



An Australian Government Initiative

Supporting Working Parents

A Guide for Employees

2015



INSIDE THIS GUIDE

- 1 Understanding the law
- 2 Working while pregnant (or potentially pregnant)
- 3 Employees and leave
- 4 Returning to work from leave
- 5 Commencing and ending employment

INCLUDES INFORMATION ON ASSISTANCE AND MAKING A COMPLAINT & GLOSSARY



**SUPPORTING
WORKING
PARENTS**

Pregnancy, parental leave and return to work: know your rights

This guide will help employees to:

- Understand the laws that relate to pregnancy, parental leave and return to work
- Effectively discuss their rights with their employer

This guide sets out employee entitlements and responsibilities and employer obligations in relation to pregnancy, parental leave and return to work under several different laws including the federal *Sex Discrimination Act 1984*, state and territory discrimination legislation, the federal *Fair Work Act 2009 (Cth)* and federal, state or territory work health and safety legislation. These laws apply to most workplaces in Australia.

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

This guide provides information based on key questions that arise when:

- working while pregnant;
- requesting and going on parental leave
- returning to work; and
- commencing and ending employment.

The guide also sets out:

- useful publications produced by the Australian Human Rights Commission, Fair Work Ombudsman and Fair Work Commission;
- information on where employees can access assistance; and
- the various avenues for making a complaint.

This guide is the result of extensive consultation and collaboration with all relevant government departments and government agencies.

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

Contents

1. Understanding the law	4
1.1 Key points	4
1.2 What laws apply to me?	4
1.3 What is pregnancy or return to work discrimination?	5
1.4 Can I take parental leave?	5
1.5 What work health and safety protections do I have?	6
1.6 Do I have any other rights?	6
1.7 Where can I get help?	6
1.8 More information	6
2. Working while pregnant (or potentially pregnant)	7
2.1 Key points	7
2.2 When do I need to tell my employer I am pregnant?	7
2.3 Can my employer ask me if I am pregnant?	7
2.4 How should I handle a negative response from my manager about my pregnancy?	8
2.5 What if my manager or colleague keeps making negative comments or jokes about my pregnancy?	8
2.6 What should I do if I am worried about my health or safety at work while pregnant?	8
2.7 What leave is available for pregnancy related illness?	9
2.8 What leave is available for prenatal medical appointments?	9
2.9 I'm undergoing fertility treatment. What are my rights?	10
2.10 What should I do if my manager is treating me differently now that they know that I am pregnant?	10
2.11 What rights do I have under the Fair Work Act if my pregnancy ends?	10
2.12 Case study	11
2.13 More information	11
3. Employees and leave	12
3.1 Key points	12
3.2 How much unpaid parental leave am I entitled to?	12
3.3 What is the Australian Government Paid Parental Leave Scheme?	13
3.4 When must I stop working and go on parental leave?	14
3.5 Can I extend my unpaid parental leave under the Fair Work Act?	14
3.6 When do I have to tell my employer that I want to take, shorten or extend my unpaid parental leave under the Fair Work Act?	14
3.7 My partner is not working. Am I still entitled to unpaid parental leave?	15
3.8 My partner and I are both working. Can we both take unpaid parental leave under the Fair Work Act?	15
3.9 Does my employer have to tell me if my position changes while I am on parental leave?	16
3.10 What communication should I have with my employer before and when I am on leave?	16
3.11 More information	17
4. Returning to work from leave	18
4.1 Key points	18
4.2 What role am I entitled to when I return to work?	18
4.3 I would like to work more flexibly when I return from parental leave. What are my options?	19
4.4 Do I have any rights if I breastfeed/express in the workplace?	19
4.5 What are replacement employees?	20
4.6 More information	20
5. Commencing and ending employment	21
5.1 Key points	21
5.2 How do I answer a question about family in an interview?	21
5.3 How can I find out about my rights in my new workplace?	21
5.4 Case study	22
5.5 Can I be terminated or made redundant while I am on parental leave?	22
5.6 What can I do if I feel I have been treated unfairly?	22
5.7 More information	23
Assistance and making a complaint – Where to access assistance and the various avenues for making a complaint	24
Glossary	32

1. Understanding the law

1.1 Key points

TOP TIP Know your rights

Understand your rights under anti-discrimination laws, the Fair Work Act and work health and safety laws and find out whether you have any additional rights by reading your employment contract (if applicable), the award or enterprise agreement that applies to your workplace and any workplace policies.

- Employees and employers have rights and responsibilities relating to pregnancy, parental leave and return to work under several different laws including the federal *Sex Discrimination Act 1984*, state and territory anti-discrimination laws, the federal *Fair Work Act 2009* and federal, state or territory work health and safety legislation.
- Refer to the glossary if there is a term you don't understand.

1.2 What laws apply to me?

LEGISLATION	WHO
Sex Discrimination Act	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 in Australia. Other provisions of the Act, including those relating to flexible working arrangements, apply to all employees except those employed by: <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). <p>See: http://www.fairwork.gov.au/about-us/the-fair-work-system if you are unsure whether the Fair Work Act applies to you.</p> <p>Employees who are not covered more generally by the Fair Work Act are still protected from dismissal for discriminatory reasons (such as pregnancy) by the unlawful termination provisions.</p>
Work health and safety legislation	All workers including employees, contractors, labour hire workers, apprentices and trainees.
State and territory anti-discrimination legislation	<p>ACT: <i>Discrimination Act 1991</i> (ACT): all 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; except Commonwealth Government employees.</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> <p>VIC: <i>Equal Opportunity Act 2010</i> (VIC): 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 not allocating a project to an employee who is pregnant because of an assumption that she will be unable to concentrate and unable to complete 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.

The Fair Work Act also 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 must work full-time might disadvantage women who are more likely to need to work part-time due to family responsibilities.

1.4 Can I 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 3.8 on page 15. Notice requirements and extensions to the initial 12 months are set out in 3.6 on page 14.

Anti-discrimination laws apply both to employees who are and who are not entitled to unpaid parental leave under the Fair Work Act. This means that an employer must ensure that the employee's sex, pregnancy or family responsibilities does not unfairly influence a decision to reject the employee's leave application. For example, it may be discrimination if an employer provides long periods of unpaid leave to employees for a variety of reasons but refuses an application for leave by a pregnant employee.

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 3.3 on page 13.



1.5 What work health and safety protections do I have?

Under work health and safety laws, businesses 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 staff returning to work after childbirth.

This also requires businesses 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 may 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 you provide your employer with evidence that you are fit for work (e.g. a medical certificate) but that it is inadvisable for you to continue in your present position because of illness or risks arising out of your pregnancy or hazards connected with your job and there is an appropriate safe job available, you are 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 8.

1.6 Do I have any other rights?

Many organisations provide additional rights and benefits above the minimum conditions set out in law to further value and support pregnant employees and their return to work. These additional rights may be found in employment contracts, organisational policies and practices, enterprise agreements or awards.

State and territory laws may also provide additional rights. For example, in addition to rights under the federal Sex Discrimination Act,

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 1996* (NT) provides a positive obligation on employers to reasonably accommodate any special needs an employee may have because they are pregnant, breastfeeding or are a parent.

1.7 Where can I get help?

The '**Assistance and making a complaint**' section sets out where to access assistance and the various avenues for making a complaint.

1.8 More information

- **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. Working while pregnant (or potentially pregnant)

2.1 Key points

- Being pregnant does not mean that you cannot continue to make a valuable contribution to the business. It is against the law to discriminate against you because you are pregnant.
- You and your employer should discuss any changes that need to be made so that your workplace is safe for you while you are pregnant.
- You have a duty to take reasonable care for your own health and safety and to comply, so far as you are reasonably able to, with any reasonable instructions relating to health and safety in the workplace.

TOP TIP

Discuss with your employer any changes that need to be made so you can work safely during your 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.

2.2 When do I need to tell my employer I am pregnant?

While employees do not generally have to notify their employer that they are pregnant, there may be health and safety reasons to do so.

All people in the workforce have a duty to take reasonable 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 their work health and safety obligations.

