



An Australian Government Initiative

Supporting Working Parents

A Toolkit for Employers

2015



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TOOLKIT**

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INCLUDES TOOLS & GLOSSARY



**SUPPORTING
WORKING
PARENTS**

Supporting working parents: a toolkit for employers

Supporting pregnant employees, employees on parental leave and working parents makes great business sense because it helps:

- Improve **retention** of employees;
- Attract new **talent**;
- Improve business **productivity**;
- Foster a **positive organisational culture**;
- Promote **diversity** and **innovation**; and
- Improve **compliance** with legal obligations.

Steps to set up your business to succeed:

- Understand your legal obligations.
- Communicate openly and genuinely.
- Recognise discrimination can be unintentional and based on assumptions.
- Take all reasonable steps to ensure everyone in your organisation is aware of their obligations.
- Ensure managers are well informed about the entitlements of pregnant employees, those on parental leave and those returning to work from parental leave.
- Ensure policies and procedures are fair and transparent.
- Monitor the implementation of policies.

This toolkit is a practical guide for employers. It promotes understanding of the laws relating to pregnant employees, employees on parental leave and working parents. These laws include the *Sex Discrimination Act 1984* (Cth), state and territory anti-discrimination legislation, the *Fair Work Act 2009* (Cth) and federal, state or territory work health and safety legislation. These laws apply to most workplaces in Australia.

This toolkit is the result of extensive consultation with business and has been developed in close collaboration with all relevant government departments and agencies.

This project would not have been possible without the generous support of PwC.

For a summary of this document, see the **Employer Quick Guide** at www.supportingworkingparents.gov.au

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1. Understanding the legal framework

1.1 Key points

TOP TIP

Communicate clearly to ensure information is understood

Consider what information or training your organisation can make available to employees and managers.

Support managers as well as any Human Resources personnel so they can liaise appropriately with employees in discussions about pregnancy, safe work, requests for parental leave and returning to work.

- Employees and employers have rights and responsibilities relating to pregnancy, parental leave and return to work under several different laws including the *Sex Discrimination Act 1984* (Cth), state and territory anti-discrimination legislation, the *Fair Work Act 2009* (Cth) and federal, state or territory work health and safety legislation.
- Some organisations provide more than the minimum conditions set out in law. These may be found in employment contracts, organisational policies and practices, enterprise agreements or awards. You should be familiar with these obligations and understand which ones apply to you.

1.2 What laws apply?

LEGISLATION	WHO IS COVERED?
Sex Discrimination Act	All employers and all employees including full-time, part-time, casuals, independent contractors, commission agents, contract workers (such as labour hire) and prospective employees, except state and local government employees.
Fair Work Act	Provisions in the Fair Work Act relating to parental leave and related entitlements apply to all employees and employers in Australia. Other provisions of the Act, including those relating to flexible working arrangements, apply to all employers and employees except: <ul style="list-style-type: none"> • State government in Tasmania • State and local government in New South Wales, Queensland and South Australia; and • State government in Western Australia or those employed by private sector employers and local government entities that are not trading or financial corporations (such as sole traders, partnerships, or other unincorporated entities). See: http://www.fairwork.gov.au/about-us/the-fair-work-system if you are unsure whether the Fair Work Act applies to you. Employees who are not covered more generally by the Fair Work Act are still protected from dismissal on discriminatory grounds (such as pregnancy) due to the unlawful termination provisions of the Act.
Work health and safety legislation	All businesses and workers in all jurisdictions, except in Victoria and Western Australia, which cover all employers, employees and others at the workplace.
State and territory anti-discrimination legislation	<p>ACT: <i>Discrimination Act 1991</i> (ACT): all employers and employees in all sectors and industries including paid and voluntary work, full-time, part-time, contract or casual and those involved with an organisation (such as board or management committee members); except Commonwealth government employees.</p> <p>NSW: <i>Anti-Discrimination Act 1977</i> (NSW): all employees and applicants, commission agents and contract workers - full-time, part-time and casual workers. Employers include partnerships (6 or more partners), local government councillors, industrial organisations, qualifying bodies, employment agencies and some voluntary organisations. Commonwealth organisations are not covered.</p> <p>NT: <i>Anti-Discrimination Act 1992</i> (NT): all workers (full-time, part-time, casual, permanent and temporary); also includes those under a contract for services, persons employed in whole or in part on a commission basis, a statutory appointment, a person with an impairment employed in a work program, or a person under a guidance program, vocational training program or other occupational training or re-training program.</p> <p>QLD: <i>Anti-Discrimination Act 1991</i> (QLD): all people applying for work and protects most workers including full-time, part-time, casual, contractors, subcontractors, trainees, apprentices and volunteers; except Commonwealth Government employees.</p> <p>SA: <i>Equal Opportunity Act 1984</i> (SA): all types of workers, including full-time, part-time, casuals, independent contractors, commission agents, partners in a firm, contract workers, unpaid workers and prospective employees, irrespective of the size of the organisation; except Commonwealth government employees.</p> <p>TAS: <i>Anti-Discrimination Act 1998</i> (TAS): all employees in all sectors and industries - paid or voluntary, full-time, part-time, contract, casual and those involved with an organisation (such as board or management committee members); except Commonwealth government employees.</p>

SEE TOOL 1

Policies to support working parents



LEGISLATION	WHO IS COVERED?
	<p>VIC: <i>Equal Opportunity Act 2010</i> (VIC): all types of employers of all sizes and all types of workers, including full-time, part-time and casual employees, trainees, probation and contract workers. Some aspects of the law also apply to volunteers and volunteer organisations. The Act applies to all stages of employment, including recruitment, returning to work after injury, illness or pregnancy, and dismissal and retrenchment.</p> <p>WA: <i>Equal Opportunity Act 1984</i> (WA): all employees in all sectors and industries – paid or voluntary, full-time, part-time, contract, casual and those involved with an organisation (such as board or management committee members); except Commonwealth government employees.</p>

1.3 What is pregnancy or return to work discrimination?

Under the **Sex Discrimination Act** it is unlawful to discriminate against an employee on the basis of, for example, their sex, pregnancy, potential pregnancy, family responsibilities and breastfeeding.

It is discrimination to treat an employee less favourably or disadvantage an employee because of a characteristic that is thought to apply to someone because of these grounds (such as assuming a pregnant employee may be unable to concentrate and therefore not giving her certain tasks).

Discrimination can be direct or indirect:

- **Direct discrimination** happens when a person is treated less favourably than another person because of, for example, their sex, pregnancy or potential pregnancy, breastfeeding or family responsibilities.
- **Indirect discrimination** happens when there is a rule, policy, requirement or practice, which appears neutral on its face but actually disadvantages a certain group of people (e.g. those who are breastfeeding) and is not reasonable in all of the circumstances.

Vicarious liability

Under the Sex Discrimination Act, employers can be held legally responsible for acts of discrimination or harassment that occur in the workplace or in connection with a person's employment.

This is known as vicarious liability and to minimise liability, employers need to demonstrate that they have:

- Taken all reasonable steps to prevent discrimination or harassment; and

- Responded appropriately to resolve incidents of discrimination and harassment.

For further information see the Australian Human Rights Commission's *Good Practice Good Business factsheet* on vicarious liability.

State and territory anti-discrimination laws

The Sex Discrimination Act is Commonwealth legislation but state and territory laws may provide additional obligations in relation to pregnancy and return to work discrimination.

For example, in Victoria, under the *Equal Opportunity Act 2010* (VIC) employers must not unreasonably refuse to accommodate the parental or caring responsibilities of an employee or prospective employee.

Also, the *Northern Territory Anti-Discrimination Act 1992* (NT) provides a positive obligation on employers to reasonably accommodate special needs an employee may have because they are pregnant, breastfeeding or are a parent.

The Fair Work Act

This Act makes it unlawful to discriminate on the basis of pregnancy, sex, family or carer's responsibilities, or to take adverse action against an employee because they have the right to take parental leave, have exercised the right to take parental leave or propose not to exercise the right to take parental leave.

➔ EXAMPLE 1

Direct discrimination:

Refusing to employ a woman because she is pregnant or may become pregnant.

➔ EXAMPLE 2

Indirect discrimination:

A policy requiring that all managers work full-time might disadvantage women, who are more likely to need to work part-time due to family responsibilities.



1.4 Can pregnant employees and their partners take parental leave?

Under the Fair Work Act, employees with at least 12 months of continuous service with their employer immediately before the birth or expected birth of their child are entitled to take 12 months of unpaid parental leave if they will have a responsibility for the care of the child. This applies to both the pregnant employee and the spouse or partner of a pregnant woman.

Casual employees are also entitled to up to 12 months of unpaid parental leave if:

- They have been employed by the employer on a regular and systematic basis for 12 months immediately before the date of birth or expected date of birth; and
- But for the birth of the child, they would have a reasonable expectation of continuing employment with the employer on a regular and systematic basis.

Parental leave entitlements for members of an 'employee couple' are set out at 3.4 on page 16.

Notice requirements and extensions to the initial 12 months are set out in 3.3 on page 14.

Where an employee is not entitled to unpaid parental leave under the Fair Work Act, anti-discrimination laws still apply. This means an employer must ensure the employee's sex, pregnancy or family responsibilities does not unfairly influence a decision to reject the employee's leave application.

An employee may also be entitled to a period of paid parental leave under an applicable award, enterprise agreement, policy or their contract of employment.

