

Reprint
as at 1 April 2016



Parental Leave and Employment Protection Regulations 2002

(SR 2002/98)

Parental Leave and Employment Protection Regulations 2002: revoked, on 1 April 2016, by regulation 19 of the Parental Leave and Employment Protection Regulations 2016 (LI 2016/68).

Sian Elias, Administrator of the Government

Order in Council

At Wellington this 15th day of April 2002

Present:

Her Excellency the Administrator of the Government in Council

Pursuant to section 73 of the Parental Leave and Employment Protection Act 1987 and to section 237 of the Employment Relations Act 2000, Her Excellency the Administrator of the Government, acting on the advice and with the consent of the Executive Council and on the recommendation of the Minister of Labour (made after consultation with the persons or organisations that the Minister considered appropriate), makes the following regulations.

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Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.
Note 4 at the end of this reprint provides a list of the amendments incorporated.

These regulations are administered by the Ministry of Business, Innovation, and Employment.

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Regulations

1 Title

These regulations are the Parental Leave and Employment Protection Regulations 2002.

2 Commencement

These regulations come into force on 1 July 2002.

3 Application

- (1) These regulations apply to an employee who takes parental leave from his or her employment in respect of a child if—
 - (a) the expected date of delivery of the child is on or after 1 July 2002; or
 - (b) the child is born on or after 1 July 2002; or
 - (c) in the case of an adoption, the date on which the employee, with a view to adoption, first assumes the care of the child is on or after 1 July 2002.
- (2) The amendments to these regulations made by the Parental Leave and Employment Protection Amendment Regulations 2006 apply in accordance with regulation 4 of those regulations.
- (3) *[Revoked]*

Regulation 3(2): substituted, on 1 July 2006, by regulation 5 of the Parental Leave and Employment Protection Amendment Regulations 2006 (SR 2006/131).

Regulation 3(3): revoked, on 1 July 2006, by regulation 5 of the Parental Leave and Employment Protection Amendment Regulations 2006 (SR 2006/131).

4 Interpretation

In these regulations, unless the context otherwise requires,—

Act means the Parental Leave and Employment Protection Act 1987

mother means, in a joint adoption case, the person who is nominated to be primarily entitled to a parental leave payment under section 71H of the Act.

tax advisor has the meaning given to it in section 20B(4) of the Tax Administration Act 1994.

Regulation 4 **tax advisor**: added, on 1 July 2010, by regulation 4 of the Parental Leave and Employment Protection Amendment Regulations 2010 (SR 2010/98).

Forms about parental leave entitlements

5 Employer's notice about parental leave entitlement

A notice under section 36 of the Act must be in form 1 of the Schedule.

6 Employer's notice about return to work and preference for appointment

A notice under section 38 of the Act must—

- (a) be in form 2 of the Schedule if section 38(b)(i) applies; and
- (b) be in form 3 of the Schedule if section 38(b)(ii) applies.

Applications for parental leave payments

7 Manner in which application for parental leave payment must be made

- (1) An application for a parental leave payment must be made in writing on the form provided by the Commissioner of Inland Revenue and sent to the address specified for that purpose on the form.

- (2) The application must be signed by—
- (a) the mother and her employer, if the application is being made for a parental leave payment as an employee; or
 - (b) the mother, if the application is being made for a parental leave payment as a self-employed person.

Regulation 7: substituted, on 1 July 2006, by regulation 6 of the Parental Leave and Employment Protection Amendment Regulations 2006 (SR 2006/131).

8 Information that mothers must give

- (1) A mother who applies for a parental leave payment must specify, on the application for a parental leave payment,—
- (a) her name, IRD number, and postal address; and
 - (b) the particulars of a bank account into which the payment may be made; and
 - (c) the birth date of the child or the expected date of delivery of the child; and
 - (d) the following information relating to entitlement to the parental tax credit (within the meaning of the Income Tax Act 2007):
 - (i) whether she is expecting 3 or more children; and
 - (ii) whether her income is below any amount specified on the application form; and
 - (iii) whether she is intending to take a period of parental leave of less than 16 weeks.
- (1A) A mother who applies for a parental leave payment as a self-employed person must also specify, on the application for a parental leave payment,—
- (a) her current or estimated tax code; and
 - (b) the parental leave commencement date and, in the case of a mother who is intending to take a period of parental leave of less than 16 weeks, the date on which she intends to return to work; and
 - (c) that she has worked as a self-employed person for at least an average of 10 hours a week over the immediately preceding 6 months or the immediately preceding 12 months before the expected date of delivery of the child (or, in the case of adoption, the date on which she, with a view to adoption, first assumes care of the child); and
 - (d) if the mother is engaged in multiple self-employment, which of the following categories she falls within:
 - (i) she is engaged in more than 1 type of work concurrently during either a 6-month or 12-month period:

- (ii) she is engaged in more than 1 type of work consecutively during either a 6-month or 12-month period with the break between the types of work being no greater than 30 days; and
 - (e) that she will not work while receiving parental leave payments, subject to section 71CD of the Act.
 - (2) The mother must make a statement that the information given under subclause (1) and (1A) (as the case may be) is correct.
 - (3) The mother must also acknowledge, if the answers to the 3 questions in subclause (1)(d) are “no”, that she elects to receive a parental leave payment instead of parental tax credit and that she understands that she and her spouse or partner lose their entitlement to parental tax credit by receiving a parental leave payment.

Regulation 8(1)(d): amended, on 1 April 2008 (effective for 2008–09 income year and later), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Regulation 8(1)(d)(iii): amended, on 1 April 2015, by section 18 of the Parental Leave and Employment Protection Amendment Act 2014 (2014 No 27).