Written notification to your employer 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 if you are pregnant and are working with lead in Western Australia.

You may need to notify your employer to access certain employee entitlements. For example, if you have worked for your employer for at least 12 months before the date of birth or expected date of birth of your child and you are planning on taking unpaid parental leave under the Fair Work Act, you must, if practicable, tell your employer at least 10 weeks before the intended start date of the leave that you plan to take this leave.

See section 3 which deals with requesting and going on unpaid parental leave under the Fair Work Act.

2.3 Can my employer ask me if I am pregnant?

Your employer should only ask you if you are pregnant in certain circumstances. If, for example, your employer suspects that you are pregnant and there are genuine work health and safety concerns if you continue in your usual role, your employer may ask you in order to make reasonably practicable adjustments to your current role. They should provide information about the risks they think may need to be addressed.

It may be inappropriate if your employer asks if you are pregnant and there are no genuine work health and safety concerns.

If your workplace poses special risks to pregnant workers, your employer should provide information about those risks to the workforce. This should help you work out when to notify your pregnancy to your employer for work health and safety reasons.



2.4 How should I handle a negative response from my manager about my pregnancy?

Most employers will be happy that you are pregnant but they may also feel under pressure and wonder what your pregnancy means for the organisation and the work that needs to be done.

The best way to handle a negative response is to set aside time to discuss any changes that might need to be made to your work activities and any leave you wish to take. It may help to refer to workplace policies. You could also consider giving your manager a few days to get used to

the idea before you have a detailed conversation. Make sure you are clear about how you want the announcement of your pregnancy to be made to the rest of the organisation.

Remember that even if your manager or another staff member has a negative response, there might be other people in the organisation who will be able to discuss your needs with you. Perhaps another employee you trust, someone in Human Resources or a union representative.

2.5 What if my manager or colleague keeps making negative comments or jokes about my pregnancy?

This could amount to discrimination. You may want to deal with the situation yourself by raising it directly with your manager or your manager's supervisor. If this does not resolve the situation, or you do not feel comfortable doing this, you can make a complaint.

See the '**Assistance and making a complaint**' section which sets out the various avenues for making a complaint.

See also, the Australian Human Rights Commission's Good Practice Good Business guide *Workplace discrimination, harassment and bullying*

2.6 What should I do if I am worried about my health or safety at work while pregnant?

You may experience a variety of physical effects such as tiredness and nausea during certain stages of your pregnancy. While this is unlikely to prevent you from performing your work, you may require some changes to your job or work environment.

You should have a conversation with your employer about the changes that can be made so that you can keep doing your job. Most of the time you and your manager will be able to find a solution and you will be able to continue safely doing your job with a few changes.

You should consult with your general practitioner/specialist and obtain a medical certificate if you believe that your work is impacting on your health

or pregnancy and you need adjustments made to your job or work environment. Your employer must take into account any medical advice from your general practitioner/specialist about your health and adjust your working conditions accordingly.

Under work health and safety laws, businesses must do what is reasonably practicable to ensure the health and safety of all their workers - including those who are pregnant. Employers must be prepared to consult on possible options to find appropriate solutions. You have the right to cease or refuse to carry out work, if you have a reasonable concern that carrying out the work would expose you to a serious risk to your health or safety due to an immediate or imminent exposure to a hazard.



Under anti-discrimination laws, employers should consider all reasonable options for accommodating the needs of pregnant employees and be prepared to discuss these options with you to find individual solutions. 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 when needed and a chair to sit on if the job usually involves standing up for long periods of time. If your employer does not provide reasonable accommodations, this may be discrimination.

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, you may take personal/carer's leave if the leave is taken because you are not fit for work, because of personal illness or injury. (You may also take personal/carer's leave to provide care or support to a member of your immediate family or household who, due to personal illness, injury or an unexpected emergency, requires care or support.)

You may access personal/carer's leave because of a pregnancy-related illness e.g. gestational diabetes, pre-eclampsia, back pain resulting from pregnancy.

In addition to personal/carer's leave, 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.

You must give your employer 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 your employer of the period, or expected period, of the leave.

Your employer can 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 you 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 your employer allows access to paid or unpaid leave for other purposes, to meet their obligations under anti-discrimination laws, they should afford pregnant employees the same flexibility in regard to attending prenatal medical appointments



SUPPORTING WORKING PARENTS

2.9 I'm undergoing fertility treatment. What are my rights?

If you are undergoing fertility treatments, such as IVF or assisted reproductive technology, you are covered by the Sex Discrimination Act. This means you cannot be disadvantaged or treated less favourably than other employees.

Where fertility treatment impacts on your or your partner's health (e.g. side effects from hormone therapy or other medication) you may be entitled to access personal/carer's leave under the Fair Work Act on the basis of your personal illness or your need to care for or support your ill partner.

2.10 What should I do if my manager is treating me differently now that they know that I am pregnant?

If your pregnancy is one of the reasons why your supervisor is treating you unfavourably, for example, refusing to let you go on training or not considering you for a promotion, this may be discrimination under, for example, the Sex Discrimination Act.

your concerns or write your employer an email or letter. If this does not resolve the issue or you feel uncomfortable raising the issues directly with your employer, you can bring a complaint to the Australian Human Rights Commission.

You should approach your employer informally and try to solve the problems directly. A good way to do this is to discuss with your employer

You may also have rights under other legislation, e.g. adverse action under the Fair Work Act and state or territory anti-discrimination laws.

2.11 What rights do I have under the Fair Work Act if my pregnancy ends?

TIMING	RIGHTS
If you miscarry within the first 12 weeks of pregnancy	You are entitled to take personal/carer's leave. If you have used all of your personal/carer's leave, you should request unpaid leave.
If your pregnancy ends within 28 weeks of the expected date of birth	Provided that you have completed at least 12 months of continuous service with your employer immediately before the expected date of birth of your child, you are entitled to a period of unpaid special maternity leave. You may also access other forms of accrued paid leave such as annual leave or long service leave. If you have accrued paid personal/carer's leave, you can take this instead of unpaid special maternity leave.
If the period of unpaid parental leave under the Fair Work Act has not commenced and the pregnancy ends other than in the birth of a live child	You or your employer may give written notice cancelling the leave.
If the period of unpaid parental leave has commenced and the pregnancy ends due to still birth, or the child dies	You can give your employer written notice that you wish to return to work and your employer must give you written notice requiring you to return to work on a specified day which must be within four weeks after your employer receives your written notice. Also, your employer may, where appropriate, give you written notice requiring you to return to work on a specified day which must be at least six weeks after your employer gives you their written notice.



2.12 Case study

Australian Human Rights Commission case study - complaint under the Sex Discrimination Act

The complainant was employed in a medical related position. She alleged her employer offered her a promotion which was conditional on the outcome of a medical assessment. The complainant claimed her employer revoked the offer when she disclosed she was pregnant. On being advised of the complaint her employer reinstated the offer of promotion. The complaint was resolved on this basis.

*Please note the complainant could have chosen to bring her complaint to another organisation rather than to the Australian Human Rights Commission. Please see the '**Assistance and making a complaint**' section for information on the various organisations.*

2.13 More information

- **Australian Human Rights Commission:**
 - *Good Practice Good Business factsheets*
- **Fair Work Commission**
 - *General protections*
- **Fair Work Ombudsman**
 - *Information for parents and families*
 - *Pregnant employee entitlements*

3. Employees and leave

3.1 Key points

TOP TIP

There are some requirements about when you need to tell your employer that you want to take leave. Section 3.6 on page 14 sets out in table form the requirements.

- 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, if you have completed at least 12 months of continuous service with your employer immediately before the birth or expected birth of your child, you are entitled to take up to 12 months of unpaid parental leave if you will have a responsibility for the care of the child. This applies to both the pregnant employee and the spouse or partner of the pregnant employee.
- Where an employee is not entitled to unpaid parental leave under the Fair Work Act, anti-discrimination laws still apply. This means that an employer must ensure that the employee's sex, pregnancy or family responsibilities does not unfairly influence a decision to reject the employee's leave application.
- The Australian Government Paid Parental Leave scheme provides two payments – Parental Leave Pay and Dad and Partner Pay.

