

Reprint  
as at 1 July 2018



## Parental Leave and Employment Protection Act 1987

Public Act 1987 No 129  
Date of assent 10 July 1987  
Commencement see section 1(2)

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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.

**This Act is administered by the Ministry of Business, Innovation, and Employment.**

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coming into force on and after 1 April 2015**

**Schedule 1** 94  
**Change of employer**

**Title** *[Repealed]*

Title: repealed, on 1 July 2006, by section 6 of the Parental Leave and Employment Protection (Paid Parental Leave for Self-Employed Persons) Amendment Act 2006 (2006 No 20).

**1 Short Title and commencement**

- (1) This Act may be cited as the Parental Leave and Employment Protection Act 1987.
- (2) This Act shall come into force on 1 October 1987.

**1A Purpose**

The purpose of this Act is to—

- (a) set minimum entitlements with respect to parental leave for male and female employees; and
- (b) protect the rights of employees during pregnancy and parental leave; and
- (c) entitle certain persons to up to 22 weeks of parental leave payments.

Section 1A: inserted, on 1 July 2006, by section 7 of the Parental Leave and Employment Protection (Paid Parental Leave for Self-Employed Persons) Amendment Act 2006 (2006 No 20).

Section 1A(c): amended, on 1 July 2018, by section 5 of the Parental Leave and Employment Protection Amendment Act 2017 (2017 No 45).

Section 1A(c): amended, on 1 April 2016, by section 4(1) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 1A(c): amended, on 1 April 2016, by section 4(2) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

**1B Outline**

- (1) This section is a guide to the overall scheme and effect of this Act, but does not affect the interpretation or application of the other provisions of this Act.
- (2) This Act sets out the circumstances in which a biological mother or other person who takes permanent primary responsibility for the care, development, and upbringing of a child who is under the age of 6 may be entitled to—
  - (a) leave from their employment;
  - (b) parental leave payments.

*Primary carer entitlements*

- (3) The person who is the child's primary carer (*see* section 7) may be entitled to parental leave and parental leave payments as follows:
  - (a) for an employee who meets the 6-month employment test (*see* section 2BA),—
    - (i) up to 22 weeks of primary carer leave (*see* Part 1); and
    - (ii) an extension to 26 weeks (*see* Part 3 (extended leave)), which may need to be shared with the person's spouse or partner (*see* section 28); and
    - (iii) if the employee is eligible to receive parental leave payments (*see* section 71CA), up to 22 weeks of parental leave payments and up to 13 weeks of preterm baby payments (*see* Part 7A); and
  - (b) for an employee who meets the 12-month employment test (*see* section 2BA),—
    - (i) up to 22 weeks of primary carer leave (*see* Part 1); and
    - (ii) an extension to 52 weeks (*see* Part 3 (extended leave)), which may need to be shared with the person's spouse or partner (*see* section 28); and
    - (iii) if the employee is eligible to receive parental leave payments (*see* section 71CA), up to 22 weeks of parental leave payments and up to 13 weeks of preterm baby payments (*see* Part 7A); and
  - (c) for an employee who does not meet the 6-month employment test but who meets the parental leave payment threshold test (*see* section 2BA(4)),—
    - (i) if agreed to by the employee's employer, a period of negotiated carer leave (*see* Part 3A); and
    - (ii) up to 22 weeks of parental leave payments and up to 13 weeks of preterm baby payments (*see* Part 7A); and
  - (d) for a self-employed person,—
    - (i) as much parental leave as the person wishes to take; and



- (ii) if the person meets the parental leave payment threshold test (*see* section 2BA(4)), up to 22 weeks of parental leave payments and up to 13 weeks of preterm baby payments (*see* Part 7A).

*Spouse/partner entitlements*

- (4) The spouse or partner of a child's primary carer may, if he or she assumes responsibility for the care of the child, be entitled to partner's leave as follows:
  - (a) for an employee who meets the 6-month employment test (*see* section 2BA),—
    - (i) up to 1 week of partner's leave (*see* Part 2); and
    - (ii) an extension to 26 weeks (*see* Part 3 (extended leave)), which may need to be shared with the child's primary carer (*see* section 28); and
  - (b) for an employee who meets the 12-month employment test (*see* section 2BA),—
    - (i) up to 2 weeks of partner's leave (*see* Part 2); and
    - (ii) an extension to 52 weeks (*see* Part 3 (extended leave)), which may need to be shared with the child's primary carer (*see* section 28); and
  - (c) for an employee who does not meet the 6-month employment test, there is no entitlement under this Act to partner's leave; and
  - (d) for a self-employed person, as much partner's leave as the person wishes to take.
- (5) It is also possible, in certain circumstances, for a primary carer to transfer their entitlements to their spouse or partner (*see* section 71E) or for the spouse or partner of a primary carer to succeed to a primary carer's entitlements (*see* section 72B).

*Administrative matters*

- (6) Parts 4 to 7 set out further matters relating to the administration of parental leave entitlements, including notice requirements (*see* Part 4), rights and obligations after parental leave begins (*see* Part 5), protection of employment (*see* Part 6), and the remedies available to employees (*see* Part 7).
- (7) Part 8 contains miscellaneous provisions that relate to the administration of parental leave and parental leave payment entitlements.

Section 1B: inserted, on 1 April 2016, by section 5 of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 1B(3)(a)(i): amended, on 1 July 2018, by section 6 of the Parental Leave and Employment Protection Amendment Act 2017 (2017 No 45).

Section 1B(3)(a)(iii): amended, on 1 July 2018, by section 6 of the Parental Leave and Employment Protection Amendment Act 2017 (2017 No 45).

Section 1B(3)(b)(i): amended, on 1 July 2018, by section 6 of the Parental Leave and Employment Protection Amendment Act 2017 (2017 No 45).