There is also the Australian Government Paid Parental Leave scheme which provides two payments - Parental Leave Pay and Dad and Partner Pay. See 3.8 on page 18.

1.5 What work health and safety obligations do I have?

Under work health and safety laws you have an obligation to ensure, so far as is reasonably practicable, the health and safety of all workers, including pregnant or potentially pregnant workers and workers returning to work after childbirth.

This also requires you to consult, so far as is reasonably practicable, with workers who are or are likely to be directly affected by a matter relating to health and safety at work.

Additional requirements apply in relation to higher-risk work, for example lead-risk processes, aviation, underwater diving and working with chemicals.

Under the Fair Work Act, regardless of an employee's status or length of service, if a pregnant employee provides you with evidence that she is fit for work (e.g. a medical certificate) but that it is inadvisable for her to continue in her present position because of illness or risks arising out of her pregnancy or hazards connected with her job and there is an appropriate safe job available, she is entitled to be transferred to the appropriate safe job.

For information about transfers to a safe job and no safe job leave under the Fair Work Act see 2.6 on page 11.



1.6 More information

The '**contact us**' section sets out the various organisations which can provide extensive information on the relevant laws and may be able to assist with resolving workplace issues.

Below are useful publications:

- **Australian Human Rights Commission**
 - *Good Practice Good Business* factsheets
- **Fair Work Ombudsman**
 - *Information for parents and families*
 - *Fact sheets and best practice guides:*
 - *Minimum workplace entitlements*
 - *Parental leave and related entitlements*
 - *Workplace discrimination*
 - *Online learning centre and course on difficult conversations in the workplace*
 - Resources on resolving workplace issues

2. Pregnant employees

2.1 Key points

TOP TIP

Accommodate change

Offer congratulations and don't make assumptions about what your employee can or can't do – discuss any concern you may have with your employee about her ability to perform the requirements of the role. Discuss with your employee any changes that need to be made so she can continue to work safely during her pregnancy.

Common ways to accommodate pregnant employees include more breaks, different start and finish times, provision of a car space, ensuring employees can have toilet breaks as needed and a chair to sit on if the job usually involves standing up for long periods of time.

- In order to meet your obligations under anti-discrimination laws, ensure that pregnant employees are not subjected to negative comments, remarks and jokes about their pregnancy.
- So far as is reasonably practicable, you must put systems in place to ensure the health and safety of all your workers, not just employees, while at work.
- You should discuss with your pregnant employee any changes that need to be made so she can continue to work safely during her pregnancy.
- As being pregnant in and of itself, is not technically an illness under the Fair Work Act, use of personal/carer's leave depends on individual circumstances.
- If you allow employees to access paid or unpaid leave for other purposes, to meet your obligations under anti-discrimination laws, you should afford pregnant employees the same flexibility in regard to attending prenatal medical appointments.

2.2 Can I ask an employee if she is pregnant?

Even if you suspect an employee is pregnant, perhaps because she is showing signs of morning sickness, or has taken some personal/carer's leave, you should generally not ask and should wait for the employee to notify you of her pregnancy.

If, however, you suspect that an employee is pregnant and there are genuine work health and safety concerns, you should ask her in a confidential and sensitive manner and make reasonably practicable adjustments to her current role.

It is very important that managers respect an employee's request for confidentiality regarding

their pregnancy and when and how their pregnancy should be disclosed to others in the workplace.

If managers need to speak to Human Resources or a colleague responsible for work health and safety about an employee's pregnancy, this should be done in consultation with the pregnant employee.

Under anti-discrimination laws, employees who may be (or are) pregnant must not be disadvantaged or treated less favourably than other employees when it comes to, for example, promotions, pay reviews and other workplace opportunities.

SEE TOOL 2

Responding to pregnancy announcements



2.3 When should an employee tell me about her pregnancy?

While an employee does not generally have to notify her employer that she is pregnant, there may be health and safety reasons (for both the employee and her unborn child) to do so.

All people in the workforce have a duty to take care of their own health and safety and to comply, so far as they are reasonably able to, with any reasonable instruction given by their employer to allow their employer to comply with work health and safety obligations.

Written notification by the pregnant employee as early as possible is advisable for higher-risk jobs (e.g. involving using or handling lead or other hazardous chemicals) and notification is mandatory for pregnant women who are working with lead in Western Australia.

If your workplace poses special risks to pregnant employees, you should proactively provide

adequate information about those risks and any health monitoring requirements to all employees, not just to those who are known to be pregnant. This will help employees in higher-risk jobs to make an informed decision about when to notify you of a pregnancy or planned pregnancy to help you adequately manage the work health and safety risks.

Notification may be a pre-requisite to obtaining certain employee entitlements. For example, if an employee is eligible and wishes to take unpaid parental leave under the Fair Work Act, the employee must notify you in writing at least 10 weeks before starting the unpaid parental leave or, if this is not possible, as soon as practicable (which may be after the leave has started). See 3.3 for notice requirements for the taking of unpaid parental leave under the Fair Work Act.

2.4 What are my work health and safety obligations?

You must do what is reasonably practicable to ensure the health and safety of all your workers, including those who are pregnant. As pregnant workers' needs may change during their pregnancy, you will need to take these changes into account and respond accordingly to meet your work health and safety obligations.

Managing risks to health and safety at work

Managing risks means eliminating or minimising risks, so far as is reasonably practicable.

As part of your general approach to managing risks, you should identify and assess any health or safety risks to workers of childbearing age and in particular risks to pregnant women and new mothers. For example, risks that may arise from any process, working conditions, physical requirements or exposure to biological or chemical agents.

You must also implement adequate risk control measures, to address those risks.

Putting plans into place is an easy way of ensuring everyone knows how to respond to work health and safety concerns when they need to.

Higher-risk workplaces

If your workplace poses special risks to pregnant women and/or new mothers, you should proactively provide adequate information about those risks and any health monitoring requirements to all your workers, not just to those who are known to be pregnant.

Providing this kind of information early is important because workers may not disclose their pregnancy if they do not have relevant information about the workplace risks.

Additional requirements may apply in relation to higher-risk industries like aviation, underground mining, underwater diving and jobs that involve working with chemicals and or radiation, so you will need to check with the relevant authority.

SEE TOOL 3

Work health and safety hazards and risk management issues



SUPPORTING WORKING PARENTS

Individual risk assessment

You will need to assess new risks as they come to your attention - for example if a worker gives you updated medical advice about her pregnancy.

You must take into account any medical advice from your worker's GP or midwife about her health, and adjust her working conditions accordingly. For example, if the worker continues to work with hazardous chemicals, you need to assess the risks to the worker and her baby. This could be, by checking the safety data sheet or instructions from the manufacturer. If there is any uncertainty you should seek advice from a professional.

Depending on the risk assessment, the worker's hours of work or conditions may need to be varied, or she may need to be temporarily transferred to another job or work area. You should consider all reasonably practicable options when accommodating pregnant workers and be prepared to consult on possible options to find individual solutions.

Further information

Contact federal, state or territory work health and safety authorities for more information. See contact details contained in the '**Contact us**' section and see: **Tool 3:** Work health and safety hazards and risk management issues.

2.5 What changes may need to be made for a pregnant employee?

Some women experience a variety of physical effects such as tiredness and nausea during certain stages of pregnancy. In most cases, this does not prevent women from performing their work. It may however require some changes to their job or work environment.

Anti-discrimination law considerations

Employers are encouraged to accommodate the effects of pregnancy in the workplace to avoid discriminating on the basis of pregnancy under, for example, the Sex Discrimination Act.

Common ways to accommodate pregnant employees include more breaks, different start and finish times, provision of a car space, ensuring pregnant employees can have toilet breaks as needed and a chair to sit on if the job usually involves standing up for long periods of time.

An employment condition, requirement or practice that unreasonably fails to accommodate pregnancy may disadvantage pregnant employees and therefore constitute indirect discrimination under, for example, the Sex Discrimination Act. While a certain requirement or practice may appear to be non-discriminatory, ultimately it could have the effect

of disadvantaging pregnant employees. The fact that an employer did not intend to discriminate is not relevant under the Sex Discrimination Act. It is the impact of the requirement or practice that is assessed. Employers should consider all reasonable options when accommodating pregnant employees and be prepared to discuss these options with employees to find individual solutions.

Work health and safety considerations

Under work health and safety laws, you must do what is reasonably practicable to ensure the health and safety of your pregnant workers. As pregnant worker's needs may change throughout her pregnancy you must continue to assess and manage any risks so far as is reasonably practicable as they arise.

As is the case under anti-discrimination laws, be prepared to consult on all reasonably practicable options to find individual solution.

Further information

Specific information on individual workplaces can be provided by some federal and state or territory work health and safety authorities. See contact details contained in the '**Contact us**' section.



2.6 What if a job is not safe for a pregnant employee?

Pregnant employees, like other employees, have the right to cease or refuse to carry out work, if they have a reasonable concern that carrying out the work would expose them to a serious risk to their health or safety due to an immediate or imminent exposure to a hazard. For most of Australia this specific right is found in the work health and safety legislation, but in Victoria it falls under an employee's duty to take reasonable care for their own health and safety.

Under the Fair Work Act, all pregnant employees, including casuals, are entitled to move to a safe job if it is not safe for them to do their usual job because of their pregnancy. This includes

employees that are not eligible for unpaid parental leave. An employee who moves to a safe job will still get the same pay rate, hours of work and other entitlements that she got in her usual job. She and her employer can however agree on different working hours.