3.2 How much unpaid parental leave am I entitled to?

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

Annual leave or long service leave can be used at the same time as unpaid parental leave under the Fair Work Act, but do not extend any available parental leave period. An employee is not entitled to take paid personal/carer's leave, compassionate leave or community service leave while he or she is taking unpaid parental leave.

Anti-discrimination laws apply both to employees who are and who are not entitled to unpaid parental leave under the Fair Work Act. This means that an employer must ensure that the employee's sex, pregnancy or family responsibilities does not unfairly influence a decision to reject the employee's leave application. For example, it may be discrimination if an employer provides long periods of unpaid leave to employees for a variety of reasons but refuses an application for leave by a pregnant employee.



3.3 What is the Australian Government Paid Parental Leave scheme?

The Australian Government Paid Parental Leave scheme 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, you will be able to receive Parental Leave Pay at the national minimum wage for up to 18 weeks. Additionally, you must be on leave from your workplace and not be working for any other employer. It can be claimed by either parent as long as they are the primary caregiver.

To be eligible for Parental Leave Pay, you must:

- be the primary carer of the child
- have an individual adjusted taxable income of \$150,000 or less in the financial year either before the date of birth or adoption, or the date you claim, whichever is earlier, and
- have worked for at least 10 of the 13 months before the birth or adoption of your child and 330 hours in that 10 month period, even if all of that work was not with the same employer, and
- meet Australian residency requirements.

Casual workers, contractors and self-employed people are also eligible to receive the payment.

Parental Leave Pay can be claimed through the Australian Government Department of Human Services.

If you are entitled to Parental Leave Pay, your employer will provide the payment to you if you:

- have worked for the employer for at least 12 months
- will remain employed by the employer during the parental leave period

- are based in Australia, and
- expect to receive at least 8 weeks of Parental Leave Pay.

In other circumstances, the Australian Government Department of Human Services will pay you directly.

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, you will be able to receive up to two weeks Dad and Partner Pay at the national minimum wage.

To be eligible, employees must be on unpaid leave, such as unpaid parental leave and not working through their two week Dad and Partner Pay period, and must:

- have an individual adjusted taxable income of \$150,000 or less in the financial year either before the start date of the Dad and Partner Pay period, or the date you claim, whichever is earlier, and
- have worked for at least 10 of the 13 months before the start date of the Dad and Partner Pay period and 330 hours in that 10 month period, even if all of that work was not with the same employer, and
- meet Australian residency requirements.

The Australian Government Department of Human Services will pay you directly.

Your employer should not prevent you from taking unpaid leave for this purpose, even if you have accrued paid leave entitlements.

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

→ 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 4 years. She notified her employer that she was pregnant and asked about the Australian Government Paid Parental Leave scheme.

For Parental Leave Pay, her employer 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.

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 6 weeks before her baby was due and commenced unpaid parental leave under the Fair Work Act. She took the first 3 weeks as annual leave and then had 3 weeks unpaid leave. When her baby was born, she received the 18 weeks of Parental Leave Pay at the national minimum wage. After these 18 weeks she took 6 weeks of unpaid parental leave. Her total time off was (6+18+6 = 30 weeks), Paid = 21 and Unpaid = 9.



SUPPORTING WORKING PARENTS

→ EXAMPLE 1

Taking and extending leave

May had worked for three years for her employer and was therefore entitled to unpaid parental leave under the Fair Work Act. She was pregnant and notified her employer that she intended to take eight months of unpaid parental leave. When she was on leave, she realised that she wasn't ready to go back to work, so she notified her employer (four weeks before her initial leave period ended) that she was extending her leave for the additional four months. She did not need to get her employer to agree to this as she had the right to extend and had provided sufficient notice (i.e. a minimum of four weeks).

Later she requested in writing an extension of three months past the initial 12 months as she could not get a childcare place until her baby was 14 months old. When she set out why she needed the extra time, her employer considered its business needs and then agreed to May's request.

3.4 When must I stop working and go on parental leave?

The Fair Work Act provides for pregnant employees to start unpaid parental leave, six weeks before the expected birth date. If you want to keep working in the six weeks before the expected birth date, your employer may request that you provide medical evidence to show that you are fit to work and whether it is inadvisable to keep working in your present position. If you do not provide your employer with a medical certificate within seven days of their request, your employer can require you to start your unpaid

parental leave under the Fair Work Act.

Unpaid parental leave under the Fair Work Act must not start later than the date of birth of the child.

If you are not eligible for unpaid parental leave under the Fair Work Act, you must stop working at a suitable time so that your employer can fulfill their obligations to provide a safe workplace. You also have an obligation to take reasonable care for your own health and safety at work.

3.5 Can I extend my unpaid parental leave under the Fair Work Act?

Under the Fair Work Act, you have the right to extend your unpaid parental leave once (provided you have not used all of the 12-month unpaid leave period) by giving written notice to your employer at least four weeks before the end date of the original leave period. This is a right under the Fair Work Act and provided you give the required notice, cannot be refused by your employer. The original leave period can only be shortened by agreement with you.

You can request in writing an extension of unpaid parental leave for a further 12 months immediately following the end of the available 12 month parental leave period. The request must be given to your employer at least four weeks before the end of the initial 12-month parental leave period. Your employer must grant or refuse the request no later than 21 days after you make the request. Your employer may refuse the request only on reasonable business grounds and must include details of the reason for the refusal in their response.

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. For example, 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.

An employer must ensure that the employee's sex, pregnancy or family responsibilities does not unfairly influence a decision to reject an extension. Otherwise, a refusal may be discriminatory.

For situations where both parents are taking unpaid parental leave under the Fair Work Act, (as part of an employee couple), the parents are entitled to no more than 24 months of leave between them.

3.6 When do I have to tell my employer that I want to take, shorten or extend my unpaid parental leave under the Fair Work Act?

The below table sets out when you need to notify your employer of your intention to take, shorten and extend unpaid parental leave under the Fair Work Act:

ACTION	NOTICE PERIOD
Telling your employer of your intention to take unpaid parental leave under the Fair Work Act	At least 10 weeks before you wish to commence unpaid parental leave (or as soon as practicable). This must be in writing and you must specify the intended start and end dates.



Confirming the start and end dates of your unpaid parental leave or advising your employer of any changes	At least four weeks before you start unpaid parental leave unless this is not practicable (e.g. the child is born prematurely). This must be in writing.
When can you stop working and start your unpaid parental leave?	The leave may start up to six weeks before the expected birth of the child but can start earlier if you and your employer agree. If you continue working during the 6 week period before the birth of the child your employer may request that you provide certain medical evidence that states you are fit to work and may require you to take unpaid parental leave if you cannot provide that evidence.
Shortening your 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 your employer.
Telling your employer that you are extending your initial period of unpaid parental leave (e.g. from nine months to 12 months)	At least four weeks before your expected date of return. This must be in writing. This is a right under the Fair Work Act and cannot be refused by your employer.
Requesting an extension to unpaid parental leave beyond the initial 12 months (e.g. 12 months to 18 months)	At least four weeks before the end of the initial 12-month unpaid parental leave period. This request must be in writing. Your employer must respond to this request within 21 days .

3.7 My partner is not working. Am I still entitled to unpaid parental leave?

Under the Fair Work Act, even though your partner is not working, you can still apply for 12 months of unpaid parental leave provided you will have a responsibility for the care of the child while on leave and have completed 12 months of continuous service with your employer immediately before the period of leave is to start.

If rather than start the unpaid parental leave at

the birth or expected date of birth of the child you wish to start the leave later, this is allowed provided that the period of unpaid parental leave starts within 12 months after the date of the birth of your baby. While you 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 your baby.

→ EXAMPLE 1 Employee couple both taking unpaid leave – Anthony/Maria

When Maria was pregnant with her first child, due in April, she worked out with her husband Anthony how they could both take parental leave to best work for them. Maria worked as a teacher and it made sense for her to go back to work at the start of the school year, but they wanted to have one of them home with the baby for a bit longer. Maria stopped work at the end of Term 1, three weeks before the birth. When the baby was born, Anthony also took three weeks concurrent parental leave and had three weeks annual leave, and then went back to work. When school started for the new year Maria went back to work. Anthony then took six months unpaid parental leave, returning to work when their baby was 15 months old.

