

## AUSTRALIA'S FIRST GOVERNMENT-FUNDED PAID PARENTAL LEAVE SCHEME

**JUNE 2010**

The Paid Parental Leave Bill 2010 has now passed through the Senate, entitling eligible parents of babies born or adopted on or after 1 January 2011 to 18 weeks of government-funded paid parental leave (**PPL**) at the minimum wage (\$569.90 per week).

### WHO IS ELIGIBLE TO RECEIVE PAID PARENTAL LEAVE

As a starting point, a parent is eligible for PPL if they are the primary care giver for a newborn child or an adopted child under the age of 16 who is born or adopted on or after 1 January 2011.

Secondly, the parent must satisfy each of the following tests:

- *Work Test* - the primary carer must have been engaged in work continuously for at least 10 of the 13 months preceding the expected birth or adoption of the child, with a break of no more than eight weeks between any two consecutive work days. They must also have undertaken at least 330 hours of paid work during the 10-month period (an average of one day a week).
- *Income Test* - The primary carer's adjusted taxable income in the full financial year before the claim or birth (whichever is earlier) must not exceed \$150,000.00 (indexed in line with the baby bonus).
- *Residency Test* - The primary carer must be an Australian resident living in Australia or resident at the date of birth of the child and remain so for the parental pay leave period, or otherwise satisfy the residency test. The holder of a permanent visa, a New Zealand citizen who arrived in Australia on a New Zealand passport or the holder of a specified temporary visa may also be eligible.

If the claimant parent or their partner is eligible for the baby bonus for the child then PPL will not be paid. Full-time, part-time and long-term casual employees, as well as contractors and the self-employed may be eligible under the scheme.

### PPL RIGHTS ARE ADDITIONAL TO EXISTING RIGHTS

An employee's entitlement to PPL is additional to any existing employer-funded entitlements (either at the same time or consecutively). Also, PPL will complement existing parental entitlements under the National Employment Standards in the *Fair Work Act 2009 (Cth)* (that is, the amount of PPL taken is deducted from the employee's unpaid parental leave entitlement).

Employers with existing paid parental leave schemes of their own might wish to review their current schemes to determine whether they need to be amended to take account PPL into account.

### EMPLOYER PAYMASTER

From 1 January 2011 until 1 July 2011, eligible parents will claim their payment of PPL directly from the Family Assistance Office.

The scheme provides, however, that from 1 July 2011, where an eligible working parent has 12 months of continuous service with a particular employer (or, if the parent is a casual employee, has worked a series of

engagements during at least 12 months on a regular and systematic basis), the employer will become the pay-master of the PPL. This aspect of the scheme met with a great deal of resistance from employers while the Bill was before Parliament, given the potential administrative costs of implementing the scheme.

Under the scheme, the Family Assistance Office will transfer PPL funds to the employer so that the employer can pay the employee as part of its normal pay schedule. The employee will be taxed on the PPL as on normal wages. Employers are not obliged to make any payment to an employee for PPL until they have received this payment from the Family Assistance Office.

PPL must be taken in one continuous 18 week period and all pay must be received before the child's first birthday (or within 12 months of the date of placement for adoption). It can be transferred from mother to father, for example if the mother cares for the child for the first nine weeks and the father cares for the child for the remaining nine weeks, however the father or partner of a birth mother is generally not eligible for PPL unless the mother is eligible.

PPL does not count as 'paid leave' under the National Employment Standards, and therefore it does not count as service for an employee.

### **'KEEPING IN TOUCH'**

The scheme allows a person on PPL to return to paid work for a maximum of 10 'keeping in touch days' while on PPL. A workday will be treated as a 'keeping in touch day' if the purpose of performing the work is to enable the person to keep in touch with his or her employment in order to facilitate a return to work after PPL (e.g. meetings, training etc) and both the employer and employee consent to the person performing that work on that day.

### **WHAT SHOULD EMPLOYERS DO IN LIGHT OF THE INTRODUCTION OF PPL?**

1. Review existing employer-funded paid parental leave schemes to determine whether any changes are required to take into account government-funded PPL.
2. Educate pay-roll officers regarding obligations to administer the PPL scheme after 1 July 2011.
3. Review contracts and policies to ensure compliance with this new entitlement.

If you have any questions in relation to this bulletin then please do not hesitate to contact any of the members of CG Law's workplace relations team.

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