If there is no safe job available, the Fair Work Act provides that an employee can take 'no safe job' leave. This leave is:

- Paid (at the base rate of pay) if the employee is entitled to unpaid parental leave under the Fair Work Act; and
- Unpaid if the employee is not entitled to unpaid parental leave under the Fair Work Act.

2.7 What leave is available for pregnancy related illness?

Under the Fair Work Act, an employee may take personal/carer's leave if the leave is taken because the employee is not fit for work, because of personal illness or injury. (An employee may also take personal/carer's leave to provide care or support to a member of the employee's immediate family (e.g. their child) or household who, due to personal illness, injury or an unexpected emergency, requires care or support).

An employee may access personal/carer's leave because of a pregnancy-related illness. In addition to this, the Fair Work Act provides for unpaid special maternity leave for pregnant employees who are eligible for unpaid parental

leave under the Fair Work Act and have a pregnancy-related illness.

The employee must give you notice of the taking of unpaid special maternity leave as soon as practicable (which may be a time after the leave has started) and must advise you of the period, or expected period, of the leave.

You are entitled to ask for evidence such as a medical certificate showing that the leave is taken for the prescribed reason.

The use of special maternity leave does not reduce the amount of unpaid parental leave under the Fair Work Act that an employee can take.

2.8 What leave is available for prenatal medical appointments?

As being pregnant in and of itself, is not technically an illness under the Fair Work Act, use of personal/carer's leave depends on individual circumstances.

Some awards, agreements or workplace policies specifically allow personal leave to be used to attend prenatal medical appointments.

If you allow employees to access paid or unpaid leave for other purposes, to meet your obligations under anti-discrimination laws, you should afford pregnant employees the same flexibility in regard to attending prenatal medical appointments.



2.9 What leave is available for miscarriage or stillbirth?

Particular sensitivity towards both men and women is needed to respond to miscarriage and stillbirth. Support should be given to an employee's manager to have these conversations sensitively and to provide appropriate support for the employee in the workplace.

If an employee has sought unpaid parental leave under the Fair Work Act and before the leave begins the pregnancy ends (other than in the birth of a live child):

- The employee may give you written notice cancelling the leave
- You may, where appropriate, give the employee written notice cancelling the leave.

If while the employee is on unpaid parental leave under the Fair Work Act, the pregnancy ends

(other than in the birth of a live child):

- The employee may give you written notice that they wish to return to work and you must give the employee written notice requiring the employee to return to work on a specified day which must be within four weeks after you receive the employee's written notice
- You may, where appropriate, give the employee written notice requiring the employee to return to work on a specified day which must be at least six weeks after you give the notice.

Unpaid special maternity leave (referred to at 2.6 on page 11) is also available for employees if the pregnancy ends within 28 weeks of the expected due date.

2.10 What about employees undergoing fertility treatment?

Employees undergoing fertility treatments are covered by the Sex Discrimination Act. This means an employee undergoing fertility treatment cannot be treated less favourably than other employees.

Where fertility treatment impacts on the employee or their partner's health (e.g. side effects from hormone therapy or other medication) the

employee may be entitled to use their personal/ carer's leave under the Fair Work Act on the basis of their personal illness or their need to care for or support their ill partner.

Privacy considerations are especially important for employees undergoing fertility treatments and any medical information must be kept confidential.

2.11 What are my obligations to replacement employees?

If you hire an employee to perform the work of an employee who is going on parental leave, the Fair Work Act requires you to notify the replacement employee that:

- The role is temporary;
- The other employee has a right to return to their pre-parental leave position when they return to work; and
- The employee and the employer have a right to cancel or end the leave early in certain circumstances (e.g. stillbirth or infant death).

It is important for you to make the temporary nature of the role clear in advertisements, during interviews and in the letter of offer to replacement employees. Managers and supervisors should

also be cautious about making promises regarding permanent employment to replacement employees.

Hiring someone 'generally', rather than a specific replacement employee to cover some of the parental leave employee's tasks, can create challenges when the employee returns from parental leave. Poor communication could mean you have to manage both the returning employee's right to return to their role, and the new employee's expectations of continuing employment. If you need to end the employment of the replacement employee, then usual workplace laws will apply regarding termination.



2.12 More information

- **Australian Human Rights Commission**
 - *Good Practice Good Business* factsheets
- **Fair Work Ombudsman**
 - Pregnancy in the workplace
 - Maternity & parental leave

Best Practice Guides:

- *Parental Leave*

Fact sheets:

- *Minimum workplace entitlements*
- *Parental leave & related entitlements*
- *Workplace discrimination*

3. Employees and leave

TOP TIP

Keep in touch

Discussing leave arrangements with your employees should involve more than calculating their leave entitlements. You should also discuss 'keeping in touch' when they are on leave.

Once your employee is on leave, don't fall into an 'out of sight, out of mind' mentality.

SEE TOOL 4

Parental leave checklist for employers

3.1 Key points

- Many different forms of leave can be used to support parents in the lead-up to birth and caring for their baby.
- Unpaid parental leave is provided for eligible employees under the Fair Work Act. While on unpaid parental leave under the Fair Work Act, entitlements such as long service leave, annual leave and personal/carer's leave do not accrue. Employers should check this with the relevant state legislation, industrial instrument or federal authority for information specific to their business.
- An employee's period of parental leave counts as service under the Fair Work Act for the purpose of determining the employee's entitlement to unpaid parental leave for subsequent pregnancies.
- Where an employee is not entitled to unpaid parental leave under the Fair Work Act, anti-discrimination laws still apply. This means an employer must ensure the employee's sex, pregnancy or family responsibilities do not unfairly influence a decision to reject the employee's leave application.
- An employee may also be entitled to a period of paid parental leave under an applicable award, enterprise agreement, policy or contract of employment.
- The Australian Government Paid Parental Leave scheme provides two payments – Parental Leave Pay and Dad and Partner Pay.
- Checklists can be useful to remind employees of their notice requirements. See **Tool 4**. Also, the Fair Work Ombudsman has employer and employee [parental leave checklists](#).

3.2 How much unpaid parental leave is an employee entitled to under the Fair Work Act?

Under the Fair Work Act, employees with at least 12 months on a regular and systematic basis immediately before the birth or expected birth of their child are entitled to take 12 months of unpaid parental leave if they will have a responsibility for the care of the child. This applies to both the pregnant employee and the spouse or partner of a pregnant woman.

Casual employees who have been employed for 12 months immediately before the date of birth or the expected date of birth of the child and but for the birth or expected birth of the child the employee would have a reasonable expectation of continuing employment by the employer on a

regular and systematic basis are also entitled to take 12 months of unpaid parental leave if they will have a responsibility for the care of the child.

For members of an employee couple, the entitlement to unpaid parental leave can depend on how much leave has been taken by the other parent (see 3.4 on page 16).

Other forms of paid leave (for example accrued annual leave or long service leave in some jurisdictions) can be taken concurrently with unpaid parental leave but do not extend any available unpaid parental leave period under the Fair Work Act.

3.3 What notice is required for an employee to take, shorten and extend unpaid parental leave?

Employees who are on unpaid parental leave under the Fair Work Act have the right to:

- Extend their leave to 12 months unpaid parental leave if they initially told you they were taking less than 12 months leave; and
- Request an additional 12 months of unpaid parental leave beyond the initial 12 months.



If an employee initially requested less than 12 months of unpaid parental leave, they can extend their leave up to 12 months. This extension is a right under the Fair Work Act and cannot be refused by you if proper notice is given. Written notice must be given to you at least four weeks before the employee's expected date of return. You are obliged to provide one extension; any further extension is by agreement between you and your employee.

The employee's request for an extension of unpaid parental leave beyond the initial 12 months must be in writing and the employer must respond to the request in writing within 21 days. This extension of leave can be refused by the employer on 'reasonable business grounds'.

The term 'reasonable business grounds' is

not defined in the Fair Work Act and what is reasonable depends largely on the circumstances of your workplace. Where the request is refused, the employer must also provide details of the reasons for the decision.

As anti-discrimination laws still apply an employer must ensure that the employee's sex, pregnancy or family responsibilities has not unfairly influenced a decision to reject the extension.

Entitlements for both parents

For situations where both parents in an employee couple are taking unpaid parental leave under the Fair Work Act, the parents are entitled to no more than 24 months of leave between them. Employers are entitled to ask their employee how much leave the other parent has taken.

→ EXAMPLE 1

It may be unreasonable if a large organisation with many employees (such as a supermarket chain) refused to allow a manager, who has the same skills as many other managers, an extension to their parental leave. The company could easily organise work among existing staff and if required, the company could recruit a replacement employee.