3.8 My partner and I are both working. Can we both take unpaid parental leave under the Fair Work Act?

Under the Fair Work Act, you and your partner are described as an employee couple. Both of you can take unpaid parental leave under the Fair Work Act provided that you have completed at least 12 months of continuous service with your employer:

- For the carer who is to take the initial unpaid parental leave, before the birth or expected birth of your child and
- For the carer who is to take a period of unpaid parental leave after the period of unpaid parental leave of the other member of the employee couple, the date that the employee's period of leave is to start.

As a general rule, employee couples cannot take parental leave at the same time except for eight weeks in total. This concurrent leave can be taken in separate periods (for e.g. some at the birth and some later) but each block of concurrent leave must not be less than two weeks.

The total leave taken between the employee couple cannot exceed 24 months and if one employee requests an extension of unpaid parental leave, their employer is entitled to ask how much parental leave the other member of the employee couple has taken in order to work out the employee's entitlement.



3.9 Does my employer have to tell me if my position changes while I am on parental leave?

Yes, your employer must consult with you while you are on parental leave if there is going to be a significant change to your 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 your role.

Under anti-discrimination laws, an employee on parental leave must not be disadvantaged or treated less favourably than other employees, for example, in the provision of a redundancy or offers of new employment.

Australian Human Rights Commission case study - complaint under the Sex Discrimination Act

The complainant was employed as a manager with the respondent marketing company. After over one year of working at the company, she went on 12 months of unpaid parental leave. She said when she contacted her employer a month before she was to return to work, she was told that her position had been made redundant because of the acquisition of another company some months before. The complainant said while on leave, she was not advised of the changes happening in the company and was not given the opportunity to apply for another position. The complainant also alleged that her former position still existed, but had a new title. The complaint was resolved with an agreement that the company pay the complainant compensation.

Please note the complainant could have chosen to bring her complaint to another organisation rather than to the Australian Human Rights Commission. Please see the 'Assistance and making a complaint' section for information on the various organisations.

3.10 What communication should I have with my employer prior to and when I am on leave?

It is best to have a discussion with your employer prior to the taking of parental leave about, for example, your intended return date and whether you think you will want to work part time on return so that both parties' preferences and wishes are understood. Keep in mind that this may also change once your baby is born.

The Fair Work Act provides that you can work up to 10 days during unpaid parental leave under the Fair Work Act. The days are paid at your usual rate of pay and are designed to assist you to keep in touch with your employer while you are on leave to facilitate your return to work after the leave. Keeping in touch days could include attending an annual planning day, important training sessions or regular informal catchups.

The rules around keeping in touch days are in the Fair Work Act, and provide that 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; and
- Both the employee and the employer consent to the employee performing work for the employer on that day; and
- 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 in the period of unpaid parental leave.

As 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.

Employees who have extended their unpaid parental leave beyond the initial available

12- month period are entitled to a further 10 keeping in touch days.

There can be no negative consequences to choosing not to attend any keeping in touch days.

3.11 More information

- **Fair Work Ombudsman**
 - *Parents and families page*
 - *Best Practice Guide Parental Leave*
 - *Employer and employee checklists for parental leave*
 - *Parental leave information*
- *Templates:*
 - Parental leave request
 - Application to vary parental leave – first 12 months
 - Application to extend parental leave – beyond 12 months

4. Returning to work from leave

4.1 Key points

TOP TIP

Flexible work can take many forms – it is not just working part-time. It 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 are entitled to unpaid parental leave under the Fair Work Act, you have the right at the end of that leave to return to your pre-parental leave position. This is known as the return to work guarantee. If you have taken a negotiated period of leave over the birth of your child, outside of the Fair Work Act entitlements, it may be discriminatory if your employer refuses to allow you to return to your pre-leave position or to allow flexible working arrangements.
- If your job no longer exists, you have a right to an available position for which you are qualified and suited, nearest in pay and status to your pre-parental leave position.
- Under the Fair Work Act, an employee who has responsibility for the care of a child who is of school age or younger may request a flexible working arrangement if they have completed at least 12 months of continuous service with their employer immediately before making the request.
- While an employer can refuse a request for flexible work under the Fair Work Act, employers should also be mindful of obligations under the Sex Discrimination Act and other state or territory anti-discrimination laws.
- Under the Fair Work Act, you may take personal/carer's leave if the leave is taken because you are not fit for work, because of personal illness or injury. You may also take personal/carer's leave to provide care or support to a member of your immediate family (e.g. your child) or household who, due to personal illness, injury or an unexpected emergency, requires care or support.

4.2 What role am I entitled to when I return to work?

During leave you should have been in contact with your employer and you should have a specific discussion with your manager as your return date becomes closer.

It is helpful in this discussion to remember that if you were entitled to unpaid parental leave under the Fair Work Act, you are entitled to your pre-leave job back and if that job no longer exists, you are entitled to an available position for which you are qualified and suited nearest in pay and status to your pre-leave job.

If you are pregnant and are employed on a fixed term contract and your contract will end while you are on leave, you are not entitled to return to the same job at the end of the negotiated leave (unless your contract or other documentation states otherwise). If however, the contract ends after you return from the leave, you are entitled to the same job to complete your work under the fixed-term contract.



4.3 I would like to work more flexibly when I return from parental leave. What are my options?

Under the Fair Work Act, an employee who has completed at least 12 months of continuous service with their employer immediately before making the request and who has responsibility for the care of a child who is of school age or younger may request a flexible working arrangement.

Casual employees are entitled to make a request in circumstances where they are a long term casual employee of the employer (i.e. they have been employed on a regular and systematic basis for a sequence of periods of employment during a period of at least 12 months) and have a reasonable expectation of continuing employment with the employer on a regular and systematic basis.

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.

You must make your request for flexibility in writing and your employer must respond to the request in writing within 21 days. A request can be refused by your employer 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 can refuse a request for flexible work under the Fair Work Act, employers should also be mindful of obligations under the Sex Discrimination Act or other state or territory anti-discrimination laws. This means that an employer must ensure that the employee's sex or family responsibilities do not unfairly influence a decision to reject the employee's request.

Employees are protected from being treated unfairly because they have requested flexible work. See fairwork.gov.au for information on general protections. If you think your employer has unfairly refused your request for flexible working arrangements you can seek legal assistance - see '**Assistance and making a complaint**'.

→ EXAMPLE 1

Mary works in Victoria. When she returned from parental leave, she requested to work three days a week. This was approved by her manager. However, soon after approval she was moved to a different department with less client contact and fewer responsibilities.

Her employer had potentially breached the law by this unfair treatment.

Mary could seek help from the Fair Work Ombudsman, lodge a claim with the Fair Work Commission, make a complaint of discrimination to the Australian Human Rights Commission or make a complaint to the Victorian Equal Opportunity and Human Rights Commission. *Please see the '**Assistance and making a complaint**' section for information on the various organisations.*

4.4 Do I have any rights if I breastfeed/express in the workplace?

Yes, breastfeeding is a protected ground of discrimination. You should request a private room with a comfortable chair, a fridge where you can store breast milk and somewhere to store your breast pump.

Work health and safety laws also require businesses to ensure, so far as is reasonably practicable, the provision of adequate facilities for

workers' welfare while at work. Failure to provide adequate facilities may constitute discrimination and a breach of work health and safety laws.

See the '**Assistance and making a complaint**' section which sets out where to access legal assistance and the various avenues for making a complaint.



4.5 What are replacement employees?

Under the Fair Work Act, a replacement employee is an employee that performs the work of an employee who is on parental leave.

During the hiring process, replacement employees must be notified by the employer that:

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

This means that replacement employees understand that they may not have continuing employment with the employer.

Sometimes an employer will not hire a specific replacement employee, but instead just hire someone generally who has taken over some of the parental leave employee's tasks. In this case, the employee that returns from parental leave is still entitled to their job back and the employer will have to consider what role the additional employee can do or consider ending their employment according to usual workplace laws.