Section 1B(3)(b)(iii): amended, on 1 July 2018, by section 6 of the Parental Leave and Employment Protection Amendment Act 2017 (2017 No 45).

Section 1B(3)(c)(ii): amended, on 1 July 2018, by section 6 of the Parental Leave and Employment Protection Amendment Act 2017 (2017 No 45).

Section 1B(3)(d)(ii): amended, on 1 July 2018, by section 6 of the Parental Leave and Employment Protection Amendment Act 2017 (2017 No 45).

### *Interpretation*

Heading: inserted, on 1 July 2006, by section 46 of the Parental Leave and Employment Protection (Paid Parental Leave for Self-Employed Persons) Amendment Act 2006 (2006 No 20).

## **2 Interpretation**

(1) In this Act, unless the context otherwise requires,—

**6-month employment test** has the meaning given in section 2BA

**12-month employment test** has the meaning given in section 2BA

**chief executive** means the chief executive of the department

**Chief of Defence Force** means the officer appointed under section 8 of the Defence Act 1990

**company** has the same meaning as in section 2(1) of the Companies Act 1993; and includes an overseas company within the meaning of that Act

**court** means the Employment Court constituted under the Employment Relations Act 2000

**department** means the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

**employee**—

(a) means a person who is an employee within the meaning of section 6 of the Employment Relations Act 2000; and

(b) in the context of provisions of this Act that relate to entitlements to parental leave payments in respect of a child, includes a person who was an employee for any 26 of the 52 weeks immediately preceding—

(i) the expected date of delivery of the child (in the case of a child to be born to the employee or to the employee's spouse or partner); or

(ii) the first date on which either the employee or the employee's spouse or partner becomes the primary carer in respect of the child (in any other case)

**employer** means any person employing any employee or employees

**employment agreement** has the meaning given to that term in section 5 of the Employment Relations Act 2000 and, for the avoidance of doubt, includes any

employment contract that continues in force under section 242 of the Employment Relations Act 2000

**Employment Relations Authority** means the Employment Relations Authority established under the Employment Relations Act 2000

**expected date of delivery**, in respect of a pregnant woman, means the date certified in writing by a medical practitioner or midwife as being the date on which that medical practitioner or midwife diagnoses that the pregnant woman may give birth to a child

**extended leave**—

- (a) means extended leave to which an employee is entitled in accordance with this Act; and
- (b) includes, for the purposes of Parts 6 to 7A only, rights and benefits in the nature of extended leave to which an employee is entitled by virtue of—
  - (i) any Act other than this Act; or
  - (ii) any employment agreement

**keeping-in-touch day** means a day that would otherwise be a day of parental leave, but on which an employee performs paid work for an employer in accordance with section 71CE(2) or 71DB(1)

**medical practitioner** means a health practitioner who is, or is deemed to be, registered with the Medical Council of New Zealand continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of medicine

**member of the Armed Forces** has the meaning given in section 2(1) of the Armed Forces Discipline Act 1971

**midwife** means a health practitioner who is, or is deemed to be, registered with the Midwifery Council established by section 114(3) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of midwifery

**Minister** means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

**negotiated carer leave** means a period of leave requested by an employee under Part 3A

**parental leave**—

- (a) means, for an employee,—
  - (i) primary carer leave to which the employee is entitled in accordance with this Act;
  - (ii) partner's leave to which the employee is entitled in accordance with this Act;

- (iii) extended leave to which the employee is entitled in accordance with this Act:
- (ab) means, for a self-employed person, a period during which the self-employed person temporarily does not work because of the birth of a child or the assumption of care of a child by the person or the person's spouse or partner (subject to section 71CD):
- (b) includes, for the purposes of Parts 6 to 7A only,—
  - (i) negotiated carer leave granted by an employer to an employee; and
  - (ii) rights and benefits in the nature of any of the kinds of leave described in paragraph (a) to which an employee is entitled by virtue of—
    - (A) any Act other than this Act; or
    - (B) any employment agreement

**parental leave payment threshold test** has the meaning given in section 2BA(4)

**partner**, in the phrase “spouse or partner” and in related contexts, means a civil union partner or a de facto partner

**partner's leave**—

- (a) means partner's leave to which an employee is entitled in accordance with this Act; and
- (b) includes, for the purposes of Parts 6 to 7A only, rights and benefits in the nature of partner's leave to which an employee is entitled by virtue of—
  - (i) any Act other than this Act; or
  - (ii) any employment agreement

**primary carer** has the meaning given in section 7

**primary carer leave** means primary carer leave to which an employee is entitled in accordance with this Act

**self-employed** means working in 1 or more of the following, other than as an employee:

- (a) providing goods or services for hire or reward under a contract for services:
- (b) carrying on a business (including a profession, trade, manufacture, or undertaking carried on for pecuniary profit), including in partnership with another person:
- (c) working for a trust in a business (as defined in paragraph (b)) carried on by the trust

**self-employed person—**

- (a) means a person who is self-employed; and
- (b) in the context of provisions that relate to entitlements to parental leave payments in respect of a child, includes a person who was self-employed for any 26 of the 52 weeks immediately preceding—
  - (i) the expected date of delivery of the child (in the case of a child to be born to the self-employed person or to the self-employed person's spouse or partner); or
  - (ii) the first date on which either the self-employed person or the self-employed person's spouse or partner becomes the primary carer in respect of the child (in any other case)

**spouse** means a husband or wife

**union** means a union registered under the Employment Relations Act 2000.

(2) *[Repealed]*

(3) *[Repealed]*

Compare: 1980 No 162 s 2

Section 2(1): substituted, on 15 May 1991, by section 2(1) of the Parental Leave and Employment Protection Amendment Act 1991 (1991 No 28).