Notice periods relating to unpaid parental leave under the Fair Work Act

ACTION	NOTIFICATION PERIOD
When must your employee notify you in writing of their intention to take unpaid parental leave under the Fair Work Act?	At least 10 weeks before they wish to begin unpaid parental leave (or as soon as practicable). Such notice must specify the intended start and end dates.
When must your employee confirm in writing the start and end dates of their unpaid parental leave or advise you of any changes?	At least four weeks before they start unpaid parental leave unless this is not practicable (e.g. the child is born prematurely).
When does parental leave have to start?	The leave may start up to six weeks before the expected date of birth (or earlier if agreed). Where the employee is working within 6 weeks of the expected birth date, the unpaid parental leave under the Fair Work Act must not start later than the date of birth of the child .
What if your employee wishes to shorten their original period of unpaid leave (e.g. from 12 months to nine months)?	The original leave period can generally only be shortened by agreement with you.
When must your employee tell you in writing that they are extending their initial period of unpaid parental leave (e.g. from nine months to 12 months)?	At least four weeks before their expected date of return. This is a right under the Fair Work Act and cannot be refused by you.
When must your employee request in writing an extension to their 12 month period of unpaid parental leave? (e.g. from 12 months to 18 months)	At least four weeks before the end date of the original leave period.
When must you respond to a request for an extension to the unpaid parental leave period beyond 12 months?	Within 21 days of receiving the request in writing. If you refuse, your response must include reasons for the refusal.



SUPPORTING WORKING PARENTS

Medical evidence

If an employee has given notice of their intention to take unpaid parental leave under the Fair Work Act, you may request medical evidence (e.g. medical certificate) that would satisfy a reasonable person of the date of birth or expected date of birth of the child.

If an employee wishes to work during the six-week period before the expected date of birth of the child, you can request that the employee provide a medical certificate (within seven days

of your request) containing a statement of whether the employee is fit for work, and if she is, a statement of whether it is inadvisable for the employee to continue in her present position because of illness or risks arising out of the employee's pregnancy or hazards connected with the position. If the employee does not provide this within seven days of your request, or their medical certificate states that the employee is not fit for work, you can require the employee to start their unpaid parental leave.

3.4 How much unpaid leave are partners entitled to?

Under the Fair Work Act, employees (including regular and systematic casual employees) with at least 12 months or more of continuous service are entitled to take 12 months of unpaid parental leave if they have a responsibility for the care of the child. This applies to both the pregnant employee and the spouse or partner of a pregnant woman.

There are different rules regarding unpaid leave depending on whether:

- Both parents are working (known as an 'employee couple'); or
- One parent is working and one is not.

Employee couple

Up to eight weeks unpaid parental leave under the Fair Work Act can be taken by both parents concurrently. This concurrent leave can be taken in separate periods (e.g. some at the birth and some later) but each block of concurrent leave must not be less than two weeks unless the employer agrees otherwise.

Parents are entitled to no more than a combined total of 24 months of leave between them. Apart from the eight-week concurrent period, each

parent must generally take their unpaid parental leave separately in a single continuous period. Keeping in touch days do not interrupt the single continuous period requirement.

Where one parent is working and one is not

The employee can take the initial 12 months of unpaid parental leave and request a further 12-month extension to their unpaid parental leave under the Fair Work Act.

Where the employee is not the person who has given birth and wishes to start the unpaid parental leave later than at the date of birth or expected date of birth of the child, the employee can start the leave later, provided that the period of unpaid parental leave starts within 12 months after the date of the birth of the child. To qualify for this unpaid parental leave, the employee must have a responsibility for the care of the child and 12 months continuous service with their employer immediately before the date on which the period of leave is to start. While the employee can request an extension to the initial 12 months of unpaid leave, the period of leave may not be extended beyond 24 months after the date of birth of the child.

3.5 What if my employee is not entitled to unpaid parental leave?

Employees not entitled to unpaid parental leave under the Fair Work Act are still protected by anti-discrimination laws. It may be discrimination if an employer provides long periods of unpaid leave to employees for a variety of reasons but then refuses an application for leave by a pregnant employee.

Employers must not discriminate and should consider:

- Providing access to other forms of leave (such as annual leave or leave without pay)
- Discussing a reasonable period of absence having regard to the needs of both their organisation and the employee



- If leave is refused, providing the employee with reasons why the employer is unable to grant leave without pay or why other options are impracticable. Well-documented and well-grounded reasons for not granting a period of leave will assist the employer explain the decision if required.

Employees not entitled to unpaid parental leave under the Fair Work Act may still be entitled to paid or unpaid leave under, for example, an enterprise agreement or contract of employment.

3.6 Do I need to inform an employee of changes within the organisation while they are on parental leave?

Yes, you must consult with your employees who are on parental leave if there is going to be a significant change to their pre-parental leave position. This could include, for example:

- A change in status, pay or location; or
- A business restructure involving redundancies, and possibly including the employee's role.

An employee who is on parental leave must not be treated less favourably than other employees. For example, if redundancies and offers of new employment are being made, employees on parental leave must be considered in the same way as other employees. See section 5.4 for further details.

3.7 How should I keep in touch with employees on leave?

It is good practice to have a meeting with the employee before they go on leave to discuss how and how often you will keep in touch while they are on leave. At this meeting you could request contact details for the employee while they are on leave or alternatively arrange for the employee to have remote access to their work email account. Let the employee know that they will receive important news and invitations to attend events. Keep in mind that any agreements may change once the baby is born.

Keeping in touch days

Employees on unpaid parental leave under the Fair Work Act can (if they wish to) work up to 10 days during their parental leave. The days are paid at the employee's usual rate of pay and are designed to assist the employee to keep in touch with you to facilitate a return to work at the end of the leave.

The rules around keeping in touch days are specified in the Fair Work Act. It is a keeping in touch day if:

- The purpose of performing the work is to enable the employee to keep in touch with his or her employment in order to facilitate a return to that employment at the end of leave;

- Both the employee and the employer consent to the employee working for the employer on that day;
- The day is not within 14 days after the birth of the child (if the employee requests the day) or 42 days after the birth of the child (if the employer requests the day); and
- The number of keeping in touch days has not been more than 10 in the period of unpaid parental leave.

Keeping in touch days could include attending an annual planning day, important training sessions or regular informal catch-ups.

Under the *Paid Parental Leave Act 2010*, an employee may lose the entitlement to Parental Leave Pay (see 3.8 on page 18) if the work performed on a keeping in touch day is not for that purpose (i.e. to assist their transition back to the workplace) or is for more than 10 days. The Fair Work Act requires unpaid parental leave to be taken as a continuous period. An employee who does not comply with the purpose of the keeping in touch days or works for more than 10 days, may lose their entitlement to continue their period of unpaid parental leave and/or return to their former position.



SUPPORTING WORKING PARENTS

→ EXAMPLE 1

Assisting a pregnant employee to understand and use the Australian Government Paid Parental Leave scheme

Jessica had been working as a filing clerk at a Sydney firm for four years. She notified her employer that she was pregnant and asked about her entitlements. Her employer informed her about the Australian Government Paid Parental Leave scheme and directed her to the Australian Government Department of Human Services website.

Jessica completed her claim online before the birth of her child. Her claim was assessed and she received notification from the Department of Human Services that she was eligible for payment. Her employer was also notified so they are aware they will need to provide the Parental Leave Pay.

When Jessica's daughter was born she provided proof of birth to the Department of Human Services online. This finalised her claim. Payment to her employer commenced from her nominated start date.

Jessica had some annual leave accrued that she also wanted to use. Jessica left work six weeks before her baby was due and commenced unpaid parental leave under the Fair Work Act. She took the first three weeks as annual leave and then had three weeks unpaid. When her baby was born, she received the 18 weeks of Parental Leave Pay at minimum wage. After these 18 weeks she took six weeks of unpaid parental leave. Her total time off was (6+18+6 = 30 weeks), Paid = 21 and Unpaid = 9.

Employees who have extended their unpaid parental leave beyond the initial 12-month period are entitled to a further 10 keeping in touch days.

Employers cannot exert undue influence or undue

pressure on an employee to consent to working a keeping in touch day. There can also be no negative consequences to an employee choosing not to attend any keeping in touch days.

3.8 What is the Australian Government Paid Parental Leave scheme?

Employees may be eligible for payment under the Australian Government Paid Parental Leave scheme, which includes two payments—Parental Leave Pay and Dad and Partner Pay.

The eligibility rules for these payments are different to the criteria for unpaid parental leave under the Fair Work Act. This means that sometimes an employee will receive payment under the Australian Government Paid Parental Leave scheme even if they are not eligible for unpaid parental leave under the Fair Work Act.

Parental Leave Pay

Parental Leave Pay helps eligible working parents with costs following the birth or recent adoption of a child. If eligible, employees can receive Parental Leave Pay at the national minimum wage for up to 18 weeks, while on leave. This payment can be claimed by either parent as long as they are the primary caregiver and are not working during the payment period. The payment is administered by the Australian Government Department of Human Services. Casual workers, contractors and self-employed people are also eligible for the Parental Leave Pay.

You will generally need to provide Parental Leave Pay if your employee:

- has worked for you for at least 12 months
- will remain your employee by during their parental leave period, and
- expects to receive at least 8 weeks of Parental Leave Pay.

Employers will be notified by the Australian

Government Department of Human Services if an employee is eligible for Parental Leave Pay and whether you need to provide the payments. In all other circumstances, the Australian Government Department of Human Services will pay the employee directly.

If the baby is stillborn or dies, the person who would have been the primary carer may be eligible for Parental Leave Pay. In this situation, the employee is entitled to the payments regardless of whether they take leave or return to work.

For more information, visit humanservices.gov.au/parentalleavepay

Dad and Partner Pay

This payment helps eligible working fathers or partners (including adopting parents and same-sex couples) when they take unpaid time off work to care for their new baby or recently adopted child. If eligible, employees will be able to receive up to two weeks Dad and Partner Pay at the national minimum wage.