→ EXAMPLE 1

Unsuccessful return to work

Cynthia was employed as the Marketing Manager looking after four business units. She took eight months unpaid parental leave provided for under the Fair Work Act and a replacement employee was hired as Assistant Marketing Manager while Cynthia was on parental leave. Cynthia had no contact with her employer while she was on leave, but heard from some work colleagues that the replacement employee was now called the Marketing Manager and the boss really liked her. Cynthia tried to

arrange a time to meet her manager to discuss her return to work, but he was too busy.

Finally he said he could meet her the day before she was due to return. In the meeting he told her there had been a restructure while she was away, and her role had changed. She would still be called the Marketing Manager but would report to the replacement employee, not him, and look after one area of the business only, not the four she had previously had responsibility for. Cynthia

decided to seek legal advice on her rights. Her employer had potentially breached the law such as:

- Failing to consult with her about the significant change to her pre-parental leave position while she was on leave (under the Fair Work Act)
- Failing to return her to her pre-leave position (under the Fair Work Act)
- Taking adverse action (in changing her reporting line and duties) against her because she had taken parental leave (under the

Fair Work Act)

- Discriminating against her by changing her role to one of lesser status and with fewer responsibilities on the basis of her pregnancy and sex, giving rise to a claim under the Sex Discrimination Act or state and territory anti-discrimination legislation or an action under the Fair Work Act.

Please see the 'Assistance and making a complaint' section for information on the various organisations.

4.6 More information

- **Fair Work Ombudsman**
 - *Parents and families page*
 - *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 template*
 - *Request for flexible working arrangements – example letters template*
- **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

- When you apply for or start a new job, an employer must not refuse to employ you and must not treat you less favourably than another job applicant because of, for example, your sex, pregnancy, potential pregnancy, marital/relationship status, family responsibilities or breastfeeding status.
- While employers can decide to terminate your employment, or make your position redundant while you are pregnant, on parental leave, or after returning to work from parental leave, they must be very careful to ensure that your pregnancy, parental leave or family responsibilities is not one of the reasons for that decision.
- Usual rules and processes around ending employment apply.
- Do not delay taking action if you think you might have a claim as there can be short time frames for lodging certain actions, e.g. 21 days. See the '**Assistance and making a complaint**' section" for further details.

5.2 How do I answer a question about family in an interview?

Employers should not ask about your plans to have children or whether you have children. You do not have to tell an employer of your plans to have children or even if you currently have any children.

Remember that under the law, pregnancy, potential pregnancy, marital/relationship status, family responsibilities or breastfeeding is irrelevant when considering a person's suitability for the job.

This means that an organisation cannot refuse to hire you because you are of childbearing

age - that would be discrimination. Similarly, an organisation cannot refuse to hire you because you are pregnant or have children - this would also be discrimination. The same rules apply for recruiters and labour hire companies.

There may be some instances where the requirements of the job may make it impractical to hire a pregnant person and that would not be discrimination. For example, where there are reasonable concerns about work health and safety issues e.g. in the lead industry.

5.3 How can I find out about my rights in my new workplace?

Under the Fair Work Act, your employer must give you a Fair Work Information Statement. This is prepared by the Fair Work Ombudsman and sets out various information including about:

- The National Employment Standards
- Modern awards
- Termination of employment.

In addition to the Fair Work Information Statement, your employer may give you:

- An employment contract

- A letter which states the Award which applies to your employment.
- An enterprise agreement that applies to your workplace
- Workplace policies that cover various issues such as leave, discrimination and pregnancy.

You should be familiar with all documents to see if your employer provides any additional rights to what you already have under the law.



5.4 Case study

Australian Human Rights Commission case study - complaint under the Sex Discrimination Act

The complainant found out she was pregnant and informed the recruitment agency and her prospective employer. The complainant alleged that the company then withdrew the offer of employment and the recruitment agency did not contact her about other employment opportunities. She claimed she was discriminated against because of her pregnancy. The company said it was a small organisation and the decision to withdraw the employment offer was based on business reasons. The complaint was resolved through conciliation with the company and agency paying money to the woman. The company also provided a written apology and developed an Equal Employment Opportunity policy for the workplace.

*Please note the complainant could have chosen to bring her complaint to another organisation rather than to the Australian Human Rights Commission. Please see the **'Assistance and making a complaint'** section for information on the various organisations.*

5.5 Can I be terminated or made redundant while I am on parental leave?

Yes, employees on parental leave are not immune to genuine redundancy. If your employer is making a number of positions redundant, they need to fairly consider you and any other employees who are on parental leave. It is wrong to either automatically include or exclude employees on leave from the process - they should be considered in the same way as everyone else.

Under the Fair Work Act, your employer must consult with you and discuss any proposed

changes to the organisation or your role in accordance with any obligations under an award or enterprise agreement that may apply. Your employer must also comply with the Fair Work Act obligation to discuss changes in roles in respect of employees on parental leave. Failure to treat employees in the same way as others can also amount to discrimination under the Sex Discrimination Act and other anti-discrimination legislation.

5.6 What can I do if I feel I have been treated unfairly?

You should raise your concerns with your manager or someone in Human Resources. Your employer may have an internal grievance procedure which can be implemented. It is in both your and the employer's best interest for your concern to be dealt with promptly and fairly.

In the event, you are unable to resolve the issue internally you may wish to pursue your complaint externally. Just be aware that there can be short time frames for bringing some actions, so do not delay taking action if you think you might have a claim.

Actions to end employment can be the subject of various claims under:

- The Fair Work Act (claims of adverse action,

unfair dismissal, breach of an award or enterprise agreement)

- The Sex Discrimination Act,
- State or territory anti-discrimination legislation
- A breach of your employment contract.

The decision of where to bring a complaint is a complex one and legal advice should be sought. It can depend on several factors like the time it will take for a complaint to be dealt with, time limits on lodging the complaint and the range of remedies or relief that are available if the matter has to go to court. Please see the **'Assistance and making a complaint'** section for information on where you can access assistance and the various avenues for making a complaint.



5.7 More information

- **Australian Human Rights Commission**
 - *Good Practice Good Business* factsheets
 - *Protections at work*
 - *Workplace discrimination*
- **Fair Work Ombudsman**
 - Fact sheets:
 - *Minimum workplace entitlements*
 - *Information for parents and families*
 - *Ending employment*
 - *Ending employment while on parental leave*
- **Fair Work Commission**
 - Guides:
 - *General Protections*
 - *Unfair Dismissal*

Assistance and making a complaint

The decision of where to bring a complaint is a complex one and legal advice should be sought. It can depend on several factors like the time it will take for a complaint to be dealt with, time limits on lodging the complaint and the range of remedies or relief that are available if the matter has to go to court.

The following organisations may be able to provide assistance and advice:

- National Legal Aid: <http://www.nationallegalaid.org/>

- National Association of CLC's: http://www.naclc.org.au/need_legal_help.php
- Australian Council of Trade Unions: <http://www.actu.org.au>
- Women's Legal Service: <http://www.wlsa.org.au/members>

The below chart provides general information on the main organisations, claims and remedies. It is not a substitute for legal advice and it is recommended that advice is sought before any particular action is taken:

The Australian Human Rights Commission

<https://www.humanrights.gov.au/>

ROLE	<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, including 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>
CLAIMS THAT CAN BE BROUGHT	<p>The Sex Discrimination Act makes it against the law to treat an employee less favourably or disadvantage the employee because of their:</p> <ul style="list-style-type: none"> • Sex • Pregnancy or potential pregnancy • Family responsibilities • Breastfeeding or • Marital or relationship status. <p>Examples of acts which may be discriminatory include:</p> <ul style="list-style-type: none"> • Not hiring someone because they are pregnant or have family responsibilities • Not returning an employee who has taken parental leave to a position with the same status, tasks and responsibilities • Unreasonably refusing to accommodate a request to work part-time • Making negative remarks about an employee's need to breastfeed <p>Almost all employees, including casuals and contract workers, are covered under the Sex Discrimination Act.</p>
TIME LIMITS FOR LODGING AN APPLICATION	<p>Complaints should generally be lodged within 12 months of the alleged act of discrimination</p>
POSSIBLE OUTCOMES (these will depend largely on the individual circumstances of each complaint)	<p>Generally, when a complaint is received, the Commission will tell the employer about the complaint and give the employer a copy of the complaint. Where appropriate, the Commission will invite the parties to participate in conciliation.</p> <p>Conciliation is an informal process that allows those involved in the complaint to talk about the issues in the complaint and try to find a way to resolve the matter. There is a wide range of outcomes that can be agreed, such as training on anti-discrimination, apology and financial compensation.</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>The Court has a wide range of powers to make orders if it finds there has been unlawful discrimination.</p> <p>This can include:</p> <ul style="list-style-type: none"> • Orders to employ or re-employ the applicant • Orders to pay damages • Orders to vary the termination of a contract.