Section 2(1) **6-month employment test**: inserted, on 1 April 2016, by section 6(9) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 2(1) **12-month employment test**: inserted, on 1 April 2016, by section 6(9) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 2(1) **chief executive**: inserted, on 1 July 2002, by section 7(4) of the Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act 2002 (2002 No 7).

Section 2(1) **Chief of Defence Force**: inserted, on 1 April 2016, by section 6(9) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 2(1) **company**: replaced, on 5 December 2013, by section 14 of the Companies Amendment Act 2013 (2013 No 111).

Section 2(1) **contract of employment**: repealed, on 1 July 2002, by section 22 of the Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act 2002 (2002 No 7).

Section 2(1) **court**: substituted, on 2 October 2000, by section 240 of the Employment Relations Act 2000 (2000 No 24).

Section 2(1) **department**: inserted, on 1 July 2002, by section 7(4) of the Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act 2002 (2002 No 7).

Section 2(1) **employee**: replaced, on 1 April 2016, by section 6(1) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 2(1) **employment agreement**: inserted, on 1 July 2002, by section 22 of the Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act 2002 (2002 No 7).

Section 2(1) **Employment Relations Authority**: inserted, on 2 October 2000, by section 240 of the Employment Relations Act 2000 (2000 No 24).

Section 2(1) **Employment Tribunal**: repealed, on 2 October 2000, by section 240 of the Employment Relations Act 2000 (2000 No 24).

Section 2(1) **expected date of delivery**: substituted, on 1 July 2002, by section 10 of the Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act 2002 (2002 No 7).

Section 2(1) **extended leave** paragraph (b): amended, on 1 April 2016, by section 6(2) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 2(1) **extended leave** paragraph (b): amended, on 1 July 2002, by section 7(5) of the Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act 2002 (2002 No 7).

Section 2(1) **extended leave** paragraph (b)(ii): amended, on 1 July 2002, by section 22 of the Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act 2002 (2002 No 7).

Section 2(1) **keeping-in-touch day**: inserted, on 1 April 2016, by section 6(9) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 2(1) **maternity leave**: repealed, on 1 April 2016, by section 6(3) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 2(1) **medical practitioner**: inserted, on 18 September 2004, by section 175(1) of the Health Practitioners Competence Assurance Act 2003 (2003 No 48).

Section 2(1) **member of the Armed Forces**: inserted, on 1 April 2016, by section 6(9) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 2(1) **midwife**: substituted, on 18 September 2004, by section 175(1) of the Health Practitioners Competence Assurance Act 2003 (2003 No 48).

Section 2(1) **Minister**: inserted, on 1 July 2002, by section 7(4) of the Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act 2002 (2002 No 7).

Section 2(1) **negotiated carer leave**: inserted, on 1 April 2016, by section 6(9) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 2(1) **parental leave** paragraph (a): substituted, on 1 July 2006, by section 8(1) of the Parental Leave and Employment Protection (Paid Parental Leave for Self-Employed Persons) Amendment Act 2006 (2006 No 20).

Section 2(1) **parental leave** paragraph (a)(i): amended, on 1 April 2016, by section 6(4) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 2(1) **parental leave** paragraph (a)(ii): amended, on 1 April 2016, by section 6(5) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 2(1) **parental leave** paragraph (ab): inserted, on 1 July 2006, by section 8(1) of the Parental Leave and Employment Protection (Paid Parental Leave for Self-Employed Persons) Amendment Act 2006 (2006 No 20).

Section 2(1) **parental leave** paragraph (b): replaced, on 1 April 2016, by section 6(6) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 2(1) **parental leave payment threshold test**: inserted, on 1 April 2016, by section 6(9) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 2(1) **partner**: inserted, on 26 April 2005, by section 3(1) of the Parental Leave and Employment Protection Amendment Act 2005 (2005 No 18).

Section 2(1) **partner's leave**: inserted, on 1 April 2016, by section 6(9) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 2(1) **partner's/paternity leave**: repealed, on 1 April 2016, by section 6(7) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 2(1) **paternity leave**: repealed, on 1 July 2002, by section 21 of the Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act 2002 (2002 No 7).

Section 2(1) **primary carer**: inserted, on 1 April 2016, by section 6(9) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 2(1) **primary carer leave**: inserted, on 1 April 2016, by section 6(9) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 2(1) **self-employed**: inserted, on 1 July 2006, by section 8(2) of the Parental Leave and Employment Protection (Paid Parental Leave for Self-Employed Persons) Amendment Act 2006 (2006 No 20).

Section 2(1) **self-employed person**: replaced, on 1 April 2016, by section 6(8) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 2(1) **spouse**: substituted, on 26 April 2005, by section 3(2) of the Parental Leave and Employment Protection Amendment Act 2005 (2005 No 18).

Section 2(1) **State employee**: repealed, on 1 July 2002, by section 14(3) of the Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act 2002 (2002 No 7).

Section 2(1) **State services**: repealed, on 1 July 2002, by section 14(3) of the Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act 2002 (2002 No 7).

Section 2(1) **union**: substituted, on 1 July 2002, by section 7(3) of the Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act 2002 (2002 No 7).

Section 2(2): repealed, on 1 April 2016, by section 6(10) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 2(3): repealed, on 1 April 2016, by section 6(10) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

## **2A Multiple employments generally**

An employee's entitlement to rights and benefits in respect of parental leave must be determined by treating each of the employee's employments separately, if the employee has more than 1 employment.

Section 2A: inserted, on 1 July 2002, by section 8(1) of the Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act 2002 (2002 No 7).

Section 2A heading: amended, on 1 July 2006, by section 46 of the Parental Leave and Employment Protection (Paid Parental Leave for Self-Employed Persons) Amendment Act 2006 (2006 No 20).

Section 2A heading: amended, on 1 December 2004, by section 7 of the Parental Leave and Employment Protection Amendment Act 2004 (2004 No 89).