The Department of Human Services will pay this directly to the employee.

Employers should not prevent an employee from taking unpaid leave for the purpose of accessing this payment, even if the employee has accrued paid leave entitlements.

For more information, visit humanservices.gov.au/dadandpartnerpay

3.9 More information

- **Fair Work Ombudsman**
 - Pregnant employee entitlements
 - Best Practice Guide Parental Leave
 - Applying for and taking parental leave, including employer and employee checklists for parental leave
- Templates for parental leave requests, applications to vary and extend, and responding to requests (approval and refusal)

SEE TOOL 5

Australian Government Paid Parental Leave scheme

4. Employees returning to work from leave

4.1 Key points

- Most employees returning to work will need some flexibility to work and manage their family commitments. Eligible employees who are the parent or have responsibility for the care of a child who is of school age or younger may request a flexible working arrangement under the Fair Work Act.
- An employee returning from unpaid parental leave under the Fair Work Act is entitled to their pre-parental leave position. If the employee's pre-parental leave position no longer exists, they are entitled to an available position for which the employee is qualified and suited, nearest in status and pay to the pre-parental leave position.
- Even if an employee is not covered by the entitlements in the Fair Work Act, it may, in certain circumstances, be discriminatory to refuse to return an employee to their pre-leave position or to allow flexible working arrangements.
- Under the Fair Work Act, an employee may take personal/carer's leave if the leave is taken because the employee is not fit for work, because of personal illness or injury. The employee may also take personal/carer's leave to provide care or support to a member of the employee's immediate family (e.g. their child) or household who, due to personal illness, injury or an unexpected emergency, requires care or support.

TOP TIP Consider flexible work

Be open to ideas about creating a more flexible workplace. Flexible work can involve job-share, compressed working weeks or nine day fortnights, reduced hours, working from home, changed start and finish times, different places of work, extended leave or a combination of all these.

If you do reach an agreement on a flexible work arrangement with an employee, make sure you record it in writing, and agree on the exact duration of the arrangement. If in doubt, have a trial period, and agree to assess the arrangement at the end of the trial period.

4.2 What are my obligations when an employee returns to work from parental leave?

An employee on unpaid parental leave under the Fair Work Act has the right at the end of the leave to return to their pre-parental leave position. This is known as the return to work guarantee.

The pre-parental leave position is the job the employee held before any changes were made to accommodate their pregnancy (such as moving to a safe job or reduced hours of work).

If their 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. For example, an equivalent full-time role if their pre-leave position was full-time.

You should also consider return to work requests from employees who are on negotiated leave and

who are not covered by the unpaid parental leave provisions of the Fair Work Act (because they do not meet those eligibility requirements). Care must be taken to ensure that the employee's sex, pregnancy or family responsibilities do not unfairly influence your consideration of their request.

Unless the employment contract or other documentation states otherwise, a pregnant woman who is employed on a fixed-term contract is not entitled to return to the pre-parental leave position if the contract ended while she was on leave. If the contract ends after the employee returns from the leave, she is entitled to the pre-parental leave job until the end of the fixed-term contract.





4.3 How do I best manage flexible work requests?

Under the Fair Work Act, employees are entitled to request their employer create a flexible working arrangement if they, for example:

- Have completed at least 12 months of continuous service with their employer; or
- Are a casual employee with 12 months of continuous employment and have a reasonable expectation of continuing employment with the employer on a regular and systematic basis; and
- Are a parent (or a person with responsibility for the care of a child) who is of school age or younger.

Under the Fair Work Act, employees who have responsibility for the care of a child and are returning to work after taking leave in relation to the birth of the child may request to work part-time to assist the employee to care for the child.

Requests for flexible working arrangements must be in writing and must set out the details of the change sought and the reasons for the change.

Flexibility can include:

- Part-time work;
- Different working hours; or
- Working from different locations, instead of the traditional full-time, work-site based week.

Whether an employer grants or refuses a request, the employer must respond to a request in writing within 21 days of receipt of the request.

Employers should assess each request fairly and consider if it would be reasonable to approve the request.

If an employer approves such a request, it is good practice to have regular, periodic reviews of the arrangement to ensure it continues to work for both the employer and employee.

If an employer refuses a request for flexible work, the employer must include details of the reasons for the refusal. A request can be refused only on 'reasonable business grounds' which may include

(but is not limited to) considerations such as that:

- The proposed arrangements would be too costly
- There is no capacity to change the working arrangements of other employees to accommodate the proposed arrangements
- It would be impractical to change the working arrangements of other employees or recruit new employees to accommodate the proposed arrangements
- The proposed arrangements would be likely to result in a significant loss in efficiency or productivity
- The proposed arrangements would be likely to have a significant negative impact on customer service.

Reasonable business grounds will vary from business to business and take into account the size of the organisation.

While an employer has the right to reasonably refuse a request for flexible work under the Fair Work Act, they should also be mindful of their obligations under anti-discrimination laws as such a refusal may be discriminatory. This means, for example, that an employer must ensure that the employee's sex or family responsibilities has not unfairly influenced a decision.

Employees are protected from being treated unfairly because they have requested flexible work. See the Fair Work Ombudsman fact sheet on [general protections](#) for more information.

Victoria and Northern Territory anti-discrimination laws

Under state anti-discrimination laws in Victoria, there is a duty not to unreasonably refuse to accommodate family and carer responsibilities.

Also, under territory anti-discrimination laws in Northern Territory, there is a positive obligation on employers to reasonably accommodate special needs an employee may have because they are, for example, breastfeeding or are a parent.



4.4 Does an employee have the right to part-time work?

While certain employees have a right to request flexible work arrangements such as part-time work under the Fair Work Act, you can refuse a request on 'reasonable business grounds' as outlined in 4.3. However, an unreasonable refusal to accommodate a request for flexible work arrangements for an employee who has family responsibilities may be discriminatory. This means

an employer must ensure that the employee's sex or family responsibilities has not unfairly influenced a decision.

Employers can provide greater rights than the Fair Work Act. This may be stated in an applicable award, agreement, contract or policy.

4.5 What if the flexible work arrangement is not working out or I want to change it?

Speak with your employee and explain why the flexible work arrangement is not working for you or why you would prefer to change the arrangement. Try to be specific about why it is not working and how the situation could be

improved. If the employee has a contractual right to the flexible work arrangement, you need to seek agreement from the employee if you want to change the arrangement.

4.6 How can we support breastfeeding employees?

To support a breastfeeding employee make sure she has suitable facilities to breastfeed, express and store any breast milk. For example, a private room with a comfortable chair, a fridge and somewhere to store a breast pump. You should also ensure that she has appropriate breaks to breastfeed or express.

Breastfeeding is a protected ground of discrimination. Failure to provide adequate facilities may constitute discrimination and a breach of work health and safety laws. Also, failure to allow an employee to have breaks to facilitate breastfeeding or expressing milk may constitute discrimination.

Work health and safety laws require businesses to ensure, so far as is reasonably practicable, the provision of adequate facilities for workers' welfare while at work.

The [Australian Breastfeeding Association's](#) 'Breastfeeding Friendly Workplace' accreditation program can assist you to develop policies that support breastfeeding women.

4.7 More information

- **Fair Work Ombudsman**
 - *Parental leave Best Practice Guide*
 - *Work and Family Best Practice Guide*
 - *The Right to Request Flexible Work Arrangements Best Practice Guide*
 - Returning to work from parental leave
 - Workplace discrimination fact sheet
 - Request for flexible working arrangements templates
- **Fair Work Commission**
 - Guides to General Protections and Unfair Dismissal
- **Australian Breastfeeding Association**
 - Breastfeeding friendly workplaces

5. Commencing and ending employment

5.1 Key points

TOP TIP

Remember employees on parental leave

Employees on unpaid parental leave need to be consulted if there is going to be a significant change to their pre-parental leave position.

This may include a change in status, pay, location or redundancy due to a restructure. They must be considered in the same way as other employees.

- You should not allow assumptions and stereotypes to influence your decision when selecting an applicant – you could miss out on a valuable employee.
- You must ensure sex, pregnancy, potential pregnancy, parental leave or family responsibilities is not one of the reasons for not hiring an employee or making an employee redundant or terminating an employee's employment.
- If you are making a position redundant, you should make sure pregnant employees, employees on parental leave and employees with family responsibilities are considered in the same way as everyone else and that an employee's sex, pregnancy or family responsibilities does not unfairly influence the decision process.

5.2 How can I ensure our recruitment process is consistent with pregnancy and return to work anti-discrimination laws?

You should not allow assumptions and stereotypes to influence your decision when selecting an applicant (e.g. assuming that an applicant with family responsibilities is unable to travel).

Pregnancy, potential pregnancy, marital/relationship status, family responsibilities or breastfeeding should not be unfairly taken into account when considering a person's suitability for the job or promotion.

You should not ask questions about a person's pregnancy or family during recruitment. Only ask questions relevant to the person's ability to perform the requirements of the job.

There may however be particular circumstances (such as when there are concerns about work health and safety issues) where it may be

appropriate to take into account an applicant's pregnancy and the potential impact on their capacity to do the requirements of the job.

Prior to an employer refusing a pregnant applicant employment on the basis of work health and safety or medical issues, all reasonable options for accommodating the application should first be considered.

Recruitment and labour hire agencies are also required to comply with the law and should not exclude applicants because they are pregnant or have children.