Assistance and making a complaint

FACTORS TO CONSIDER	<p>There is no cost in making a complaint to the Commission.</p> <p>The Commission is not an advocate for the complainant or the employer. A complainant under the Sex Discrimination Act cannot go straight to court – a complaint must be lodged with the Commission first.</p> <p>At Court, a complainant must be able to show less favourable treatment against a comparison employee (direct discrimination) or that a condition has been imposed which is unreasonable in all the circumstances, and which disadvantages the employee because of their sex/pregnancy/family responsibilities (indirect discrimination). The onus of proof is on the complainant to prove the case. The employer bears the onus of proving that a condition is reasonable.</p> <p>If a complainant succeeds at Court they generally would have any legal costs paid. If they are unsuccessful they may have to pay the legal costs of the employer.</p> <p>There is no cap on the damages that can be awarded, and both economic loss (lost wages, out of pocket expenses) and non-economic loss (damages for hurt and suffering) can be claimed.</p>
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Fair Work Ombudsman

<http://www.fairwork.gov.au/>

ROLE	<p>The Fair Work Ombudsman (FWO) help employers and employees understand their rights and responsibilities at work. FWO works with employees, employers and the community to educate and encourage compliance with Australia's workplace laws.</p> <p>The FWO can investigate suspected breaches of workplace laws.</p>
CLAIMS THAT CAN BE BROUGHT	<p>An individual can make a request for assistance to the FWO if they believe the Fair Work Act has not been complied with.</p> <p>The FWO can help the parties to resolve the issue or choose to investigate.</p> <p>The FWO can also seek information from employers, either voluntarily or by issuing notices, and can enter into enforceable undertakings to rectify breaches.</p> <p>If the FWO thinks proceedings should be commenced against an employer, it can seek orders that include the imposition of a penalty. It must start those proceedings in the Federal Circuit Court or Federal Court.</p>
TIME LIMITS FOR LODGING AN APPLICATION	<p>Can take action with respect to breaches that happened up to six years ago</p>
POSSIBLE OUTCOMES (these will depend largely on the individual circumstances of each complaint)	<p>Once a request for assistance is made, the focus of the FWO is on early intervention and resolution of workplace issues through the provision of advice and support.</p> <p>In responding to a request for assistance, the FWO may offer a mediation service, issue a compliance notice, or seek enforceable undertakings or a compliance partnership from the employer. Enforceable undertakings and partnerships can include a wider range of remedies than a court could order, and could include commitments to changing policies and practices, as well as paying back-pay and contrition payments</p> <p>In cases of serious non-compliance, the FWO may choose to conduct an investigation or inquiry. If the FWO decides to prosecute, it can seek the imposition of a penalty. The Court can also impose any orders it considers appropriate including orders granting an injunction to stop conduct, award compensation for loss, or make orders for reinstatement.</p>
FACTORS TO CONSIDER	<p>Once a request for assistance is made, the process is largely determined by the FWO.</p> <p>You cannot compel the FWO to investigate or to bring a prosecution. It has a compliance and enforcement policy and a litigation policy, and it does not investigate or prosecute every case. It must consider whether it is in the public interest to do so.</p> <p>If proceedings are commenced, you will be a witness, not a party to those proceedings, so they are largely out of your control.</p> <p>You may not receive any direct financial compensation as a result of requesting assistance from the FWO.</p> <p>There is no cost to you in making a request for assistance.</p>

Assistance and making a complaint

Fair Work Commission

<https://www.fwc.gov.au/>

ROLE	<p>Role includes:</p> <ul style="list-style-type: none"> • Determining unfair dismissal applications • The first step in resolving unlawful termination claims, general protection/adverse action claims (such as discrimination) – including termination and complaints about conduct during employment, can determine general protection/adverse action claims involving dismissal by arbitration (subject to consent) • Making orders to stop bullying at work.
CLAIMS THAT CAN BE BROUGHT	<p>Unfair dismissal</p> <p>Unlawful termination – a limited claim for employees not covered by the General Protections provisions – mainly State public servants.</p> <p>General Protections/adverse action claims that involve either dismissal, or actions other than dismissal</p> <p>Anti-bullying applications</p>
TIME LIMITS FOR LODGING AN APPLICATION	<p>An application for unfair dismissal, unlawful termination or a general protections/ adverse action involving termination must be lodged within 21 calendar days after the dismissal took place.</p> <p>There is no time limit for claims not involving dismissal, but the general time limit for matters involving an allegation of breach of the Fair Work Act is six years.</p>
POSSIBLE OUTCOMES (these will depend largely on the individual circumstances of each complaint)	<p>The primary remedy in an unfair dismissal claim is reinstatement, or compensation if reinstatement is not practicable</p> <p>In a general protections/adverse action matter involving dismissal or unlawful termination, if the FWC hears the matter by arbitration it can make orders that include reinstatement, compensation, lost remuneration and maintaining continuity of service. If the matter is heard by a court, the orders are wide, but along similar lines.</p> <p>Both of these types of applications cannot vary the terms of a job (ie make a full-time role part-time or vary duties) unless the parties reach agreement on that matter privately.</p> <p>In an anti-bullying application the FWC may make any order (other than the payment of money) to prevent the employee from being bullied.</p>
FACTORS TO CONSIDER	<p>Not every employee is eligible to bring an unfair dismissal claim – you should check eligibility with the Fair Work Commission. In an unfair dismissal claim there is a cap on damages of six months remuneration, and no compensation for hurt feelings or distress.</p> <p>The applicant in an unfair dismissal claim must prove that the action as harsh, unjust and unreasonable.</p> <p>With a General Protections/ Adverse Action claim involving dismissal, the FWC must convene a private conference with the parties to see if the matter can be resolved. If it cannot, the parties can agree to have it arbitrated by the FWC, or the applicant can elect to go the Federal Circuit Court or Federal Court to have it heard.</p> <p>If the application does not involve dismissal, the FWC can hold a conference, but only if both parties agree. The applicant can then choose to proceed with Court action.</p> <p>The onus of proof is on the respondent to show that the action complained of was not taken for the alleged particular reason or with that intent. This can assist applicants particularly in discrimination matters.</p> <p>Often when matters get to the Court stage there is an additional mediation step to try and assist parties to resolve the issues by agreement.</p> <p>As with any agreement, the parties can always reach terms that are wider than what the FWC or Court can impose.</p> <p>Parties usually pay their own legal costs in any FWC proceeding and related Court proceedings even if they are successful. There are some exceptions if parties have acted unreasonably.</p> <p>This can leave parties out of pocket if the damages awarded do not exceed the costs incurred, or if a respondent defends a matter successfully.</p> <p>As a general rule, conferences occur usually within four to six weeks of lodging an application. Once finished at the FWC, Court proceedings need to be initiated within set time frames, and the time it takes to conclude any litigation can vary significantly.</p> <p>You must still be employed to bring an application to stop bullying. You cannot bring this after you have been terminated, and the FWC cannot order compensation.</p>

Assistance and making a complaint

ACT Human Rights Commission

<http://hrc.act.gov.au/>

ROLE	Deals with complaints under the Discrimination Act 1991 (ACT)
CLAIMS THAT CAN BE BROUGHT	Discrimination and/or harassment under the Discrimination Act 1991 (ACT)
TIME LIMITS FOR LODGING AN APPLICATION	Complaints must generally be lodged within two years of the events complained about (with some exceptions).
POSSIBLE OUTCOMES (these will depend largely on the individual circumstances of each complaint)	The ACT Human Rights Commission generally aims to assist parties to resolve the complaint through conciliation. Common outcomes from successful conciliations include reinstatement or compensation, apologies, change in policy or arrangements.
FACTORS TO CONSIDER	If a complaint is not able to be conciliated or is otherwise closed by the Commission, the complainant has the right to have the matter referred to the ACT Civil and Administrative Tribunal for determination.

