



A QUICK EMPLOYER GUIDE TO SUPPORTING WORKING PARENTS

Supporting pregnant employees and working parents makes good business sense

This guide is up to date as of 1 July 2015

This quick guide 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.

The **Employer Toolkit on Supporting Working Parents** provides you with more detailed information on your obligations. It also has contact details for organisations that can help you meet your legal obligations and build a safe and fair workplace for everyone.

→ PREGNANT EMPLOYEES

Discrimination issues: 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 them from performing their work. It may, however, require some changes to their duties or work environment. You are encouraged to accommodate the needs of pregnant employees in the workplace to avoid discriminating on the basis of pregnancy under, for example, the Sex Discrimination Act.

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

any changes you might need to make to keep her and her unborn child safe at work. Changes could include varying the work environment or hours of work, or a temporary transfer to another work area or an appropriate safe job. Conducting a risk assessment will be necessary if new issues (involving risks to health or safety) arise that you haven't planned for. You must follow through by implementing reasonably practicable measures to address the risks and should contact your local work health and safety authority if you are unsure about what needs to be done.

Fair Work Act issues: Under the Fair Work Act, regardless of an employee's status or length of service, if an employee

WHAT TO DO WHEN AN EMPLOYEE INFORMS YOU THAT SHE IS PREGNANT:

- Offer congratulations and discuss work health and safety issues.
- Avoid making assumptions about what your employee can or can't do – discuss with your employee any changes that need to be made so she can work safely during her pregnancy.
- In consultation with the employee, make reasonably practicable changes to her job, such as providing regular breaks or providing an appropriate safe job.

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.

An appropriate safe job means a safe job that has the same ordinary hours of work as the employee's present position or a different number of ordinary hours agreed to by the employee. You must pay the employee at the employee's full rate of pay (i.e. the same rate as she was paid before the transfer) for the hours that she works in the appropriate safe job.

If an appropriate safe job is not available, the Fair Work Act provides that an employee can take 'no safe job' leave. This leave is:

- Paid if the employee is entitled to unpaid parental leave under the Fair Work Act or
- Unpaid if the employee is not entitled to unpaid parental leave under the Fair Work Act.

→ Relevant laws

ANTI-DISCRIMINATION LAWS

Federal, state and territory anti-discrimination laws make it unlawful for an employer to discriminate against an employee on various grounds including sex, pregnancy, potential pregnancy, breastfeeding and family responsibilities. This applies to most employment relationships and across all

stages of the employment relationship, from recruitment through to termination.

FAIR WORK ACT

The Fair Work Act sets out specific standards for employment, including in relation to pregnant employees, unpaid parental leave and the right to request flexible work arrangements. It makes discrimination on the basis of sex, pregnancy and family and carer's responsibilities unlawful, subject to certain

exceptions, and protects employees who have workplace rights, like the right to take unpaid parental leave.

WORK, HEALTH AND SAFETY LAW

These laws set out employers' obligations to ensure, for example, so far as is reasonably practicable, that the workplace is safe for all workers including employees and contractors and others at the workplace.

Work health and safety

issues: You must ensure, so far as is reasonably practicable, the health and safety of all your workers, including those who are pregnant. Discussing any work health and safety issues with the pregnant worker will help identify

→ COMMENCING AND ENDING EMPLOYMENT

You should not allow myths and stereotypes to influence your decision when selecting an applicant – you could miss out on a valuable employee.

You must ensure 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.

→ EMPLOYEES AND LEAVE

Many different forms of leave can be used to support parents in the lead-up to birth and caring for their baby.

Under the Fair Work Act, employees with at least 12 months of service are entitled to 12 months of unpaid parental leave if they take leave associated with the birth of a child and they have a responsibility for the care of a child. It does not need to be the primary responsibility. This applies to both a pregnant employee and the working spouse or partner of a pregnant person. There are different rules regarding unpaid leave depending on whether both parents are working or one parent is working and one is not. Casual employees are also entitled to unpaid parental leave if, immediately before the birth, they are, or will be, a long-term casual employee with 12 months regular and systematic service and a reasonable expectation of this continuing.

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

to refuse the employee's leave application.

Keeping in touch days: Under the Fair Work Act, an employee can choose (if they so wish to do so) to work up to 10 days during their unpaid parental leave. The aim of this is to help the employee keep in touch with you and what is happening in the workplace to facilitate a return to work at the end of their leave.

Consultation requirement: Under the Fair Work Act, you must take all reasonable steps to give an employee on unpaid parental leave information about, and an opportunity to discuss, any decisions taken while the employee is on leave if those decisions will have a significant effect on the status, pay or location of the employee's pre-leave position.

Extension: An employee on unpaid parental leave under the Fair Work Act has the right to request an additional 12 months of unpaid parental leave. While you may refuse this request on "reasonable business grounds", you must clearly state the reason for your refusal in a written response.

WHAT TO DO WHEN AN EMPLOYEE REQUESTS AN EXTENSION TO PARENTAL LEAVE:

- Consider requests from all employees, including those not covered by the Fair Work Act, on their merits, taking into account what is reasonable for your business.
- Provide a response in writing and, if you refuse the request, explain your decision.

→ RETURNING TO WORK

Guarantee: An employee returning from unpaid parental leave under the Fair Work Act is entitled to their pre-parental leave job. If the employee's job no longer exists, the employee is entitled to an available position for which the employee is qualified and suited, nearest in status and pay to the pre-parental leave position.

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.

Flexible work request: An employee with at least 12 months of continuous employment who has responsibility for the care of a child who is of school age or younger may request flexible working arrangements under the Fair Work Act. The request must be in writing and set out details of the change the employee seeks and the reasons for the change. You must respond within 21 days and can

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 commence 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.
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.

WHAT TO DO WHEN AN EMPLOYEE REQUESTS PARENTAL LEAVE:

- Identify what entitlements are available to the employee under the Fair Work Act, their contract, and any applicable agreement, policy or award.
- Identify your obligations under anti-discrimination laws.
- Meet with the employee to discuss her or his leave plans.
- Work out how best to "keep in touch" while the employee is on leave.

refuse the request in writing on 'reasonable business grounds'.

Breastfeeding: Many women combine breastfeeding and/or expressing breast milk and working. 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 the breast pump. You should also ensure she has appropriate breaks to breastfeed or express.

Breastfeeding is a protected ground of discrimination. Failure to provide adequate facilities may constitute discrimination

WHAT TO DO WHEN AN EMPLOYEE REQUESTS A FLEXIBLE WORK ARRANGEMENT:

- Consider requests from all employees, including those not covered by the Fair Work Act, on their merits, taking into account what is reasonable for your business. If in doubt, consider trialling the flexible arrangement.
- Make sure your workplace practices or any policies do not discriminate, even unintentionally, against employees with family responsibilities.

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.