Regulation 8(1A): inserted, on 1 July 2006, by regulation 7(1) of the Parental Leave and Employment Protection Amendment Regulations 2006 (SR 2006/131).

Regulation 8(1A)(b): amended, on 1 April 2015, by section 18 of the Parental Leave and Employment Protection Amendment Act 2014 (2014 No 27).

Regulation 8(2): amended, on 1 July 2006, by regulation 7(2) of the Parental Leave and Employment Protection Amendment Regulations 2006 (SR 2006/131).

Regulation 8(3): amended, on 26 April 2005, by section 12 of the Relationships (Statutory References) Act 2005 (2005 No 3).

8A Documents that must be provided with application if mother is self-employed

- (1) An application for a parental leave payment made by a mother as a self-employed person must be accompanied by—
 - (a) a certificate or a copy of a certificate from a medical practitioner or a midwife stating that the mother is pregnant and stating the expected date of delivery; or
 - (b) in the case of adoption,—
 - (i) a letter from a Social Worker (as defined in section 2 of the Adoption Act 1955) stating that the self-employed person is keeping or will be keeping a child in the self-employed person’s home with a view to adoption; or
 - (ii) a certified copy of an interim order of a court under section 6(1)(b) of the Adoption Act 1955; or
 - (iii) a copy of a statutory declaration to the effect that the self-employed person has assumed the care of a child with a view to adoption by the self-employed person, or by the self-employed person and her spouse or partner jointly.

- (2) The application must also be accompanied by either—
- (a) a statement and declaration by a chartered accountant or a tax advisor in respect of the mother in the form set out in form 5 of the Schedule; or
 - (b) a declaration made by the mother, in accordance with the Oaths and Declarations Act 1957, in the form set out in form 6 of the Schedule.

Regulation 8A: inserted, on 1 July 2006, by regulation 8 of the Parental Leave and Employment Protection Amendment Regulations 2006 (SR 2006/131).

Regulation 8A(2)(a): amended, on 1 July 2010, by regulation 5 of the Parental Leave and Employment Protection Amendment Regulations 2010 (SR 2010/98).

9 Information that employers must give

- (1) This regulation applies to the employer of a mother who applies for a parental leave payment in respect of her parental leave from that employer's employment.
- (2) The employer must specify, on the application for a parental leave payment,—
- (a) the employer's name, IRD number, and postal address; and
 - (b) the mother's parental leave commencement date and, in the case of a mother who is intending to take a period of parental leave of less than 16 weeks, the date on which the mother intends to return to work; and
 - (c) in the case of a mother on a fixed term agreement, the date on which the fixed term agreement ends (if it is known); and
 - (d) the greater of—
 - (i) the mother's ordinary weekly pay before the commencement of the parental leave; and
 - (ii) her average weekly earnings during—
 - (A) the year ending with the expected date of delivery (or, in the case of adoption, the date on which the employee assumes the care of the child with a view to adoption) for an employee to whom section 7(b)(i) or 8(1)(b)(i), applies; or
 - (B) the 6 months ending with the expected date of delivery (or, in the case of adoption, the date on which the employee assumes the care of the child with a view to adoption), for an employee to whom section 7(b)(ii) or 8(1)(b)(ii) applies; and
 - (e) the mother's current tax code.
- (3) That employer must also make a statement as to—
- (a) whether the mother meets the criteria for parental leave under the Act; and
 - (b) whether the employer has received—

- (i) a certificate from a medical practitioner or midwife stating that the mother is pregnant and stating the expected date of delivery (and, if no certificate has been provided, whether or not the mother is required to give a certificate by any alternative provision in an employment agreement under which the mother is entitled to take leave); or
 - (ii) in the case of an adoption, the letter from a Social Worker or interim order of the court or statutory declaration, as the case may be, that is required by section 33 of the Act.
- (4) The employer must make a statement that the information given under subclauses (2) and (3) is correct.

Regulation 9(2)(b): amended, on 1 April 2015, by section 18 of the Parental Leave and Employment Protection Amendment Act 2014 (2014 No 27).

Regulation 9(2)(d): substituted, on 1 December 2004, by section 24 of the Parental Leave and Employment Protection Amendment Act 2004 ().

Regulation 9(2)(d)(i): amended, on 1 July 2006, by regulation 9 of the Parental Leave and Employment Protection Amendment Regulations 2006 (SR 2006/131).

Applications for transfer of entitlement to paid parental leave

10 Manner in which application for transfer of paid parental leave must be made

- (1) An application for transfer of all or part of an entitlement to a parental leave payment must be made in writing on the form provided by the Commissioner of Inland Revenue and sent to the address specified for that purpose on the form.
- (2) The application must be signed by—
 - (a) the mother and her spouse or partner, and by the employer of the spouse or partner, if the application is being made for the transfer of a parental leave payment to an employee; or
 - (b) the mother and her spouse or partner, if the application is being made for the transfer of a parental leave payment to a self-employed person.

Regulation 10: substituted, on 1 July 2006, by regulation 10 of the Parental Leave and Employment Protection Amendment Regulations 2006 (SR 2006/131).

11 Information that mothers and spouses or partners must give on transfer application

- (1) Every mother who wishes to transfer all or part of her entitlement to a parental leave payment must specify, on the transfer application,—
 - (a) her name and IRD number; and
 - (b) how many weeks the mother wishes to receive paid parental leave for herself.