NSW: Anti-Discrimination Board of New South Wales

http://www.antidiscrimination.justice.nsw.gov.au/adb/adb1_index.html

ROLE	<p>Roles include:</p> <ul style="list-style-type: none"> • Promoting anti-discrimination and equal employment opportunity) principles and policies throughout NSW • Preventing discrimination from happening • Informing people about their rights and responsibilities under anti-discrimination law, and explaining how they can prevent and address discrimination.
CLAIMS THAT CAN BE BROUGHT	<p>Discrimination and harassment based on sex which includes pregnancy and breastfeeding in the area of employment, provision of goods and services, state education, the provisions of accommodation and registered clubs.</p> <p>Also it is unlawful to victimise a person because they have complained about discrimination or helped someone with a discrimination complaint. A victimisation complaint may be up held even if the original discrimination complaint is not.</p>
TIME LIMITS FOR LODGING AN APPLICATION	The President of the Anti-Discrimination board of NSW may decline a complaint if the whole or part of the conduct complained of happened more than 12 months before making the making of the complaint.
POSSIBLE OUTCOMES (these will depend largely on the individual circumstances of each complaint)	<p>If after an investigation the complaint appears to involve a breach of anti-discrimination law, and it has not yet been resolved, the board helps to conciliate the complaint. The Board assists the parties to come to an agreement or settlement that will resolve it.</p> <p>Many complaints are resolved through conciliation, but this can only occur if both parties agree on a settlement. The board is impartial and does not have the power to impose a settlement if the parties do not agree. If the parties do reach agreement, they often sign a written agreement, which is a legally enforceable document.</p> <p>Examples of settlements include:</p> <p>An apology, reinstatement of the complainant, the complainant being provided with benefits, facilities or services that were denied.</p> <p>Training for staff in the respondent organisation about discrimination, and/or developing or improving existing policies.</p> <p>The respondent paying compensation to the complainant or some other form of compensation such as a donation to charity.</p>
FACTORS TO CONSIDER	<p>If a complaint cannot be conciliated, and in certain other cases, it will be referred to the New South Wales Civil and Administrative Tribunal (NCAT) which reviews administrative decisions made by NSW Government agencies and resolves discrimination matters. Remedies available at NCAT include: ordering compensation (currently \$100,000).</p> <p>Prohibiting discriminatory conduct in the future, ordering the publication of an apology, and ordering the development of programs or policies aimed at eliminating discrimination and declaring that discriminatory contracts are unenforceable.</p>

Assistance and making a complaint

NT: Northern Territory Anti-Discrimination Commission

<http://www.adc.nt.gov.au/>

ROLE	Deals with complaints under the <i>Anti-Discrimination Act 1996</i> (NT)
CLAIMS THAT CAN BE BROUGHT	Complaints about discrimination and harassment based on an attribute; and complaints, about failure to reasonably accommodate a special need based on an attribute. Relevant attributes are: <ul style="list-style-type: none"> • Pregnancy • Breastfeeding • Marital status • Parenthood • Association with someone who has an attribute (e.g. parent of a child with a disability)
TIME LIMITS FOR LODGING AN APPLICATION	12 months
POSSIBLE OUTCOMES (these will depend largely on the individual circumstances of each complaint)	A confidential settlement following a conciliation conference. Outcomes may include compensation, apology, workplace policy, discrimination training.
FACTORS TO CONSIDER	The Commission is based in Darwin. It aims to get matters listed for conciliation within six weeks of receiving a complaint. The Commission has the ability to prioritise matters where a party has lost their job or the allegations raise other issues of urgency. The Commission is happy to speak to parties prior to lodging a complaint so they can get more information about the process. Interpreters (including Auslan interpreters) can be made available. There is no cost to use the service.

QLD: Anti-Discrimination Commission Queensland

<http://www.adcq.qld.gov.au/>

ROLE	The Anti-Discrimination Commission Queensland (ADCQ) tries to resolve complaints of discrimination, sexual harassment, vilification, victimisation and unnecessary requests for information in they come within the Anti-Discrimination Act 1991. The ADCQ uses conciliation to try to resolve complaints and will write up any agreement reached so that it can be signed by all parties and filed in the QCAT. If the complaint cannot be resolved, the complaint can choose to refer the complaint to QCAT for a public hearing.
CLAIMS THAT CAN BE BROUGHT	A complaint must be in writing and set out details of a possible breach of the Anti-Discrimination Act 1991 such as discrimination on the basis of one of the 16 attributes (including sex, pregnancy, family responsibilities, breastfeeding, relationship status, impairment, race, religion, sexuality) and in the areas of public life covered (including in work, goods and services, State laws and programs, accommodation and education); sexual harassment; vilification; victimisation; and being asked unnecessary question on which discrimination may be based.
TIME LIMITS FOR LODGING AN APPLICATION	Complaints must generally be lodged within 12 months of the events complained about (with some exceptions)
POSSIBLE OUTCOMES (these will depend largely on the individual circumstances of each complaint)	The Commission will try to resolve the complaint through conciliation. If any agreement is reached the Commission will write it up and have the parties sign and it is then enforceable as a court order. An agreement can include any outcome the parties agree on including an apology, a work reference, financial compensation, changes to work policy and training for staff.
FACTORS TO CONSIDER	The process involves at least one conciliation step at the ADCQ, and usually a second opportunity to mediate if the matter goes to the Queensland Civil and Administrative Tribunal. Parties are usually given a date for conciliation within six weeks of the ADCQ accepting the complaint. Parties are encouraged to reach agreement to resolve the complaint and if so, this finalises the complaint. Parties do not need a lawyer in conciliation and any representative must seek the ADCQ's permission to attend. A complainant must be able to show less favourable treatment against a comparison employee (direct discrimination) or that a condition has been imposed which is unreasonable in all the circumstances, and which is harder to comply with because of sex/pregnancy/family responsibilities (indirect). The onus of proof is on the complainant to prove the case There are no costs orders at the ADCQ nor usually in QCAT. There is no cap on the compensation that can be awarded, and both economic loss (lost wages, out of pocket expenses) and non-economic loss (compensation for hurt and suffering) can be claimed

Assistance and making a complaint

South Australian Equal Opportunity Commission

<http://www.eoc.sa.gov.au/>

ROLE	Deals with complaints under the Equal Opportunity Act 1984 (SA)
CLAIMS THAT CAN BE BROUGHT	Discrimination under the Equal Opportunity Act 1984 (SA). Discrimination on the basis of: <ul style="list-style-type: none">• Pregnancy• Caring Responsibilities• Association with a child• Sex• Disability (cases where women are not able to work unless they are 100% fit with regard to issues such as morning sickness have been registered as disability complaints.
TIME LIMITS FOR LODGING AN APPLICATION	One year from when the act of discrimination happened. In certain circumstances, late complaints may also be accepted.
POSSIBLE OUTCOMES (these will depend largely on the individual circumstances of each complaint)	Conciliation conference resulting in a confidential agreement. Often this includes an apology, financial compensation (injury to feeling, job prospects), change in policy and training. Unresolved complaints are referred to the South Australian Equal Opportunity Tribunal.
FACTORS TO CONSIDER	The Commission can prioritise complaints with ongoing employment and also to accommodate the birth of a child.