For further information see the Australian Human Rights Commission's [Good Practice Good Business step-by-step guide to preventing discrimination](#) in recruitment.

5.3 Can I end the employment of a pregnant employee, an employee on parental leave or an employee who has family responsibilities?

While you can decide to terminate an employee's contract, or make their position redundant while they are pregnant, on parental leave, or after returning to work, you must be very careful to ensure that the employee's pregnancy, parental leave or family responsibilities is not one of

the reasons for that decision. Actions to end employment can be the subject of claims under the Fair Work Act, the Sex Discrimination Act or state or territory anti-discrimination legislation. It may also be a breach of the employment contract.



5.4 How should I handle redundancy?

If you are making a position redundant, you should make sure pregnant employees, employees on parental leave and employees with family responsibilities are considered in the same way as everyone else and that an employee's sex, pregnancy or family responsibilities does not unfairly influence a decision process.

For example, if voluntary redundancies are being offered, then these should also be offered to employees on parental leave. It may be discrimination to have a selection criterion based on who did not receive a recent performance appraisal or bonus.

5.5 How do I best manage performance concerns?

While you are entitled to dismiss an employee because of poor or inadequate performance, you are not entitled to dismiss an employee if a reason for the dismissal (even if it is not the only or main reason) is, for example, the employee's sex, pregnancy, potential pregnancy or family responsibilities.

Confusion about the motives for dismissal of a pregnant or potentially pregnant employee can often lead to an allegation of discrimination. This can be the result of poor communication and inadequate management practices, for example,

where an employee with unsatisfactory work performance is not made properly aware of the performance issues before, for example, the pregnancy and/or dismissal. Where an employee is under performing, it is important to inform the employee directly and conduct regular performance reviews and counselling sessions. Thorough documentation should be kept. Conducting the first such review or dismissing an employee after the employee announces a pregnancy may lead to considerable misunderstanding and allegations of discrimination.

5.6 More information

- **Australian Human Rights Commission**
 - *Good Practice Good Business* factsheets
- **Fair Work Ombudsman**
 - Ending employment
 - Unfair dismissal
 - Ending employment during parental leave
 - Fact sheets:
 - *Minimum workplace entitlements*
- **Fair Work Commission**
 - Guides:
 - *General Protections*
 - *Unfair Dismissal*
 - *Workplace discrimination*
 - *Ending employment*

Contact us

ORGANISATION	ROLE
<p>Australian Human Rights Commission https://www.humanrights.gov.au/</p> <p>ph 1300 656 419</p>	<p>The Commission's National Information Service provides employers and employees with information about their obligations and rights under the Sex Discrimination Act.</p> <p>A key role of the Commission is to investigate and conciliate complaints of discrimination under the Sex Discrimination Act.</p> <p>The Commission is not a court and cannot decide if discrimination has happened. The Commission's role is to get both sides of the story and help those involved try to resolve the complaint.</p> <p>If the complaint cannot be resolved or is terminated for some other reason, such as that the complaint is lacking in substance or has already been adequately dealt with, the complainant has the option of making an application to the Federal Circuit Court of Australia or the Federal Court of Australia. The court can determine if discrimination has happened.</p> <p>A complainant under the Sex Discrimination Act cannot go straight to court. It must first go to the Australian Human Rights Commission.</p>
<p>Fair Work Ombudsman http://www.fairwork.gov.au/</p> <p>ph 13 13 94</p>	<p>The Fair Work Ombudsman helps employers and employees understand their rights and responsibilities at work. Fair Work Ombudsman works with employees, employers and the community to educate and encourage compliance with Australia's workplace laws.</p> <p>The Fair Work Ombudsman can investigate suspected breaches of workplace laws.</p>
<p>Fair Work Commission https://www.fwc.gov.au/</p> <p>ph 1300 799 675</p>	<p>The Fair Work Commission's role includes:</p> <ul style="list-style-type: none"> • Determining unfair dismissal applications • Resolving unlawful termination claims, general protection/adverse action claims (such as discrimination) – including termination and complaints about conduct during employment, can also determine general protection/adverse action claims involving dismissal by arbitration • Making orders to stop bullying at work.
<p>State and Territory Anti-Discrimination bodies</p>	<p>Each state and territory has its own anti-discrimination body.</p> <p>These are:</p> <p>ACT: Australian Capital Territory Human Rights Commission http://hrc.act.gov.au/</p> <p>NSW: Anti-Discrimination Board of New South Wales http://www.antidiscrimination.justice.nsw.gov.au/adb/adb1_index.html</p> <p>NT: Northern Territory Anti-Discrimination Commission http://www.adc.nt.gov.au/</p> <p>QLD: Anti-Discrimination Commission Queensland http://www.adcq.qld.gov.au/</p> <p>SA: South Australian Equal Opportunity Commission http://www.eoc.sa.gov.au/</p> <p>TAS: Tasmanian Office of the Anti-Discrimination Commissioner http://www.antidiscrimination.tas.gov.au/home</p> <p>VIC: Victorian Equal Opportunity & Human Rights Commission http://www.humanrightscommission.vic.gov.au/</p> <p>WA: Western Australian Equal Opportunity Commission http://www.eoc.wa.gov.au/</p>
<p>Commonwealth, State and Territory-based work health and safety authorities</p>	<p>In relation to work health and safety - education, assistance, compliance, investigations, enforcement and prosecutions.</p> <p>Further information about each Authority and their contact details is available on the Safe Work Australia website: http://www.safeworkaustralia.gov.au/sites/swa/about/who-we-work-with/regulators/pages/whs-regulators</p>

Tool 1: Policies to support working parents

Thinking of creating a workplace policy to support working parents?

Policies do not need to be long or complicated. This tool provides guidance on creating a parental

Parental leave:

The main reasons for having a parental leave policy are to:

- Communicate to working parents that you value their contribution. This helps you to retain valuable skills and expertise
- Encourage open and constructive communication with your employees
- Strike the right balance between business needs and family responsibilities
- Explain to working parents their entitlements to leave – both paid and unpaid and relevant notice requirements.

An effective parental leave policy:

Refers to the legal rights and obligations of employers and employees. You may wish to refer your employees to this toolkit and **Employee Guide** ('Pregnancy, parental leave and return to work: know your rights') their rights and your obligations under the law.

Breastfeeding:

You can include a breastfeeding policy as part of your parental leave policy.

The main reasons for having a breastfeeding policy are to:

- Signify to employees that you are committed to providing a workplace environment where women can work and breastfeed/express and
- Encourage communication with employees to identify the best way to accommodate breastfeeding/expressing.

An effective breastfeeding policy sets out:

Whether breastfeeding or expressing breaks during work hours are paid or unpaid.

Details of a site where breastfeeding or expressing can be done (ideally a private, separate room with a chair, table, fridge, sink and cupboard to store breast pumps).

Tool 2: Responding to pregnancy announcements

An employee has just told you they are pregnant. What do you do next?

Respond positively

Offer congratulations and understand that decisions impacting family choices are important and can be emotional. Organise an initial planning meeting within the next month. Do remember to respect any request for confidentiality.

Be open and honest at the initial planning meeting in terms of needs and expectations

Discuss the need to balance individual and organisational requirements from the outset. The more the arrangement is set up as a partnership, the more successful it will be.

Be prepared and informed

Create a check list that covers the key issues.

Issues to consider before the initial planning meeting include:

- Employment rights and obligations including work health and safety issues;
 - Policies relating to parental leave (where appropriate);
 - The employee notice requirements checklist referred to **Tool 4** of the toolkit;
 - The employee's plans and expectations including 'unknowns' (such as exact date the employee will start leave and return to work date and whether the employee will want to return part-time or prefer some other working arrangements);
 - Options for covering the workload of the employee during their parental leave;
 - How to keep in touch during parental leave, including frequency and type of communication, if the employee wishes;
 - Access to equipment such as mobile phones or laptops while on parental leave and
 - Access to professional development opportunities while on leave (e.g. training and job opportunities).
-

Involve the right people

In addition to the employee and the direct manager, make sure any relevant individuals are involved in the initial planning meeting. This could involve Human Resources, any dedicated work health and safety staff or in the case of small businesses and organisations, the owner or general manager.

Tool 3:

Work, health and safety hazards and risk management issues

Work health and safety laws require businesses to do what is reasonably practicable to ensure the health and safety of their workers. This covers new and expectant mothers—including those women who are pregnant, postnatal or breastfeeding.

In practice, the duty requires businesses to identify work health and safety hazards and control the risk of exposure to the hazard, so far as is reasonably practicable.

As a pregnant worker's needs may change throughout her pregnancy, businesses must continue to assess and manage any new risks so far as is reasonably practicable as they arise.

Additional requirements may also apply to higher-risk work, for example certain jobs in:

- Aviation
- Diving
- Lead-risk industries
- Underground mines where there is exposure to radiation.

Continuing to work in some roles may be prohibited or inadvisable for new and expectant mothers.

Assessing risks after notification

On receiving notification of pregnancy, businesses must reassess the workplace to identify any foreseeable hazards that could give rise to risk to health or safety and implement controls to ensure the exposure to the risks does not cause harm to new and expectant mothers or to their unborn children.

In many workplaces, conditions or work processes normally considered acceptable may no longer be so during pregnancy or breastfeeding. If the pregnancy is normal and low risk, businesses will still need to consider the health and safety risks at the workplace.