Section 2A: amended, on 1 April 2016, by section 7 of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

## **2AB Multiple employments of certain medical practitioners**

- (1) This section applies to a medical practitioner who is an employee of a district health board and—
  - (a) is undertaking training that is described by the Minister by notice in the *Gazette* as training to which this section applies; and
  - (b) in order to complete the training, is required to work for more than 1 district health board.
- (2) For the purposes of determining the entitlement of a medical practitioner to whom this section applies to rights and benefits in respect of parental leave, if, during a 12-month period (or 6-month period, as the case may be), the medical practitioner is employed by more than 1 district health board consecutively, those employments must be treated as 1 employment.
- (3) A notice published under this section is a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.
- (4) This section overrides section 2A.

Section 2AB: inserted, on 9 November 2004, by section 8 of the Parental Leave and Employment Protection Amendment Act 2004 (2004 No 89).

Section 2AB heading: amended, on 1 July 2006, by section 46 of the Parental Leave and Employment Protection (Paid Parental Leave for Self-Employed Persons) Amendment Act 2006 (2006 No 20).

Section 2AB(2): amended, on 1 April 2016, by section 8 of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 2AB(3): replaced, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

## 2AC Multiple employments of teachers

- (1) For the purposes of determining the entitlement of a teacher to rights and benefits in respect of parental leave, if, during a 12-month period (or 6-month period as the case may be), the teacher is employed by more than 1 board of trustees to work in more than 1 State school or integrated school (whether concurrently or consecutively), those employments must be treated as 1 employment.

- (2) In subsection (1),—

**board of trustees** means a board of trustees constituted under Part 9 of the Education Act 1989

**integrated school** has the same meaning as in section 145 of the Education Act 1989

**State school** has the same meaning as in section 2(1) of the Education Act 1989

**teacher** has the same meaning as in section 91A of the Education Act 1989.

- (3) This section overrides section 2A.

Section 2AC: inserted, on 9 November 2004, by section 8 of the Parental Leave and Employment Protection Amendment Act 2004 (2004 No 89).

Section 2AC heading: amended, on 1 July 2006, by section 46 of the Parental Leave and Employment Protection (Paid Parental Leave for Self-Employed Persons) Amendment Act 2006 (2006 No 20).

Section 2AC(1): amended, on 1 April 2016, by section 9 of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

## 2AD Concurrent employment and self-employment

- (1) This section applies to a person who is an employee and a self-employed person.
- (2) The person's entitlement to rights and benefits in respect of parental leave must be determined by treating the person's employment and self-employment separately.
- (3) This section is subject to section 2A.



Section 2AD: inserted, on 1 July 2006, by section 10 of the Parental Leave and Employment Protection (Paid Parental Leave for Self-Employed Persons) Amendment Act 2006 (2006 No 20).

Section 2AD(2): amended, on 1 April 2016, by section 10(1) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 2AD(3): amended, on 1 April 2016, by section 10(2) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

## 2B Multiple children

- (1) This section applies for the purpose of—
  - (a) determining a person's entitlement to rights and benefits in respect of parental leave and parental leave payment; and
  - (b) ensuring that a person described in subsection (2) or (3) does not receive both a parental leave payment under Part 7A and a parental tax credit (within the meaning of the Income Tax Act 2007) in respect of the same children.
- (2) A person who gives birth to 2 or more children as a result of 1 pregnancy and assumes or intends to assume the care of those children must be treated as if the person had given birth to only 1 child as a result of the pregnancy and had assumed or intended to assume the care of only 1 of those children.
- (3) A person who becomes the primary carer in respect of 2 or more children within a 4-week period is treated as if the person had become the primary carer in respect of only the youngest of those children within that period.

Section 2B: inserted, on 1 July 2002, by section 8(1) of the Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act 2002 (2002 No 7).

Section 2B heading: amended, on 1 April 2016, by section 11(1) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 2B heading: amended, on 1 July 2006, by section 11(1) of the Parental Leave and Employment Protection (Paid Parental Leave for Self-Employed Persons) Amendment Act 2006 (2006 No 20).

Section 2B(1)(b): amended, on 1 April 2016, by section 11(2) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 2B(1)(b): amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), pursuant to section ZA 1(1) of the Income Tax Act 2007 (2007 No 97).

Section 2B(3): replaced, on 1 April 2016, by section 11(3) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

## 2BA Thresholds for entitlements

### *Parental leave threshold tests*

- (1) In this Act, the following tests are used to determine an employee's entitlements to parental leave:
  - (a) an employee meets the **6-month employment test** if the employee will have been employed by the same employer for at least an average of 10 hours a week in the 6 months immediately preceding the expected date of—

- (i) delivery of the child (in the case of a child to be born to the employee or to the employee's spouse or partner); or
  - (ii) assumption of responsibility for the care of the child (in any other case):
- (b) an employee meets the **12-month employment test** if the employee will have been employed by the same employer for at least an average of 10 hours a week in the 12 months immediately preceding the expected date of—
  - (i) delivery of the child (in the case of a child to be born to the employee or to the employee's spouse or partner); or
  - (ii) assumption of responsibility for the care of the child (in any other case).
- (2) The provisions of Schedule 1 apply if it is necessary to ascertain, in relation to any of the circumstances mentioned in clauses 1 to 5 of Schedule 1,—
  - (a) whether an employee has been employed by the same employer during any period of time; or
  - (b) whether an employee has resumed service with the same employer.
- (3) Section 72A applies if it is necessary to ascertain whether an employee will have been employed by the same employer for at least an average of 10 hours a week during a 12-month period (or 6-month period, as the case may be).