- (2) The mother's spouse or partner to whom all or part of the entitlement to a parental leave payment is to be transferred must specify, on the transfer application,—
- (a) his or her name, IRD number, and postal address; and
 - (b) the particulars of a bank account into which the payment may be made.
- (3) If the mother's spouse or partner to whom all or part of the entitlement to a parental leave payment is to be transferred is a self-employed person, the mother must specify on the transfer application that the self-employed person is her spouse or partner and the spouse or partner must specify—
- (a) his or her current or estimated tax code; and
 - (b) the date that the spouse or partner will commence parental leave and, in the case of a spouse or partner who intends to take a period of parental leave of less than 16 weeks, the date on which he or she intends to return to work; and
 - (c) that he or she has worked as a self-employed person for at least an average of 10 hours a week over the immediately preceding 6 months or the immediately preceding 12 months before the expected date of delivery of the child (or, in the case of adoption, the date on which he or she, with a view to adoption, first assumes care of the child); and
 - (d) if the spouse or partner is engaged in multiple self-employment, which of the following categories he or she falls within:
 - (i) he or she is engaged in more than 1 type of work concurrently during either a 6-month or 12-month period;
 - (ii) he or she is engaged in more than 1 type of work consecutively during a 6-month or 12-month period with the break between the types of work being no greater than 30 days; and
 - (e) that he or she will not work while receiving parental leave payments, subject to the exceptions in section 71CD of the Act; and
 - (f) that he or she intends to assume care of the child to be born to his or her spouse or partner, or intends to assume (with a view to adopt) the care of a child who is not more than 5 years of age.
- (4) The mother and the spouse or partner must make a statement that the information given under subclauses (1) to (3) (as the case may be) is correct.

Regulation 11 heading: amended, on 1 July 2006, by regulation 11(1) of the Parental Leave and Employment Protection Amendment Regulations 2006 (SR 2006/131).

Regulation 11(2): amended, on 26 April 2005, by section 12 of the Relationships (Statutory References) Act 2005 (2005 No 3).

Regulation 11(3): substituted, on 1 July 2006, by regulation 11(2) of the Parental Leave and Employment Protection Amendment Regulations 2006 (SR 2006/131).

Regulation 11(3)(b): amended, on 1 April 2015, by section 18 of the Parental Leave and Employment Protection Amendment Act 2014 (2014 No 27).

Regulation 11(4): added, on 1 July 2006, by regulation 11(2) of the Parental Leave and Employment Protection Amendment Regulations 2006 (SR 2006/131).

11A Documents that must be provided with transfer application if spouse or partner is self-employed

If the mother's spouse or partner to whom all or part of the entitlement to a parental leave payment is to be transferred is a self-employed person, the application must be accompanied by either—

- (a) a statement and declaration by a chartered accountant or a tax advisor in respect of the spouse or partner in the form set out in form 5 of the Schedule; or
- (b) a declaration made by the spouse or partner, in accordance with the Oaths and Declarations Act 1957, in the form set out in form 6 of the Schedule.

Regulation 11A: inserted, on 1 July 2006, by regulation 12 of the Parental Leave and Employment Protection Amendment Regulations 2006 (SR 2006/131).

Regulation 11A(a): amended, on 1 July 2010, by regulation 6 of the Parental Leave and Employment Protection Amendment Regulations 2010 (SR 2010/98).

12 Information that employers must give on transfer application

- (1) This regulation applies to an employer of the spouse or partner if a mother is transferring all or part of the entitlement to a parental leave payment to her spouse or partner.
- (2) The employer of the spouse or partner must specify, on the transfer application,—
 - (a) the employer's name, IRD number, and postal address; and
 - (b) the parental leave commencement date for the spouse or partner and, in the case of a spouse or partner who is intending to take a period of parental leave of less than 16 weeks, the date on which the spouse or partner intends to return to work; and
 - (c) in the case of a spouse or partner on a fixed term agreement, the date on which the fixed term agreement ends (if it is known); and
 - (d) the greater of—
 - (i) the ordinary pay of the spouse or partner before the commencement of the parental leave; and
 - (ii) the average weekly earnings of the spouse or partner during—
 - (A) the year ending with the expected date of delivery (or, in the case of adoption, the date on which the employee assumes the care of the child with a view to adoption), for an employee to whom section 17(c)(i) or 18(1)(b)(i) of the Act applies; or

- (B) the 6 months ending with the expected date of delivery (or, in the case of adoption, the date on which the employee assumes the care of the child with a view to adoption), for an employee to whom section 17(c)(ii) or 18(1)(b)(ii) of the Act applies; and
 - (e) the current tax code for the spouse or partner.
- (3) That employer must also make a statement as to—
- (a) whether the spouse or partner meets the criteria for parental leave under the Act; and
 - (b) whether the employer has received—
 - (i) a certificate from a medical practitioner or midwife stating that the mother is pregnant and stating the expected date of delivery (and, if no certificate has been provided, whether or not the spouse or partner is required to give a certificate by any alternative provision in an employment agreement under which the spouse or partner is entitled to take leave); or
 - (ii) in the case of an adoption, the letter from a Social Worker or interim order of the court or statutory declaration, as the case may be, that is required by section 33 of the Act; and
 - (iii) a written assurance from the mother that the employee is her spouse or partner and that the spouse or partner intends to assume care of the child to be born to her (and if not, whether the mother is not required by any alternative provision in an employment agreement under which the spouse or partner is entitled to take leave to give that assurance).
- (4) The employer must make a statement that the information given under subclauses (1) to (3) is correct.

Regulation 12(1): substituted, on 26 April 2005, by section 12 of the Relationships (Statutory References) Act 2005 (2005 No 3).