For higher risk work environments with specific hazards, for example lead processing, the businesses may have legal obligations to new and expectant mothers to protect them and their unborn children from harm.

Common work health and safety issues for new and expectant mothers

Lifting and handling (refer the manual tasks code): The centre of gravity for pregnant workers shifts as the pregnancy progresses and they are unable to carry the load close to their body. Muscle function is also impacted by pregnancy, as muscles soften and loosen in preparation for birth. Repeated lifting and carrying loads can affect the pregnant worker carrying their baby to full-term.

Prolonged sitting or standing: Due to increased blood flow, continuous standing during the working day may lead to dizziness, faintness, and fatigue. It can also contribute to an increased risk of premature childbirth and miscarriage and oedema particularly in the later stages of pregnancy. It is hazardous for pregnant workers to work in confined workspaces, or with workstations which do not adjust to take account of increased abdominal size.

Infectious diseases: Exposure to infectious agents, such as hepatitis B, from bodily fluids could be a problem for health care workers, child care workers, cleaners, doctors and people working with animals.

Chemicals: Can have a negative impact on the development of a foetus and pregnancy can also result in higher sensitivity to chemicals. Chemicals can be found in all workplaces, whether in cleaning products, bleaches, floor polish, solvents, thinners and pesticides.

Hazardous Chemicals: In workplaces where hazardous chemicals have been identified as a high risk to the pregnant worker and/or the unborn child, medical clearance may be required for the mother to continue in that work or workplace. Toxic chemicals are commonly used by hairdressers, domestic workers and those working in labs.

Bullying: May be experienced when pregnant, breastfeeding and returning to work after taking parental leave.

Night and evening work: Can be difficult for pregnant workers. It can increase the risk of fatigue and exhaustion which can pose a risk to the mother, especially in the later stages of pregnancy. The risks associated with night work may be even greater if pregnant workers are getting inadequate rest during the day.

Work Hazards: A hazard is something that has the potential to cause harm to a person. A 'reproductive' hazard can adversely affect the reproductive health of women and men and/or can negatively impact the growth and development of an unborn child.

WHAT ARE WORK HAZARDS FOR NEW AND EXPECTANT MOTHERS?

Physical risks	<ul style="list-style-type: none"> • Movements and postures • Manual handling • Shocks and vibrations • Noise • Radiation (ionising and non-ionising)
Biological and chemical agents	<ul style="list-style-type: none"> • Exposure to infectious diseases • Hazardous chemicals e.g. mercury; pesticides; lead (there are more than 800 chemicals that can affect a pregnancy or unborn child)
Working conditions	<ul style="list-style-type: none"> • Facilities (including restrooms) • Work-related stress • Extremes of cold and heat
Working arrangements	<ul style="list-style-type: none"> • Working hours • Overtime • Flexibility around breaks

Risk Management

Work health and safety authorities publish practical guidance on risk management.

The basic risk management steps are:

- Identify the workplace hazards that could pose a health or safety risk to new or expectant mothers.
- Carry out a risk assessment:
 - be based on the initial assessment, and
 - taking into account of any medical advice.
- Take appropriate action to eliminate or minimise the risks so far as is reasonably practicable.
- Implement measures to control the risks. These measures must be monitored and reviewed on a regular basis throughout the pregnancy. Some hazards can present more of a risk at different stages of the pregnancy increasing the susceptibility to injury.

Risk management steps for new and expectant mothers

STEP 1: Identify hazards in the workplace or work processes, for example:

- (1) Slippery surfaces

- (2) Manual handling

- (3) Potential exposure to biological or chemical agents

STEP 2: Decide who might be harmed and how, for example:

- (1) Pregnant worker in later pregnancy, due to poor balance
- (2) Pregnant worker may have increased risk of postural problems

STEP 3: Decide whether the existing controls are adequate or should be altered, for example:

- (1) Clean slippages immediately and ensure sensible footwear is worn
- (2) Ensure so far as is reasonably practicable the pregnant worker has lighter or alternative duties not requiring excessive physical exertion

STEP 4 Review your assessment and revise it if necessary.

Specific workplace hazards

Some hazards may be high risk to new and expectant mothers and/or the unborn child.

Businesses should reassess the control measures in addition to managing low risk exposure to general hazards.

Businesses using hazardous chemicals should check the labels and the relevant Chemical Safety Data Sheet (SDS) for any health and safety risks to new and expectant workers.

Controlling the risks

Common ways of controlling the risks include:

- 1.** Adjusting the working conditions and/or hours of work → If this does not remove the risk
- 2.** Providing suitable alternative work → If this is not possible
- 3.** Referring to requirements for no safe job leave.

Tool 4: Parental leave checklist for employers

Are you about to sit down with an employee to discuss parental leave?

Use this checklist to make sure you understand the relevant law and actions you should take. Even if an employee is not entitled to unpaid parental leave under the Fair Work Act this can still be used as a guide to respond to employee requests for leave related to the birth of their baby.

Eligibility

Check the employee's eligibility for unpaid parental leave under the Fair Work Act and also consider your obligations under anti-discrimination laws.

ACTION	NOTIFICATION PERIOD
When must your employee notify you in writing of their intention to take unpaid parental leave under the Fair Work Act?	At least 10 weeks before they wish to begin unpaid parental leave (or as soon as practicable). Such notice must specify the intended start and end dates.
When must your employee confirm in writing the start and end dates of their unpaid parental leave or advise you of any changes?	At least four weeks before they start unpaid parental leave unless it is not possible (e.g. the child is born prematurely).
When does parental leave have to start?	The leave may start up to six weeks before the expected date of birth (or earlier if agreed). Where the employee is working within six weeks of the expected birth date, the unpaid parental leave under the Fair Work Act must not start later than the date of birth of the child.
When must your pregnant employee provide a medical certificate concerning whether she is fit to continue working?	If the employee continues working in the six weeks before the expected birth of the child, you can request that she provide a medical certificate stating whether she is fit to work and whether it is advisable for her to continue in her current position Where the employee is working within six weeks of the expected birth date , the unpaid parental leave under the Fair Work Act must not start later than the date of birth of the child.
What if your employee wishes to shorten their original period of unpaid leave (e.g. from 12 months to nine months)?	The original leave period can generally only be shortened by agreement with you.
When must your employee tell you in writing that they are extending their initial period of unpaid parental leave (e.g. from nine months to 12 months)?	At least four weeks before their expected date of return. This is a right under the Fair Work Act and cannot be refused by you.
When must your employee request in writing an extension to their 12-month period of unpaid parental leave?	At least four weeks before the end date of the original leave period.
When must you respond to a request for an extension to the unpaid parental leave period beyond 12 months?	Within 21 days of receiving the request in writing. If you refuse, your response must include reasons for the refusal.

Notice requirements

Make sure the employee is aware of the formal notice requirements under the Fair Work Act. (Refer the employee to the employee notice requirements checklist in 3.3).

Discuss keeping in touch

Arrange a time to meet with the employee to plan the upcoming leave and to discuss how you will stay in touch. Remember 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 a redundancy).

Discuss return to work

At least four weeks before the employee's return to work date, check in with them about their plans to return to work. Consider site inductions, security clearances, computer access, training to update skills, facilities for breastfeeding/expressing breast milk etc.

Same job on return

Provide the employee with their pre-parental leave role on return from parental leave. If that position no longer exists find an available position for which they are qualified and suited and is nearest in status and pay to their pre-parental leave position.

Tool 5:

Australian Government Paid Parental Leave scheme

ENTITLEMENT	ELIGIBILITY CRITERIA (AT JULY 2015)
Parental Leave Pay	<p>To be eligible for Parental Leave Pay, employees need to:</p> <ul style="list-style-type: none">• be the primary carer of a newborn or recently adopted child• have worked 10 of the 13 months before the birth or adoption of the child and 330 hours in that 10 month period, with no more than an 8 week gap between 2 consecutive working days• meet residency requirements from the date the child enters their care until the end of their Paid Parental Leave period• have received an individual taxable income of \$150,000 or less in the financial year either before the date of birth or adoption, or the date they claim, whichever is earlier, and• be on leave or not working from when they become the child's primary carer until the end of their Paid Parental Leave period.
Dad and Partner Pay	<p>To be eligible for Dad and Partner Pay, employees need to:</p> <ul style="list-style-type: none">• meet the residence requirements• provide care for a newborn or recently adopted child• have an individual adjusted taxable income of \$150,000 or less in the financial year either before the date of their claim or the date their Dad and Partner Pay period starts, whichever is earlier• have worked 10 of the 13 months before the birth or adoption of the child and 330 hours in that 10 month period, with no more than an 8 week gap between 2 working days, and• be on unpaid leave or not working during their Dad and Partner Pay period. <p>Additionally, the employee needs to be either the:</p> <ul style="list-style-type: none">• biological father of the child• partner of the birth mother• adopting parent• partner of the adopting parent• partner in a surrogacy arrangement, or• partner of a parent in a surrogacy arrangement.

Employees need to make their claim for Parental Leave Pay or Dad and Partner Pay directly to the Australian Government Department of Human Services. You will be notified by the Department of Human Services if your employee is eligible for the payments.

If your employee is eligible for Parental Leave Pay, you must make the payments if the employee:

- has worked for you for at least 12 months before the expected date of birth or adoption
- will be your employee during the Paid Parental Leave period
- is Australian-based, and
- is expected to receive at least 8 weeks of Parental Leave Pay.