TAS: Tasmanian Office of the Anti-Discrimination Commissioner

<http://www.antidiscrimination.tas.gov.au/home>

ROLE	Deals with complaints under the Anti-Discrimination Act 1998 (Tas)
CLAIMS THAT CAN BE BROUGHT	Discrimination on the basis of: <ul style="list-style-type: none">• Pregnancy• Breastfeeding• Parental status• Family responsibilities• Gender• Disability
TIME LIMITS FOR LODGING AN APPLICATION	12 months after the alleged discrimination or prohibited conduct took place. Commissioner may accept a complaint after the time limit has expired if it is reasonable to do so.
POSSIBLE OUTCOMES (these will depend largely on the individual circumstances of each complaint)	The Commissioner is to attempt to resolve complaints by conciliation at an early stage. Conciliation may be undertaken either before, during or after the investigation of the complaint. If the complaint is not resolved, further investigation may be undertaken and parties may be directed to take part in a further conciliation. Conciliation Agreements are binding and confidential and may include an apology, financial compensation, training, change of policy or procedures, re-instatement of employment or any other condition considered appropriate. Unresolved complaints may be referred to the Anti-Discrimination Tribunal.
FACTORS TO CONSIDER	The Commissioner has 42 days from the date the complaint is lodged to decide whether the complaint discloses possible breaches of the Act and should be accepted. Decisions are reviewable.

Assistance and making a complaint

VIC: Victorian Equal Opportunity & Human Rights Commission

<http://www.humanrightscommission.vic.gov.au/>

ROLE	Independent statutory body with responsibilities under, for example, the <i>Equal Opportunity Act 2010</i> Complaints to the Commission under the Equal Opportunity Act 2010 are resolved through a confidential dispute resolution process, which encourages workers and employers to reach a mutually satisfactory outcome.
CLAIMS THAT CAN BE BROUGHT	Allegations of discrimination (direct and indirect) in an area of public life due to one of 17 personal characteristics (attributes) protected by the Equal Opportunity Act 2010. This includes: sex, parental and carer status, pregnancy, breastfeeding, marital status and disability. Allegations an employer has unreasonably refused to accommodate the responsibilities that an employee has as a parent or carer. (There is also a right to request flexible working arrangements under the Fair Work Act). Allegations of sexual harassment and/or victimisation.
TIME LIMITS FOR LODGING AN APPLICATION	The Commission may decline to provide dispute resolution if it has been over 12 months since the alleged contravention took place.
POSSIBLE OUTCOMES (these will depend largely on the individual circumstances of each complaint)	The Commission's dispute resolution service is free, flexible, timely and fair. Settlement Agreements are binding and confidential and may include an apology, financial compensation, training, changing of policy / procedure, reinstatement of employment or any other condition that may be appropriate. Unresolved complaints may still be brought to the Victorian Civil and Administrative Tribunal (VCAT).
FACTORS TO CONSIDER	In Victoria, under the Equal Opportunity Act an employer must not refuse flexible arrangements for an employee with parental or carer responsibilities unless it is reasonable to do so in the circumstances. A person can make a direct application to VCAT in relation to a complaint of discrimination, sexual harassment and/or victimisation. Employers also have a duty to take reasonable and proportionate measures to eliminate discrimination, sexual harassment and victimisation as far as possible.

WA: Western Australian Equal Opportunity Commission

<http://www.eoc.wa.gov.au/>

ROLE	Roles include; <ul style="list-style-type: none"> • Promoting equality of opportunity through community information and education • Investigating and attempting to conciliate allegations of discrimination on the grounds and areas of the Equal Opportunity Act 1984.
CLAIMS THAT CAN BE BROUGHT	Allegations, in writing, of discrimination on the grounds and relevant areas set out in the Equal Opportunity Act 1984. The relevant grounds are: breastfeeding, family responsibility, family status, marital status, pregnancy, and sex .
TIME LIMITS FOR LODGING AN APPLICATION	The incident or incidents must have occurred within the 12 months previous to the date of lodgement of the complaint. In some circumstances, the Commissioner may rule there is good cause to include incidents that occurred more than 12 months before the complaint form is lodged.
POSSIBLE OUTCOMES (these will depend largely on the individual circumstances of each complaint)	Conciliation conference resulting in a confidential agreement, which can include any elements the parties agree on: such as apology, reinstatement, monetary compensation, provision of goods or services, access to facilities, equal opportunity training and policy changes. The complaint may also be dismissed, withdrawn or lapsed, and in some circumstances referred to the State Administrative Tribunal.
FACTORS TO CONSIDER	To be accepted, a complaint must include a ground and relevant area of the Act. Not all areas are applicable in every ground. The onus of proof is on the complainant.

Assistance and making a complaint

State and Territory work health and safety Authorities.

ROLE	In relation to work health and safety -education, assistance, compliance, investigations, enforcement and prosecutions. 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
CLAIMS THAT CAN BE BROUGHT	Not applicable - concerns about work health and safety issues (including alleged discrimination for raising safety issues at the workplace) may be raised with the relevant Authority.
TIME LIMITS FOR LODGING AN APPLICATION	Not applicable.
POSSIBLE OUTCOMES (these will depend largely on the individual circumstances of each complaint)	<ul style="list-style-type: none">• Providing advice and information.• Monitoring and enforcing compliance with work health and safety laws.• Fostering co-operative, consultative relationships between duty holders and the persons to whom they owe duties and their representatives.• Sharing information with other regulators.• Conducting and defending proceedings under work health and safety laws.
FACTORS TO CONSIDER	Not applicable. The relevant Authorities and Departments of Public Prosecution are responsible for prosecuting alleged offences under work health and safety laws.

Shortcut glossary

Adoption and surrogacy are not specifically dealt with in this guide. 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 guide 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: http://www.fairwork.gov.au/about-us/policies-and-guides/fact-sheets/rights-and-obligations/protections-at-work</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>

Shortcut glossary

TERM	DEFINITION
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 happens 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 happens 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>
Employer/ Employee	<p>'Employer' and 'employee' are used in this guide 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.</p>
Employee couple	<p>Defined under the Fair Work Act as two employees where each of the employees is the spouse or de facto partner of the 'other.'</p>
Family responsibilities	<p>Responsibilities to care for or support a dependent child or immediate family member.</p>
General protections	<p>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.</p> <p>See the Fair Work Ombudsman website for further information: http://www.fairwork.gov.au/about-us/policies-and-guides/fact-sheets/rights-and-obligations/protections-at-work</p>
Keeping in touch days	<p>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:</p> <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.

Shortcut glossary

TERM	DEFINITION
National Employment Standards	<p>The National Employment Standards are statutory minimum employment rights for employees set out in the Fair Work Act. The National Employment Standards (sections 59 – 131) provide certain specific rights for pregnant employees and new parents, including:</p> <ul style="list-style-type: none"> • One year unpaid parental leave for employees with 12 months service, including some casuals; • Unpaid special maternity leave for eligible employees who cannot work because of pregnancy related illness or if the pregnancy ends within 28 weeks of the expected due date; • Keeping in touch provisions; • Transfer to a safe job, or 'no safe job' leave; • Consultation rights while on parental leave; • Return to work guarantee and • Right to request flexible work arrangements <p>The National Employment Standards cannot be excluded by a modern award, enterprise agreement or contract of employment.</p>
No safe job leave	<p>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:</p> <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	<p>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.</p>
Parental Leave Pay	<p>This is an Australian Government payment for eligible primary carers after the birth or adoption of a child.</p>
Replacement employee	<p>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.</p>
Return to work guarantee	<p>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.</p>

Shortcut glossary

TERM	DEFINITION
Right to request	<p>This refers to the right under the Fair Work Act for eligible employees to request:</p> <ul 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)).
Unfair dismissal	<p>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).</p>
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 the employee has or will have a responsibility for the care of the child.
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	<p>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.</p>
Worker	<p>Work health and safety laws in most state and territories impose duties of care on persons c0worker is broadly defined to include employees, contractors, sub-contractors, volunteers or any other person carrying out ‘work’.</p>

General disclaimer: This guide provides general information only. It is not legally binding and it should not be used as a substitute to individual legal advice. Refer to the glossary for definition of terms used.



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