Regulation 12(1): amended, on 1 July 2006, by regulation 13(1) of the Parental Leave and Employment Protection Amendment Regulations 2006 (SR 2006/131).

Regulation 12(2): substituted, on 26 April 2005, by section 12 of the Relationships (Statutory References) Act 2005 (2005 No 3).

Regulation 12(2)(b): amended, on 1 April 2015, by section 18 of the Parental Leave and Employment Protection Amendment Act 2014 (2014 No 27).

Regulation 12(2)(d)(i): amended, on 1 July 2006, by regulation 13(2) of the Parental Leave and Employment Protection Amendment Regulations 2006 (SR 2006/131).

Regulation 12(3)(a): amended, on 26 April 2005, by section 12 of the Relationships (Statutory References) Act 2005 (2005 No 3).

Regulation 12(3)(b)(i): amended, on 26 April 2005, by section 12 of the Relationships (Statutory References) Act 2005 (2005 No 3).

Regulation 12(3)(b)(iii): amended, on 26 April 2005, by section 12 of the Relationships (Statutory References) Act 2005 (2005 No 3).

13 Applications if mother dies or spouse or partner becomes sole guardian

- (1) If a spouse or partner wishes to succeed to the mother's entitlement to a parental leave payment under section 72B of the Act,—
- (a) the spouse or partner must make the applications required by regulations 7 to 12, as the case may be, rather than the mother; and
 - (b) the spouse or partner must specify the information that is required of the mother; and
 - (c) if required to do so by the department, the spouse or partner must attach to the transfer application a copy of the mother's death certificate or of the authority under which the spouse or partner has become the sole guardian of the child, as the case may be.

- (2) The mother does not have to sign the application by the spouse or partner or give a statement that the information in the application is correct.

Regulation 13 heading: amended, on 26 April 2005, by section 12 of the Relationships (Statutory References) Act 2005 (2005 No 3).

Regulation 13(1): amended, on 1 July 2006, by regulation 14 of the Parental Leave and Employment Protection Amendment Regulations 2006 (SR 2006/131).

Regulation 13(1): amended, on 26 April 2005, by section 12 of the Relationships (Statutory References) Act 2005 (2005 No 3).

Regulation 13(1)(a): amended, on 26 April 2005, by section 12 of the Relationships (Statutory References) Act 2005 (2005 No 3).

Regulation 13(1)(b): amended, on 26 April 2005, by section 12 of the Relationships (Statutory References) Act 2005 (2005 No 3).

Regulation 13(1)(c): amended, on 26 April 2005, by section 12 of the Relationships (Statutory References) Act 2005 (2005 No 3).

Regulation 13(2): amended, on 26 April 2005, by section 12 of the Relationships (Statutory References) Act 2005 (2005 No 3).

14 Notices about early return to work, etc

- (1) This regulation applies to a mother or her spouse or partner if, during the period for which either of them is receiving a parental leave payment under the Act,—
- (a) the one receiving the payment returns to work as an employee or self-employed person; or
 - (b) the fixed term employment agreement of the one receiving the payment ends; or
 - (c) the one receiving the payment resigns from his or her employment or ceases to be self-employed.
- (2) The notice that a person is required to give under section 71U of the Act—
- (a) must be made in writing or by telephone to the Commissioner of Inland Revenue; and

- (b) must specify his or her name, IRD number, and the date on which he or she will return to work or on which the fixed term employment agreement ends or on which the resignation takes effect or of cessation of self-employment, as the case may be.

Regulation 14(1): substituted, on 1 July 2006, by regulation 15(1) of the Parental Leave and Employment Protection Amendment Regulations 2006 (SR 2006/131).

Regulation 14(2)(b): amended, on 1 July 2006, by regulation 15(2) of the Parental Leave and Employment Protection Amendment Regulations 2006 (SR 2006/131).

15 Procedures relating to determinations and demand notices

- (1) A demand notice by a Labour Inspector under section 70B of the Act must be in form 4 of the Schedule.
- (2) The Employment Relations Authority Regulations 2000 apply to an objection to a determination or a demand notice under section 70C of the Act, as a document commencing proceedings before the Authority, except that—
 - (a) the objection need not include a statement of the problem or matter to which the application relates (as required by regulation 6(1)(a) of those regulations); and
 - (b) the objection must be accompanied by a copy of the determination or demand notice to which the objection relates; and
 - (c) the employer or employee who lodges the objection must, as soon as practicable after the lodging of the objection, serve a copy of the objection on the Labour Inspector who made the determination or served the demand notice.

Annual adjustment of maximum rate of parental leave payment

16 Way in which annual adjustments must be made

The way in which the adjustments must be made under section 71N of the Act is as follows:

- (a) the percentage movement on which the adjustment is based must be the annual percentage movement in the February average ordinary time weekly earnings (employees) immediately before the 1 July date on which the adjustment is to take effect, as published by Statistics New Zealand in the Quarterly Employment Survey; and
- (b) if, in that 12-month period, there is a decrease in the percentage movement in average ordinary time weekly earnings (employees), as so published,—
 - (i) no adjustment takes effect under section 71N of the Act on the following 1 July; and
 - (ii) an adjustment on any succeeding 1 July must be based on the percentage movement in the February average ordinary time weekly earnings (employees) between the February series before the date

of the last adjustment and the February series before the 1 July on which the next adjustment is to take effect; and

- (c) any correction to the Quarterly Employment Survey that is published by Statistics New Zealand after 15 May in the current year must be disregarded until the adjustment that takes effect on 1 July in the following year.

