



WORKING PARENTS: A QUICK GUIDE TO YOUR RIGHTS

This guide is up to date as of 1 July 2015

You have rights under the Sex Discrimination Act 1984 (Cth), state and territory anti-discrimination legislation, the Fair Work Act 2009 (Cth) and federal, state or territory work, health and safety legislation.

Effective communication between you and your manager about these rights and obligations will enable you to keep working safely.

The Employee Guide titled **Pregnancy, parental leave and return to work: know your rights** provides you with more detailed information on your rights. It also has contact details for organisations that can help you, for example, to resolve disputes and make a complaint.

→ WORKING WHILE PREGNANT (OR POTENTIALLY PREGNANT)

Being pregnant does not mean that you cannot continue to make a valuable contribution to the organisation. It is against the law to discriminate against you because you are pregnant.

Notice: While employees do not generally have to notify their employer that they are pregnant, there may be health and safety reasons to do so. Also, you 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 you intend to start this leave.

finish times. If your employer does not provide reasonable accommodations, this may be discrimination. Under work health and safety laws, businesses must do what is reasonably practicable to ensure the health and safety of their workers - including those who are pregnant. Employers must be prepared to consult on possible options to find appropriate solutions.

If you are fit to work but it is inadvisable to do your usual job because you are pregnant, you are entitled to be transferred to an appropriate safe job under the Fair Work Act. If there is no appropriate safe job for you, provided that you are eligible for unpaid parental leave under the Fair Work Act, you can take "no safe job" leave at the usual rate of pay until unpaid parental leave under the Fair Work Act

starts. You will need to provide evidence by way of a medical certificate, if your employer requests it. If you are not eligible for unpaid parental leave under the Fair Work Act, you are still entitled to unpaid no safe job leave under the Fair Work Act.

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

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 (e.g. your child) 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 this, the Fair Work Act provides for unpaid special maternity leave for pregnant employees who are eligible for unpaid parental leave under the Fair Work Act and have a pregnancy-related illness.

Physical effects of pregnancy:

You may experience 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. For example, you may need more breaks, a different chair, or different start and

→ Relevant laws

ANTI-DISCRIMINATION LAWS

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

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

FAIR WORK ACT

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

who have workplace rights, like the right to take unpaid parental leave.

WORK, HEALTH AND SAFETY LAW

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

→ COMMENCING AND ENDING EMPLOYMENT

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 your sex, pregnancy, potential pregnancy,

marital/relationship status, family responsibilities or breastfeeding.

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.

→ REQUESTING AND GOING ON UNPAID 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 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 12 months of unpaid parental leave.

When you are on unpaid parental leave, you have the right to request an additional 12 months of unpaid parental leave under the Fair Work Act. While your employer may refuse this request on “reasonable business grounds”, they must clearly state the reason for refusal in a written response.

The table (right) 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.

WHAT TO DO WHEN ARRANGING PARENTAL LEAVE:

- Identify what entitlements you have under the Fair Work Act, your contract of employment and any applicable policy, award or agreement.
- Consider your rights under other legislation such as anti-discrimination laws and work, health and safety law.
- Meet with your employer to discuss leave plans and dates.
- Work out how best to “keep in touch” while you are on leave.

Not eligible for unpaid parental leave under the Fair Work Act:

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 refuse the employee’s leave application.

Australian Government Paid Parental Leave scheme:

This 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

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

ACTION	NOTIFICATION 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 six-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 from (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. from 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 .

if they are not eligible for unpaid parental leave under the Fair Work Act.

Keep in touch: You can work up to 10 days during unpaid parental leave without ending the parental leave period and formally returning to work. 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 employment after the leave. Keeping in touch days could include attending an annual planning day, important training sessions or regular informal catchups. Your employer must consult with you if there are any significant changes to your job while you are on parental leave.

→ RETURNING TO WORK

Guarantee: 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.

Flexible work arrangement: Under the Fair Work Act,

employees who have completed at least 12 months of continuous service with their employer immediately before making the request and who have 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.

While an employer has the right to reasonably refuse a request for flexible work under the Fair Work Act, employers should also be mindful of their obligations under anti-discrimination laws not to treat an employee less favourably on the basis of their employee’s sex or family responsibilities.

Breastfeeding: You have a right to breastfeed or express and store breast milk at work. Breastfeeding is a protected ground of discrimination. Failure to provide adequate facilities may constitute discrimination and a breach of work health and

WHAT TO DO WHEN REQUESTING A FLEXIBLE WORK ARRANGEMENT:

- Put your request in writing and explain the flexibility that you require.
- Remember that flexible work can take many forms – it is not just working part-time. It can involve reduced hours, changed start and finish times, a nine-day fortnight, different place of work or a combination of these.
- Consider trialling the flexible arrangement to show your employer that it can work.

safety laws. Also, failure to allow you to have breaks to facilitate breastfeeding or expressing milk may constitute discrimination.