility Measures\) Act 2020](#) earlier this year.
- Further details are set out below.

### Flexible unpaid parental leave

- In June this year the government-funded Paid Parental Leave scheme, administered by Centrelink, was amended by the [Paid Parental Leave Amendment \(Flexibility Measures\) Act 2020](#) to provide more flexibility.
- However, in order for an employee to access the Parental Leave Pay, the employee must generally not be at work. Under the current Unpaid Parental Leave (UPL) entitlement under the Fair Work Act, UPL must be taken in a single continuous block. Once an employee returns to work, they will usually forfeit any remaining untaken UPL.

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- Without changes to the Fair Work Act, employees seeking to access flexible Parental Leave Pay will generally need to negotiate additional time off work or a part-time return to work with their employer.

### **Changes proposed by the Bill**

- To address the discrepancy between the government-funded Paid Parental Leave scheme and the ability to take UPL:
  - The Bill seeks to amend the Fair Work Act to allow parents to take up to 30 days of their existing entitlement to 12 months of UPL flexibly, including on a single-day basis, at any time within two years of birth or adoption.
  - Note that any period of 'continuous' UPL must be taken first, before the flexible portion of the UPL.

### Stillbirth and infant death

- Under the current law, if an employee has started birth-related UPL when their child is stillborn or dies, they are entitled to remain on UPL unless their employer directs them to return to work with six weeks' notice. They can also choose to return to work within four weeks' (with the employer notifying the specific day of return in that period). If an employee is not on UPL when the child is stillborn or dies, either the employee or their employer can cancel any upcoming leave.

### **Changes proposed by the Bill**

- The Bill seeks to "improve and clarify" minimum leave entitlements for parents of stillborn babies and babies who die during the first 24 months of life by:
  - Ensuring that parents of stillborn babies have the same entitlement to UPL as parents of live babies (including by allowing these employees to start UPL in relation to a stillborn child even if they have not previously given notice to their employer).
  - Removing an employer's ability to recall a parent on UPL back to work or cancel any upcoming planned period of UPL following a stillbirth or death of a child or an infant.
  - Allowing employees in these circumstances who wish to return to work earlier the ability to do so by providing their employer with at least four weeks' written notice.
  - Allowing employees who are on UPL to take compassionate leave following the stillbirth or death of the child in relation to whom the employee is taking UPL.
  - Making explicitly clear that employees can take compassionate leave in relation to a stillborn child if that child would have been an immediate family or household member had the child been born alive.

### Hospitalisation of a child immediately after birth

- The Bill also seeks to amend UPL entitlements for parents who experience premature birth and other birth related complications that require the child to be hospitalised immediately following birth.
- Under the current law, parents of premature babies have the same entitlement to UPL as other parents. However, because UPL must generally be taken in a single continuous period, premature babies and other babies with birth-related complications who remain in hospital for some time following birth may result in affected parents having less time at home with their child than they had initially expected.

### **Changes proposed by the Bill**

- To address, this, the Bill seeks to allow parents of premature babies and newborns who require hospitalisation immediately following birth to agree with their employer to effectively put their UPL 'on hold' while their baby is hospitalised, and resume their UPL when the baby goes home.
- This measure also aligns with the PPL Act, which allows parents in this situation to return to work and continue to receive the Government-funded parental leave payment.

### **What does this mean for employers?**

- Employers should be aware that changes to unpaid parental leave entitlements are likely to soon become law. However, until Parliament has passed the Bill, no changes are necessary.
- Employers may wish to notify any employee who is likely to take unpaid parental leave in the near future about these changes, and consider any impacts arising if the changes become law

### **Requiring assistance or have any questions**

Please contact your Employee and Industrial Relations team at [iradvice@mbawa.com](mailto:iradvice@mbawa.com)

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