Revocation

17 Revocation

The Parental Leave and Employment Protection (Forms) Regulations 1987 (SR 1987/267) are consequentially revoked.

Schedule Forms

Form 1

Notice about entitlement to parental leave

r 5

Section 36, Parental Leave and Employment Protection Act 1987

To be given to an employee within 21 days after the employer receives notice that the employee wishes to take parental leave.

To [*name and postal address of employee*]

1 Your notice stating that you wish to take parental leave is acknowledged.

either

2 You are entitled to take parental leave commencing on [*date*] and ending on [*date*].

or

2 You are not entitled to take parental leave because—

- * at the expected date of delivery of the child (*or* at the date on which you, with a view to adoption, assume care of the child) you will not have been employed for at least an average of 10 hours a week (including at least 1 hour in each week or 40 hours in each month) over—
 - the immediately preceding 12 months; or
 - the immediately preceding 6 months.

- * [*State reasons why employee is not entitled to take parental leave*]

*3 [*To be filled in if the employee is entitled to take parental leave*]

Your employment can (*or* cannot) be kept open until the end of your parental leave.

*4 [*To be filled in if the employment cannot be kept open*]

- * Your employment cannot be kept open because of the occurrence of a redundancy situation (*or* (in the case of certain periods of leave exceeding 4 weeks) because a temporary replacement is not reasonably practicable due to your key position).

- * You will, for the period of 26 weeks beginning with the day after the date on which your parental leave ends, be given preference over other applicants for any position that is vacant and that is substantially similar to the position held by you at the beginning of your parental leave.

*5 You may, by a parental leave complaint made under section 56 of the Parental Leave and Employment Protection Act 1987, dispute my statement that you are not entitled to take parental leave or that your position cannot be kept open. If you wish to make such a complaint, do not delay as the time for making such a

complaint is limited. Your union representative or your solicitor or the Department of Labour will advise you.

*Delete if inapplicable.

[Date]

.....
Employer

Information about parental leave under the Parental Leave and Employment Protection Act 1987

Employees are eligible for—

- (a) up to 52 weeks' parental leave from their employment with an employer if they will have worked for the same employer for at least 12 months for at least an average of 10 hours a week on the relevant date; or
- (b) up to 16 weeks' parental leave from their employment with an employer if they have worked for the same employer for the immediately preceding 6 months for at least an average of 10 hours a week on the relevant date.

The relevant date is the expected date of delivery of the child or, in the case of adoption, the date on which the employee first assumes the care of the child with a view to adoption.

In most cases, the employer must keep the employee's job open for them until the parental leave ends. The main exceptions to this are if the employer proves that there is a redundancy situation or, in the case of parental leave of more than 4 weeks, if the employer proves that the employee's position cannot be kept open because a temporary replacement is not reasonably practicable due to the employee's key position. Whether an employee's position is a key position depends upon the circumstances of each case, including the size of the employer's enterprise and the training period or skills required in the job. Your union representative or your solicitor or the Department of Labour will be able to advise you further.

Entitlements for employees on the basis of 12 months' service

Maternity leave, partner's/paternity leave, and extended leave is available to employees who have worked for the same employer for at least an average of 10 hours a week over the immediately preceding 12 months. Maternity and extended leave amount to 52 weeks, which may be shared by the spouses or partners in the child's first year. This period of 52 weeks may be exceeded as follows:

- (a) a mother may start her maternity leave early if directed to do so by her lead maternity carer or by her employer:

(b) partner's/paternity leave of up to 2 weeks is available.

Maternity leave must be taken in 1 continuous period not exceeding 16 weeks.

Entitlements for employees on the basis of 6 months' service

Maternity leave and partner's/paternity leave is available to employees who have worked for the same employer for at least an average of 10 hours a week over the immediately preceding 6 months. Maternity leave of 16 weeks, if available, may be exceeded if the mother is directed to start her maternity leave early by her lead maternity carer or by her employer. 1 week's partner's/paternity leave is also available.

Maternity leave must be taken in 1 continuous period not exceeding 16 weeks.

However, if an employee who qualifies for parental leave on the basis of 6 months' service transfers the entitlement to parental leave payments to her spouse or partner, and her spouse or partner also qualifies on the basis of 6 months' service, the total amount of leave that may be taken by both spouses or partners is 16 weeks (excluding any period of partner's/paternity leave).

Commencement of maternity leave

Maternity leave for all employees (whether they qualify on the basis of 6 or 12 months' service) may begin—

- (a) up to 6 weeks before the expected date of delivery if the mother gives to her employer not less than 21 days' notice in writing of that date. In the case of an adoption, maternity leave may begin no earlier than the date on which the mother first assumes (with a view to adoption) the care of the child; or
- (b) on any date before the date of confinement that is agreed between the mother and her employer; or
- (c) on a date specified by the mother's lead maternity carer if—
 - (i) the mother is pregnant; and
 - (ii) the lead maternity carer certifies that, in his or her opinion, she should begin her maternity leave on that date; and
 - (iii) the mother gives the certificate to her employer; or
- (d) on a date appointed by her employer if—
 - (i) the mother is pregnant; and
 - (ii) the mother is unable, by reason of her pregnancy, to perform her work to the safety of herself or others, or is incapable of performing her work adequately; and
 - (iii) there is no other suitable work available.

A mother who is pregnant is entitled, before taking maternity leave, to take a total of up to 10 days' special leave without pay for reasons connected with her pregnancy.

If, by reason of pregnancy, a mother is unable to perform her work to the safety of herself or others, or is incapable of performing her work adequately, her employer may temporarily transfer her from one job to another.