*Parental leave payment threshold test*

- (4) In this Act, the following test is used to determine a person's entitlement to parental leave payments (the **parental leave payment threshold test**):
  - (a) an employee meets the parental leave payment threshold test if he or she will have been employed as an employee for at least an average of 10 hours a week for any 26 of the 52 weeks immediately preceding—
    - (i) the expected date of delivery of the child (in the case of a child to be born to the person or his or her spouse or partner); or
    - (ii) the first date on which the person, or his or her spouse or partner becomes the primary carer in respect of the child (in any other case):
  - (b) a self-employed person meets the parental leave payment threshold test if he or she will have been self-employed for at least an average of 10 hours a week for any 26 of the 52 weeks immediately preceding—
    - (i) the expected date of delivery of the child (in the case of a child to be born to the self-employed person or his or her spouse or partner); or
    - (ii) the first date on which the self-employed person, or his or her spouse or partner becomes the primary carer in respect of the child (in any other case).

Section 2BA: inserted, on 1 April 2016, by section 12 of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

### *Application of Act*

Heading: inserted, on 1 July 2006, by section 46 of the Parental Leave and Employment Protection (Paid Parental Leave for Self-Employed Persons) Amendment Act 2006 (2006 No 20).

## **2C Transitional, savings, and related provisions**

The transitional, savings, and related provisions set out in Schedule 1AA have effect according to their terms.

Section 2C: inserted, on 20 May 2014, by section 4 of the Parental Leave and Employment Protection Amendment Act 2014 (2014 No 27).

## **3 Act to bind the Crown**

This Act shall bind the Crown.

Compare: 1980 No 162 s 3

## **4 Application of this Act to employees who have non-statutory rights to parental leave**

- (1) Parts 1 to 5 apply to all employees except employees who have rights and benefits in the nature of parental leave that are,—
  - (a) in their overall effect, as favourable to that employee as, or more favourable to that employee than, the rights and benefits provided for in Parts 1 to 5; and
  - (b) provided under a comprehensive employment agreement or other arrangement (other than this Act).
- (2) An employment agreement or other arrangement is **comprehensive** if it effectively addresses all of the following matters:
  - (a) the conditions of eligibility for any parental leave:
  - (b) the duration of parental leave:
  - (c) the degree of protection provided for the employee's position in the employment of the employer during, and subsequent to, any absence on parental leave:
  - (d) the employer's obligation or lack of an obligation to pay remuneration during the parental leave:
  - (e) the procedural requirements relating to parental leave.
- (3) The provisions of an employment agreement or other arrangement that is not comprehensive are of no effect in so far as the provisions relate to parental leave.
- (4) Parts 6 to 7A apply to all persons.

Section 4: substituted, on 1 July 2002, by section 9 of the Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act 2002 (2002 No 7).

Section 4(4): amended, on 1 April 2016, by section 13 of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

### *Restrictions on parental leave*

Heading: inserted, on 1 July 2006, by section 46 of the Parental Leave and Employment Protection (Paid Parental Leave for Self-Employed Persons) Amendment Act 2006 (2006 No 20).

## **5 Restriction on parental leave under this Act where employee or employee's spouse or partner takes parental leave under any other provision**

Nothing in this Act shall entitle an employee otherwise entitled to any period of parental leave under this Act to take a period of parental leave under this Act which, when aggregated with any rights and benefits in the nature of parental leave taken or proposed to be taken by that employee's spouse or partner under any Act other than this Act or under any employment agreement, would exceed the total period of parental leave to which that employee and that employee's spouse or partner would be entitled by virtue of this Act if the provisions of this Act regarding primary carer leave, partner's leave, and extended leave were to apply to both that employee and that employee's spouse or partner.

Section 5 heading: amended, on 26 April 2005, by section 8 of the Parental Leave and Employment Protection Amendment Act 2005 (2005 No 18).

Section 5: amended, on 1 April 2016, by section 14 of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 5: amended, on 26 April 2005, by section 8 of the Parental Leave and Employment Protection Amendment Act 2005 (2005 No 18).

Section 5: amended, on 1 July 2002, by section 22 of the Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act 2002 (2002 No 7).

Section 5: amended, on 15 May 1991, by section 3 of the Parental Leave and Employment Protection Amendment Act 1991 (1991 No 28).

## **6 Restriction on taking of parental leave within 6 months of end of previous period of parental leave in respect of another child**

An employee shall not be entitled to parental leave in respect of a child by virtue of this Act if—

- (a) that employee has previously taken, in respect of another child, a period of leave, being—
  - (i) parental leave under this Act; or
  - (ii) a period of leave in the nature of parental leave under any Act other than this Act, or any employment agreement; and
- (b) less than 6 months have elapsed since the day after the date on which the most recent period of leave referred to in paragraph (a) ended.

Section 6 heading: amended, on 1 July 2006, by section 12(1) of the Parental Leave and Employment Protection (Paid Parental Leave for Self-Employed Persons) Amendment Act 2006 (2006 No 20).

Section 6(a)(ii): amended, on 1 July 2002, by section 22 of the Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act 2002 (2002 No 7).

Section 6(a)(ii): amended, on 15 May 1991, by section 3 of the Parental Leave and Employment Protection Amendment Act 1991 (1991 No 28).

Section 6(b): amended, on 1 July 2006, by section 12(2) of the Parental Leave and Employment Protection (Paid Parental Leave for Self-Employed Persons) Amendment Act 2006 (2006 No 20).

#### **6A Treatment of employment with same employer for purposes of determining subsequent parental leave entitlements**

- (1) This section applies if an employee resumes service with the same employer—
  - (a) at the end of a period of parental leave; or
  - (b) while the employee is entitled, following parental leave, to preference in obtaining employment with the employee's employer.
- (2) For the purposes of determining subsequent entitlements to parental leave under this Act, the employee's period of employment with the employer must be treated as beginning on the day that the employee resumes service with the employer.
- (3) This section overrides section 43.