To make the payments you must:

- register your business with the Australian Government Department of Human Services
- pay the employee in their normal pay cycle, and
- deduct PAYG tax, child support (if your employee has a child support liability) and deductions that your employee has authorised and that are principally for their benefit.

You do not need to:

- provide Parental Leave Pay for independent contractors, former employees or other employees who do not meet the criteria above (they will be paid directly by the Australian Government Department of Human Services)
- pay Dad and Partner Pay, as these payments will always be paid by the Department of Human Services, or
- pay superannuation on Parental Leave Pay or Dad and Partner Pay.

For more information, visit humanservices.gov.au/pplemployers

Other paid parental leave

If your employee is entitled to other paid parental leave (such as leave provided for in their employment contract, enterprise agreement or policy), you should pay that leave in accordance with the terms that apply.

Tool 6:

Employer checklist for flexible work requests

Have you received a written request from an employee for flexible work?

Use this tool to consider how to respond.

Eligibility

Check the employee's eligibility for requesting flexible work under the Fair Work Act. If they are eligible, the request must be responded to in writing within 21 days. If they are not, you should still consider the request and respond as soon as reasonably possible.

Discussing the request

Meet with the employee to help you consider his or her request.

Consider the request

Consider all requests seriously and take into account all relevant facts and circumstances. A request under the Fair Work Act can be refused only on reasonable business grounds. Employers should also be mindful of their obligations under anti-discrimination laws.

Written response

You are required to give the employee a response within 21 days of the request. Keep a copy of the letter for your own records. If the request is refused, set out your reasons in a written response to the employee. If the request is agreed to, ensure it is documented.

Follow-up

If you agree to a trial period, ensure that you follow up with the employee at the conclusion of the trial and document what is agreed.

Shortcut glossary

Adoption and surrogacy are not specifically dealt with in this toolkit. Employers have substantially the same obligations to employees who are adopting a child, including through a surrogacy arrangement, as they do to employees giving birth to a child.

Additional state and territory laws
Employers should be aware that there may be other laws in their state or territory which provide additional rights and obligations. This toolkit identifies where state or territory laws provide greater rights or responsibilities than the Commonwealth law.

TERM	DEFINITION
Adverse action	<p>The Fair Work Act (section 342) sets out the circumstances in which one person will be regarded as having taken adverse action against another person.</p> <p>It covers employers and employees, as well as prospective employees, and, in some circumstances, contractors and industrial associations.</p> <p>An employer must not take any 'adverse action' against an employee or prospective employee, because that person has a workplace right, has exercised a workplace right or proposes to exercise that workplace right, such as the right to take parental leave.</p> <p>It is also adverse action to discriminate on grounds that include sex, pregnancy and family or carer's responsibilities.</p> <p>Adverse action can include refusing employment, dismissal, or modifying an employee's position in a way that disadvantages them.</p> <p>See the Fair Work Ombudsman website for further information.</p>
Appropriate safe job	<p>This phrase is defined in section 81 of the Fair Work Act. If an employee provides evidence (e.g. a medical certificate) that it is inadvisable for her to continue in her current position but if she is otherwise fit for work, then she is entitled to be transferred to an available job that has the same ordinary hours of work as the employee's present position, or a different number of hours agreed to by the employee.</p> <p>If there is no such position, and the employee is entitled to unpaid parental leave, the employee is entitled to take paid 'no safe job' leave. Subject to certain conditions, employees who are not entitled to unpaid parental leave may be entitled to unpaid 'no safe job' leave.</p>
Dad and Partner Pay	<p>This is an Australian Government payment for eligible dads and partners after the birth or adoption of a child.</p>
Discrimination (direct and indirect discrimination)	<p>Discrimination is less favourable treatment. It is unlawful if the reason for that treatment is because of a protected ground, such as pregnancy or sex. Discrimination on the basis of grounds including sex, pregnancy and family responsibilities is unlawful under the Fair Work Act, the Sex Discrimination Act and state and territory anti-discrimination legislation.</p> <p>Discrimination can be direct or indirect.</p> <p>Direct discrimination occurs when a person is treated less favourably than another person because of their sex, pregnancy or potential pregnancy, breastfeeding or family responsibilities.</p> <p>Indirect discrimination occurs when there is a rule, policy, requirement or practice, which appears neutral on its face but actually disadvantages people who have a particular attribute, and it is not reasonable in all of the circumstances.</p>

Shortcut glossary

TERM	DEFINITION
Employer/ Employee	'Employer' and 'employee' are used in this toolkit to cover a range of working arrangements that may not strictly meet the legal definitions of employee and employer. Work, health and safety laws in most state and territories for instance, protect all workers – not just direct employees. For example, in addition to employees, employers have obligations to contractors and prospective employees.
Employee couple	Defined under the Fair Work Act as two employees where each of the employees is the spouse or de facto partner of the 'other'.
Family responsibilities	Responsibilities to care for or support a dependent child or immediate family member.
General protections	This refers to provisions in the Fair Work Act (sections 335 – 378) which, among other things, prohibit adverse action being taken against an employee for certain reasons, including pregnancy and sex, or because of the employee's workplace rights. See the Fair Work Ombudsman website for further information.
Keeping in touch days	This refers to provisions in the Fair Work Act (sections 79A and 79B) which enable an employee to perform work for the employer during the period of unpaid parental leave if: <ul style="list-style-type: none"> • The purpose of performing the work is to enable the employee to keep in touch with his or her employment in order to facilitate a return to that employment at the end of leave; • Both the employee and the employer consent to the employee working for the employer on that day; • The day is not within 14 days after the birth of the child (if the employee requests the day) or 42 days (if the employer requests the day); and • The number of keeping in touch days has not been more than 10.
No safe job leave	Provided that a pregnant employee (including casual) gives their employer evidence (e.g. a medical certificate) that they can work but can no longer do their usual job, under the Fair Work Act (section 81), the employer must move the employee to a safe job. The employee will be paid at the same rate, work the same hours and accrue the same entitlements that she received in her usual job. If there is no safe job available she can take 'no safe job' leave. This leave is: <ul style="list-style-type: none"> • Paid (at the base rate of pay) if the employee is entitled to unpaid parental leave (section 81A) or • Unpaid if the employee is not entitled to unpaid parental leave (section 82A).
Pre-parental leave position	This phrase is defined in section 83(2) of the Fair Work Act as the position the employee held before starting unpaid parental leave or if, before starting the unpaid parental leave, the employee was transferred to a safe job because of her pregnancy or reduced her working hours due to her pregnancy; the position the employee held immediately before that transfer or reduction.
Parental Leave Pay	This is an Australian Government payment for eligible primary carers after the birth or adoption of a child.
Replacement employee	Section 84A of the Fair Work Act sets out specific requirements for an employer to notify an employee who is engaged to perform the work of another employee planning to take, or taking unpaid parental leave. The employer must notify the replacement employee that the engagement to perform the work is temporary, of the return to work guarantee and of the rights of both the employee and employer that may result in the parental leave ending earlier than anticipated.
Return to work guarantee	This phrase refers to the right that an employee has under section 84 of the Fair Work Act to return to the position they held prior to commencing unpaid parental leave or if that 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.
Right to request	This refers to the right under the Fair Work Act for eligible employees to request: <ol style="list-style-type: none"> (i) An extension of unpaid parental leave for a further period up to 12 months (section 76); and (ii) A flexible work arrangement (section 65); and (iii) To work part time when returning to work after parental leave (section 65(1B)).

Shortcut glossary

TERM	DEFINITION
Unfair dismissal	Under the Fair Work Act, an employee may be able to bring an unfair dismissal claim if the dismissal was harsh, unjust or unreasonable (sections 379 – 405).
Unpaid parental Leave	<p>This is an entitlement which certain employees may be entitled to under the Fair Work Act (section 70) and/or pursuant to contracts of employment, policies, an agreement or award.</p> <p>Under the Fair Work Act, certain employees are entitled to unpaid parental leave if the leave is associated with:</p> <ul style="list-style-type: none"> (i) The birth of a child of the employee or the employee's de facto spouse or partner; or (ii) The placement of a child for adoption; and <p>the employee has or will have a responsibility for the care of the child.</p>
Unpaid special maternity leave	<p>This is a particular Fair Work Act entitlement (section 80) for female employees if they are not fit for work because:</p> <ul style="list-style-type: none"> (i) They have a pregnancy-related illness; or (ii) They have been pregnant, and the pregnancy ends within 28 weeks of the expected date of the birth of the child otherwise than by the birth of a living child. <p>An employee is only entitled to this leave if they are also eligible for unpaid parental leave under the Fair Work Act.</p>
Unlawful termination	These Fair Work Act provisions are available to employees to whom the general protections do not apply. They prohibit employers from dismissing employees for certain reasons, including pregnancy and sex.
Vicarious liability	<p>Employers can be held legally responsible for acts of discrimination or harassment that occur in the workplace or in connection with a person's employment. This is known as vicarious liability.</p> <p>In order to minimise their liability, employers need to demonstrate that they have taken all reasonable steps to prevent discrimination or harassment from occurring in their workplaces and that they have responded appropriately to resolve incidents of discrimination and harassment.</p>
Worker	<p>Work health and safety laws in most state and territories impose duties of care on persons conducting a business or undertakings to workers.</p> <p>The term worker is broadly defined to include employees, contractors, sub-contractors, volunteers or any other person carrying out 'work'.</p>



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