Partner's/paternity leave

Partner's/paternity leave can be taken by the spouse or partner for 1 continuous period not exceeding—

- (a) 2 weeks if he or she has worked for the same employer for the immediately preceding 12 months for at least an average of 10 hours per week; or
- (b) 1 week if he or she has worked for the same employer for the immediately preceding 6 months for at least an average of 10 hours per week.

If a mother transfers parental leave payments to an eligible spouse or partner who qualifies for parental leave on the basis of 6 months' service with the same employer, the spouse's partner's/paternity leave is increased by the number of weeks' payment that is transferred to him or her by the mother (but it may not exceed 16 weeks, excluding any period of partner's/paternity leave taken).

An employee who qualifies for parental leave on the basis of 6 months' service and who is entitled to partner's/paternity leave may have his or her leave extended if he or she—

- (a) assumes alone, with a view to adoption, the care of a child; or
- (b) is nominated as primarily entitled to a parental leave payment.

The period of partner's/paternity leave is then the shorter of 16 weeks or the period during which the employee receives the parental leave payments. Partner's/paternity leave may begin on any date in the period beginning 21 days before the expected date of delivery and ending 21 days after the actual date of delivery or, if the child is discharged from a hospital or a similar establishment more than 21 days after the actual date of delivery, ending on the day on which the child is discharged from that hospital or establishment. Partner's/paternity leave may begin, in the case of adoption, on any date in the period beginning 21 days before the date on which the employee first assumes, with a view to adoption, the care of the child, and ending 21 days after that date. Alternatively, partner's/paternity leave may begin on any date that is agreed between the employee and his employer.

Extended leave

Extended leave is available only to employees who have worked for the same employer for 12 months for at least an average of 10 hours a week.

Extended leave may be taken by the mother and the mother's spouse or partner. They may take no more than 1 continuous period each. The combined total of the 2 periods may not exceed 52 weeks.

If the mother takes a period of maternity leave of 16 weeks or less, the period of 52 weeks' extended leave will be reduced by that period of maternity leave.

If the mother begins her maternity leave early at the direction of a lead maternity carer or her employer, the period of 52 weeks' extended leave will not be reduced by any period of maternity leave in excess of 16 weeks.

The period of 52 weeks will not be reduced by any period of partner's/paternity leave taken by the spouse or partner.

If maternity or partner's/paternity leave has been taken in relation to the birth or adoption of the child, extended leave may begin at any time after that period of maternity or partner's/paternity leave ends.

If maternity or partner's/paternity leave has not been taken in relation to the birth of the child, extended leave may begin at any time after the date of confinement.

In the case of adoption, if maternity or partner's/paternity leave has not been taken in relation to the adoption of the child, extended leave may begin at any time after the employee first assumes, with a view to adoption, the care of the child.

Extended leave may also begin on any other date that is agreed between the employee and his or her employer.

No extended leave may be taken after—

- (a) the child attains the age of 12 months; or
- (b) in the case of an adopted child, the first anniversary of the date on which the employee first assumed the care of the child with a view to adoption; or
- (c) the employee ceases to have care of the child.

An employee who is on parental leave may end that leave early in certain circumstances.

These circumstances are—

- (a) if the child is miscarried; or
- (b) if the child is stillborn or dies; or
- (c) if the employee or the employee's spouse or partner has consented to the adoption of the child and some other person has the care of the child with a view to its adoption; or
- (d) if the employee ceases to have care of the child; or
- (e) if his or her employer consents (which consent may, in the case of a female employee who has been pregnant, be conditional on a medical certificate stating that the female employee is fit to return to work).

In any of these circumstances, the employee may choose,—

- (a) if his or her position is being kept open by the employer, to end the parental leave by returning to work before the date on which he or she is required to return to work at the end of the parental leave; or
- (b) in any other case, to end the parental leave and to begin the period of preference.

If, in any case, the employee chooses to return to work early or to begin the period of preference early, the employee must give to his or her employer not less than 21 days' notice in writing of the date on which he or she intends to return to work or to begin the period of preference, as the case may be.

An employee who is on parental leave may extend the parental leave to a specified date if his or her employer consents.

Schedule form 1: amended, on 1 April 2015, by section 18 of the Parental Leave and Employment Protection Amendment Act 2014 (2014 No 27).

Schedule form 1: amended, on 1 December 2005, by section 34 of the Parental Leave and Employment Protection Amendment Act 2004 (2004 No 89).

Schedule form 1: amended, on 26 April 2005, by section 12 of the Relationships (Statutory References) Act 2005 (2005 No 3).

Schedule form 1: amended, on 1 December 2004, by section 24 of the Parental Leave and Employment Protection Amendment Act 2004 (2004 No 89).

Form 2
Notice to employee whose job is being kept open

r 6(a)

Section 38, Parental Leave and Employment Protection Act 1987

To be given to an employee within 21 days after the employee begins his or her parental leave.

To [*name and address of employee*]

- 1 Your parental leave ends on [*date*].
- 2 You will be required to return to work on [*date*].
- 3 You are required to give to [*name of employer*] (*or me*), not later than 21 days before the date on which your parental leave ends, a written notice stating whether or not you will be returning to work at the end of your parental leave.
- 4 You should read the information below.

[*Date*]

.....
Employer

Information about early ending and extension of parental leave

An employee who is on parental leave and whose job is being kept open may end his or her parental leave early in certain circumstances.