Section 6A: inserted, on 1 July 2006, by section 13 of the Parental Leave and Employment Protection (Paid Parental Leave for Self-Employed Persons) Amendment Act 2006 (2006 No 20).

### **Part 1 Primary carer leave**

Part 1 heading: amended, on 1 April 2016, by section 15 of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

#### **7 Meaning of primary carer**

- (1) In this Act, unless the context otherwise requires, **primary carer** means—
  - (a) a female (the **biological mother**) who is pregnant or has given birth to a child;
  - (b) the spouse or partner of the biological mother, only if—
    - (i) the spouse or partner has succeeded under section 72B to all or part of the biological mother's entitlement to a parental leave payment; or
    - (ii) the biological mother has transferred all or part of her entitlement to a parental leave payment to that spouse or partner under section 71E (in which case the spouse or partner is the primary carer for the period of time in relation to which the entitlement is transferred); or

- (c) a person, other than the biological mother or her spouse or partner, who takes permanent primary responsibility for the care, development, and upbringing of a child who is under the age of 6 years (and if there is more than 1 such person, the person nominated in accordance with subsection (2)).

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#### **Examples**

If a child under the age of 6 years goes to live with their aunt, who intends to raise the child in place of the child's biological parents, the aunt is the child's primary carer.

If a couple formally adopt a child under the age of 6 years, or undertake to care for the child permanently, the member of the couple that is nominated under subsection (2) is the child's primary carer.

If a child under the age of 6 is temporarily placed with a foster parent, that person is not a primary carer because the placement is not permanent.

If a child's grandmother minds the child every day while his or her parents are at work, the grandmother is not a primary carer, because the child's parents still have primary responsibility for the child's upbringing.

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- (2) If 2 or more persons meet the criterion in subsection (1)(c),—
- (a) those persons must jointly nominate which one of them is to be the primary carer; and
- (b) only the nominated person is entitled to primary carer leave and parental leave payments under this Act.
- (3) Subsection (2)(b) does not limit sections 71E and 71EA (both of which relate to the transfer of entitlements to parental leave payments to a spouse or partner) or section 72B (which relates to succession to entitlements by a spouse or partner).

Section 7: replaced, on 1 April 2016, by section 16 of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

### **8 Entitlement to primary carer leave**

- (1) An employee may take primary carer leave if the employee—
- (a) is the primary carer in respect of a child; and
- (b) meets the 6-month employment test or the 12-month employment test.
- (2) No employee may take primary carer leave under subsection (1) in respect of a child if the employee has previously taken a period of leave in respect of that child, being—
- (a) parental leave under this Act; or
- (b) a period of leave in the nature of parental leave under any Act other than this Act or under any employment agreement.

Section 8: replaced, on 1 April 2016, by section 16 of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

## **9 Duration of primary carer leave**

- (1) Primary carer leave must be taken in 1 continuous period not exceeding 22 weeks, subject to subsection (2).
- (2) If a female employee begins her primary carer leave—
  - (a) on a date specified, pursuant to section 13(1), in a certificate; or
  - (b) on a date appointed, pursuant to section 14, by her employer,—the female employee shall be entitled to take at least 16 weeks of her primary carer leave after the expected date of delivery and, if necessary for that purpose, to extend the duration of her primary carer leave.
- (3) A period of primary carer leave in excess of 22 weeks taken by a female employee under subsection (2) is to be treated as primary carer leave for the purposes of this Act, but must not be taken into account in assessing under section 26 any period of extended leave to which the female employee or her spouse or partner may be entitled under this Act.

Compare: 1980 No 162 s 8

Section 9 heading: amended, on 1 April 2016, by section 17(1) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 9(1): substituted, on 1 December 2005, by section 28(1) of the Parental Leave and Employment Protection Amendment Act 2004 (2004 No 89).

Section 9(1): amended, on 1 July 2018, by section 7(1) of the Parental Leave and Employment Protection Amendment Act 2017 (2017 No 45).

Section 9(1): amended, on 1 April 2016, by section 17(2) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 9(2): amended, on 1 July 2018, by section 7(2) of the Parental Leave and Employment Protection Amendment Act 2017 (2017 No 45).

Section 9(2): amended, on 1 April 2016, by section 17(3) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 9(2)(a): amended, on 1 July 2002, by section 10 of the Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act 2002 (2002 No 7).

Section 9(3): substituted, on 1 December 2004, by section 11(2) of the Parental Leave and Employment Protection Amendment Act 2004 (2004 No 89).

Section 9(3): amended, on 1 July 2018, by section 7(1) of the Parental Leave and Employment Protection Amendment Act 2017 (2017 No 45).

Section 9(3): amended, on 1 April 2016, by section 17(4) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 9(3): amended, on 26 April 2005, by section 8 of the Parental Leave and Employment Protection Amendment Act 2005 (2005 No 18).

## **10 Date of commencement of primary carer leave**

Primary carer leave begins,—

- (a) in the case of a child born to the employee, on the date of confinement;  
or
- (b) in any other case, on the date on which the employee becomes the primary carer in respect of the child; or

- (c) on such earlier date—
  - (i) as is determined in accordance with section 11 or section 12 or section 13; or
  - (ii) as is appointed by the employer pursuant to section 14.

Compare: 1980 No 162 s 9

Section 10 heading: amended, on 1 April 2016, by section 18(1) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 10: amended, on 1 April 2016, by section 18(2) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 10(a): replaced, on 1 April 2016, by section 18(3) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 10(b): replaced, on 1 April 2016, by section 18(3) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

## **11 Right of employee to determine date of commencement of primary carer leave**

Primary carer leave may, at the option of the employee and subject to compliance with section 37, begin on a date which is earlier, by not more than 6 weeks than,—

- (a) in the case of a child to be born to the employee, the expected date of delivery; or
- (b) in any other case, the date on which the employee intends to become the primary carer in respect of the child.

Compare: 1980 No 162 s 10(1)

Section 11 heading: amended, on 1 April 2016, by section 19(1) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 11: amended, on 1 April 2016, by section 19(2) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 11: amended, on 1 April 2016, by section 19(3) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 11: amended, on 1 April 2016, by section 19(4) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 11(a): replaced, on 1 April 2016, by section 19(5) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 11(b): replaced, on 1 April 2016, by section 19(5) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

## **12 Right of employer and employee to determine date of commencement of primary carer leave by agreement**

Primary carer leave may, by agreement between the employee and his or her employer, begin on any date before,—

- (a) in the case of a child to be born to the employee, the expected date of delivery; or



- (b) in any other case, the date on which the employee intends to become the primary carer in respect of the child.

Section 12: replaced, on 1 April 2016, by section 20 of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

*Provisions applicable to pregnant employees only*

Heading: inserted, on 1 April 2016, by section 21 of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

**13 Right of medical practitioner or midwife to determine date of commencement of primary carer leave**

- (1) If a medical practitioner or midwife considers that the female employee, being pregnant, should begin her primary carer leave before the expected date of delivery, the medical practitioner or midwife may give to the female employee a certificate specifying the date on which, in the medical practitioner's or midwife's opinion, that female employee should begin her primary carer leave.
- (2) If the female employee gives that certificate to her employer, her primary carer leave, despite section 10 or section 12 or section 14, begins on the earlier of—
- (a) the date specified in the certificate; or
- (b) the date of confinement.

Section 13: substituted, on 1 July 2002, by section 10 of the Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act 2002 (2002 No 7).

Section 13 heading: amended, on 1 April 2016, by section 22(1) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 13(1): amended, on 1 April 2016, by section 22(2) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 13(1): amended, on 18 September 2004, by section 175(1) of the Health Practitioners Competence Assurance Act 2003 (2003 No 48).

Section 13(2): amended, on 1 April 2016, by section 22(2) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

**14 Right of employer to appoint date of commencement of primary carer leave**

Where, by reason of pregnancy, a female employee is unable to perform her work to the safety of herself or others or is incapable of performing her work adequately, her employer, if no other suitable work is available, may, subject to section 9(2), direct her to commence her primary carer leave on such date as the employer appoints (including a date that is earlier, by more than 6 weeks, than the expected date of delivery).

Compare: 1980 No 162 s 13

Section 14 heading: amended, on 1 April 2016, by section 23(1) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 14: amended, on 1 April 2016, by section 23(2) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

**15 Special leave**

- (1) A female employee who is pregnant is entitled, before taking primary carer leave, to take a total of up to 10 days' special leave without pay for reasons connected with her pregnancy.
- (2) No period of special leave taken under subsection (1) by a female employee shall be taken into account in assessing the period of primary carer leave or the period of extended leave to which that female employee or her spouse or partner is entitled in accordance with this Act.

Compare: 1980 No 162 s 25

Section 15(1): amended, on 1 April 2016, by section 24 of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 15(2): amended, on 1 April 2016, by section 24 of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 15(2): amended, on 26 April 2005, by section 8 of the Parental Leave and Employment Protection Amendment Act 2005 (2005 No 18).

**16 Ability to perform work**

Where, by reason of pregnancy, a female employee 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.

Compare: 1980 No 162 s 24

## Part 2 Partner's leave

Part 2 heading: substituted, on 1 July 2002, by section 21 of the Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act 2002 (2002 No 7).

Part 2 heading: amended, on 1 April 2016, by section 25 of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

**17 Entitlement of spouse or partner of primary carer to partner's leave**

- (1) An employee may take partner's leave if the employee—
  - (a) is the spouse or partner of the primary carer in respect of a child; and
  - (b) assumes or intends to assume responsibility for the care of that child; and
  - (c) meets the 6-month employment test or the 12-month employment test.
- (2) Despite subsection (1), an employee may not take partner's leave in respect of a child under subsection (1) if—
  - (a) the employee has previously taken, in respect of that child, a period of leave, being—
    - (i) partner's leave under this Act; or
    - (ii) a period of leave in the nature of partner's leave under any Act other than this Act or under any employment agreement; or

- (b) the employee is the biological mother of the child and transferred her parental leave payment entitlements to her spouse or partner under section 71E.

Section 17: replaced, on 1 April 2016, by section 26 of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

## **18 Entitlement of other adoptive parent to partner's/paternity leave**

*[Repealed]*

Section 18: repealed, on 1 April 2016, by section 26 of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

## **19 Duration of Partner's leave**

Partner's leave must be taken in 1 continuous period not exceeding—

- (a) 2 weeks if the employee meets the 12-month employment test; or
- (b) 1 week if the employee meets the 6-month employment test.

Section 19: substituted, on 1 December 2004, by section 14 of the Parental Leave and Employment Protection Amendment Act 2004 (2004 No 89).

Section 19 heading: amended, on 1 April 2016, by section 27(1) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 19: amended, on 1 April 2016, by section 27(2) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 19(a): amended, on 1 April 2016, by section 27(3) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 19(b): amended, on 1 April 2016, by section 27(4) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

## **19A Extension of partner's/paternity leave entitlements for spouses or partners of employees in certain circumstances**

*[Repealed]*

Section 19A: repealed, on 1 April 2016, by section 28 of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

## **19AB Extension of partner's/paternity leave entitlements for spouses or partners of self-employed persons in certain circumstances**

*[Repealed]*

Section 19AB: repealed, on 1 April 2016, by section 28 of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

## **19B Extension of partner's/paternity leave of adoptive parent**

*[Repealed]*

Section 19B: repealed, on 1 April 2016, by section 28 of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

## **20 Date of commencement of partner's leave**

Partner's leave begins,—

- (a) in the case of a child born to the employee's spouse or partner, on the date of confinement; or
- (b) in any other case, on the date on which the employee's spouse or partner becomes the primary carer in respect of the child; or
- (c) on any earlier or later date determined in accordance with section 21 or 22.