These circumstances are—

- (a) if the child is miscarried; or
- (b) if the child is stillborn or dies; or
- (c) if the employee or the employee's spouse or partner has consented to the adoption of the child and some other person has the care of the child with a view to its adoption; or
- (d) if the employee ceases to have care of the child; or
- (e) if his or her employer consents (which consent may, in the case of a female employee who has been pregnant, be conditional on a medical certificate stating that she is fit to return to work).

In any of these circumstances, the employee may choose to end the parental leave by returning to work before the date on which he or she is required to return to work at the end of the parental leave.

An employee who chooses to return to work early must give to his or her employer not less than 21 days' notice in writing of the date on which he or she intends to return to work.

An employee who is on parental leave may extend the parental leave to a specified date if his or her employer consents.

Schedule form 2: amended, on 26 April 2005, by section 12 of the Relationships (Statutory References) Act 2005 (2005 No 3).

Form 3
Notice to employee whose job is not being kept open

r 6(b)

Section 38, Parental Leave and Employment Protection Act 1987

To be given to an employee within 21 days after the employee begins his or her parental leave.

To [*name and address of employee*]

- 1 Your parental leave ends on [*date*].
- 2 You will, during the period of 26 weeks beginning on [*date of the day after the date on which the employee's parental leave ends*], be given preference by [*name of employer*] (*or me*) over other applicants for any position that is vacant and that is substantially similar to the position held by you at the beginning of your parental leave.
- 3 You should read the information below.

[*Date*]

.....
Employer

Information about early ending and extension of parental leave

An employee who is on parental leave and whose job is not being kept open may end his or her parental leave early in certain circumstances.

These circumstances are—

- (a) if the child is miscarried; or
- (b) if the child is stillborn or dies; or
- (c) if the employee or the employee's spouse or partner has consented to the adoption of the child and some other person has the care of the child with a view to its adoption; or
- (d) if the employee ceases to have care of the child; or
- (e) if his or her employer consents (which consent may, in the case of a female employee who has been pregnant, be conditional on a medical certificate stating that she is fit to return to work).

In any of these circumstances, the employee may choose to end the parental leave and begin the period of preference by giving his or her employer not less than 21 days' notice in writing of the date on which he or she intends to begin the period of preference.

An employee who is on parental leave may extend the parental leave to a specified date if his or her employer consents.

Schedule form 3: amended, on 26 April 2005, by section 12 of the Relationships (Statutory References) Act 2005 (2005 No 3).

Form 4
Demand notice

r 15

Section 70B(1), Parental Leave and Employment Protection Act 1987

To *[name and address of employer]*

1 This demand notice is being served on you in your capacity as the employer (or former employer) of *[full name of employee]* (the **employee**).

either

2 I have received from the employee a complaint that you have denied the employee's entitlement to take parental leave under the Parental Leave and Employment Protection Act 1987.

or

2 I believe on reasonable grounds that you have denied the employee's entitlement to parental leave under the Parental Leave and Employment Protection Act 1987.

3 The parental leave claimed is *[specify type of parental leave claimed]*, being *[specify details of the period of leave]*.

4 I have given you not less than 7 days to comment on the complaint (or the grounds for my belief).

5 I am satisfied, after having considered any comments made by you, that the employee is entitled to take the parental leave.

6 I am satisfied that you are not prepared to acknowledge the employee's entitlement to take parental leave in a reasonable manner or within a reasonable time

Demand

7 I demand by this notice that you acknowledge the employee's entitlement to take parental leave and allow the employee to take parental leave.

Objection

8 Both your right to lodge an objection to this demand notice and the consequences of this notice are specified in the additional information for the employer that is supplied with this notice.

[Date]

.....
Labour Inspector

This demand notice is made by [*full name*], Labour Inspector, whose address for service is [*address*] and whose telephone number is [*number*] and whose fax number for service is [*number*] and whose document exchange number for service is [*number*] and whose e-mail address for service is [*address*].

Additional information for the employer

Your right to lodge an objection

- 1 You may lodge with the Employment Relations Authority, within 28 days after this demand notice is served on you, an objection to this demand notice

Consequences of this demand notice

- 2 This demand notice has the consequences specified in paragraphs 3 to 5—
 - (a) if no objection is lodged before the close of the period of 28 days specified in paragraph 1; or
 - (b) if any objection lodged before the close of that period is withdrawn (whether before or after the close of that period).

Imposition of legal requirement

- 3 This demand notice imposes a legal requirement on you to comply with it.

Evidence of leave entitlement

- 4 This demand notice is prima facie evidence before the Employment Court or the Employment Relations Authority that the employee has the entitlement to take parental leave.

Enforcement by compliance order

- 5 This demand notice may be enforced by the making by the Employment Relations Authority of a compliance order under section 137 of the Employment Relations Act 2000.

Form 5

Statement and declaration to be made by chartered accountant or tax advisor in
respect of self-employed persons

rr 8A(2), 11A

This form or form 6 must be completed and accompany the following applications:

- (a) an application for paid parental leave if the person applying is self-employed:
- (b) an application for the transfer of a parental leave payment if the mother's spouse or partner to whom all or part of the entitlement to a parental leave payment is to be transferred is self-employed.

Information to be provided in respect of self-employed person

[*Name of self-employed person*] of [*address, occupation*]—

- (a) is self-employed because he or she is working, other than as an employee, doing 1 or more of the following:
 - *(i) providing goods or services for hire or reward under a contract for services:
 - *(ii) carrying on business (including a profession, trade, manufacture, or undertaking carried on for pecuniary profit), including in partnership with another person:
 - *(iii) working for a trust in a business (as defined in paragraph (ii)) carried on by the trust; and
- (b) his or her net income in the *6 months/*12 months immediately preceding the *expected date of delivery of his or her child (or children)/*date on which he or she will assume the care of a child (or children) with a view to adoption is or will be \$[*amount*]; and

- (c) his or her average weekly earnings in the *6 months/*12 months immediately preceding the *expected date of delivery of his or her child (or children)/*date on which he or she will assume the care of a child (or children) with a view to adoption are or will be \$[*amount*].

*Delete if inapplicable.

Declaration by *chartered accountant/*tax advisor

I, [*name*], am a *chartered accountant/*tax advisor for the person named above and I declare that I have nothing in my knowledge or possession to suggest that the information provided above is incorrect.

*Delete if inapplicable.

Date:

Signature:

(*chartered accountant/*tax advisor)

Name of *chartered accountant/*tax advisor

*Delete if inapplicable.

Note

This statement and declaration must be completed by a person who is—

- (a) a chartered accountant; or
(b) a tax advisor as defined in section 20B(4) of the Tax Administration Act 1994.

Form 5: substituted, on 1 July 2010, by regulation 7 of the Parental Leave and Employment Protection Amendment Regulations 2010 (SR 2010/98).

Form 6

Declaration to be made by self-employed persons

rr 8A(2), 11A

This form or form 5 must be completed and accompany the following applications:

- (a) an application for paid parental leave if the person applying is self-employed;
- (b) an application for the transfer of a parental leave payment if the mother's spouse or partner to whom all or part of the entitlement to a parental leave payment is to be transferred is self-employed.

Declaration by self-employed person

I, [*state name of self-employed person*] of [*state place of abode and occupation*], solemnly and sincerely declare that—

- (a) I am self-employed because I am [*tick all that apply*]—
 - (i) providing goods or services for hire or reward under a contract for services;
 - (ii) carrying on business (including a profession, trade, manufacture, or undertaking carried on for pecuniary profit), including in partnership with another person;
 - (iii) working for a trust in a business (as defined in paragraph (ii)) carried on by the trust; and
- (b) to the best of my knowledge my net income in the [*tick whichever applies*]—
 - 6 months; or
 - 12 months
 immediately preceding the
 - expected date of delivery of my child (or children); or
 - date on which I will assume the care of a child (or children) with a view to adoption
 is or will be \$[*state amount*]; and
- (c) to the best of my knowledge my average weekly earnings in the [*tick whichever applies*]—
 - 6 months; or
 - 12 months
 immediately preceding the
 - expected date of delivery of my child (or children); or
 - date on which I will assume the care of a child (or children) with a view to adoption
 are or will be \$[*state amount*],—

and I make this solemn declaration conscientiously believing the same to be true by virtue of the Oaths and Declarations Act 1957.

Declared at [*place*] [*date*].

.....
Justice of the Peace

(*or* other person authorised to take a statutory declaration)

Schedule form 6: added, on 1 July 2006, by regulation 16 of the Parental Leave and Employment Protection Amendment Regulations 2006 (SR 2006/131).

Marie Shroff,
Clerk of the Executive Council.

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 18 April 2002.

**Parental Leave and Employment Protection Amendment
Regulations 2006**
(SR 2006/131)

Silvia Cartwright, Governor-General

Order in Council

At Wellington this 23rd of May 2006

Present:

The Right Hon Helen Clark presiding in Council

Pursuant to section 73 of the Parental Leave and Employment Protection Act 1987, Her Excellency the Governor-General, acting on the advice and with the consent of the Executive Council and on the recommendation of the Minister of Labour (made after consultation with the persons or organisations that the Minister considered appropriate), makes the following regulations.

Regulations

1 Title

These regulations are the Parental Leave and Employment Protection Amendment Regulations 2006.

2 Commencement

- (1) Regulations 3 and 4 come into force on the day after the date of the notification of these regulations in the *Gazette*.
- (2) The rest of these regulations come into force on 1 July 2006.

4 Application of amendments made by these regulations

- (1) The amendments made by these regulations apply to an employee or self-employed person who takes parental leave from his or her work in respect of a child if—
 - (a) the expected date of delivery of the child is on or after 1 July 2006; or
 - (b) the child is born on or after 1 July 2006; or
 - (c) in the case of adoption, the date on which the person or the person's spouse or partner, with a view to adoption, assumes the care of the child is on or after 1 July 2006.

- (2) An employee or self-employed person to whom the amendments in these regulations apply may, in accordance with these regulations, before 1 July 2006, apply for a parental leave payment or apply to have an entitlement to a payment transferred to him or her.
- (3) However, no person is obliged to comply with any obligation arising out of the amendments in these regulations until 1 July 2006.

Diane Morcom,
Clerk of the Executive Council.

Date of notification in *Gazette*: 25 May 2006.

Reprints notes

1 *General*

This is a reprint of the Parental Leave and Employment Protection Regulations 2002 that incorporates all the amendments to those regulations as at the date of the last amendment to them.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Parental Leave and Employment Protection Regulations 2016 (LI 2016/68): regulation 19

Parental Leave and Employment Protection Amendment Act 2014 (2014 No 27): section 18

Parental Leave and Employment Protection Amendment Regulations 2010 (SR 2010/98)

Income Tax Act 2007 (2007 No 97): section ZA 2(1)

Parental Leave and Employment Protection Amendment Regulations 2006 (SR 2006/131)

Relationships (Statutory References) Act 2005 (2005 No 3): section 12

Parental Leave and Employment Protection Amendment Act 2004 (2004 No 89): sections 24, 34