Section 20: replaced, on 1 April 2016, by section 29 of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

## **21 Right of employee to determine date of commencement of partner's leave**

Partner's leave may, at the option of the employee, begin,—

- (a) in the case of a child to be born to the employee's spouse or partner, on any date in the period—
  - (i) beginning on the 21st day before the expected date of delivery; and
  - (ii) ending with the close of the 21st day 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, the close of the day on which the child is discharged from that hospital or establishment; or
- (b) in any other case, on any date in the period—
  - (i) beginning on the 21st day before the date on which the employee's spouse or partner intends to become the primary carer in respect of the child; and
  - (ii) ending with the close of the 21st day after the actual date on which the employee's spouse or partner becomes the primary carer in respect of the child.

Section 21: replaced, on 1 April 2016, by section 30 of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

## **22 Right of employer and employee to determine date of commencement of partner's leave by agreement**

Partner's leave may, by agreement between the employee and his or her employer, begin on any date.

Section 22 heading: amended, on 1 April 2016, by section 31(1) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 22 heading: amended, on 1 July 2002, by section 21 of the Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act 2002 (2002 No 7).

Section 22: amended, on 1 April 2016, by section 31(2) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 22: amended, on 1 July 2002, by section 21 of the Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act 2002 (2002 No 7).

### Part 3 Extended leave

#### 23 Entitlement of employee to extended leave

- (1) Except as otherwise provided in this Act, an employee is entitled to extended leave if—
- (a) the employee—
    - (i) is the primary carer in respect of a child; or
    - (ii) is the spouse or partner of the primary carer in respect of a child and assumes or intends to assume responsibility for the care of that child; and
  - (b) the employee meets—
    - (i) the 6-month employment test (in which case the maximum duration of extended leave is 26 weeks, as set out in section 26(1)(a)); or
    - (ii) the 12-month employment test (in which case the maximum duration of extended leave is 52 weeks, as set out in section 26(1)(b)).
- (2) An employee is not entitled to extended leave in respect of a child under subsection (1) if that employee has previously taken, in respect of that child, 1 or more periods of leave that in total amount to the employee's maximum entitlement under section 26(1)(a) or (b), whether that leave is—
- (a) extended leave under this Act; or
  - (b) a period of leave in the nature of extended leave under any Act other than this Act, or any employment agreement.

Section 23: replaced, on 1 April 2016, by section 32 of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

#### 24 Entitlement of adoptive parent to extended leave

*[Repealed]*

Section 24: repealed, on 1 April 2016, by section 32 of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

#### 25 Restriction where 2 or more children born or adopted at one time

*[Repealed]*

Section 25: repealed, on 1 July 2002, by section 8(2) of the Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act 2002 (2002 No 7).

#### 26 Duration of extended leave

- (1) Subject to subsections (2) and (3), the maximum amount of extended leave that an individual employee may take in respect of a child is—
- (a) 26 weeks, if the employee meets the 6-month employment test; or

- (b) 52 weeks, if the employee meets the 12-month employment test.
- (2) If an employee and that employee's spouse or partner are each individually entitled to extended leave in respect of the same child, the maximum combined entitlement of the employee and his or her spouse or partner is—
- (a) 26 weeks, if both meet the 6-month employment test; or
- (b) 52 weeks, if both meet the 12-month employment test; or
- (c) 52 weeks, if one meets the 12-month employment test and the other meets the 6-month employment test (in which case the person who meets the 6-month employment test may not take more than 26 weeks of extended leave out of the combined total entitlement of 52 weeks).
- (3) If an employee takes primary carer leave in respect of a child, the period of extended leave to which the employee and his or her spouse or partner are entitled in respect of the child is the relevant period specified in subsection (1) or (2) reduced by the total period of primary carer leave taken, excluding any period of primary carer leave in excess of 22 weeks taken under section 9(2).
- (4) If a female employee takes special leave under section 15, the period of extended leave to which that female employee or her spouse or partner is entitled in accordance with this Act is not reduced.
- (5) If an employee takes a period of partner's leave, the period of extended leave to which the employee and his or her spouse or partner are entitled in accordance with this Act is not reduced.
- (6) The period of extended leave to which an employee and his or her spouse or partner are entitled is not increased by the number of hours worked by the employee or his or her spouse or partner on a keeping-in-touch day in accordance with section 71CE(2) or 71DB(2).
- (7) This section is subject to the other provisions of this Act.

Section 26: replaced, on 1 April 2016, by section 33 of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 26(3): amended, on 1 July 2018, by section 8 of the Parental Leave and Employment Protection Amendment Act 2017 (2017 No 45).

## **27 Period during which extended leave may be taken**

- (1) An employee may take 1 or more periods of extended leave (up to the maximum amount to which the employee is entitled) at any time within the period beginning with the applicable start date and ending with the applicable end date.
- (2) If an employee takes more than 1 period of extended leave within the period referred to in subsection (1), each such period of extended leave must be taken on dates agreed between the employee and the employer.
- (3) In this section,—

**applicable start date** means,—

- (a) if the employee takes primary carer leave in respect of a child, the date of expiry or earlier termination of the employee's primary carer leave; or
- (b) if the employee takes partner's leave in respect of a child, the date of expiry or earlier termination of the employee's partner's leave; or
- (c) if the employee is entitled to take primary carer leave or partner's leave in respect of a child, and has not taken any such leave,—
  - (i) in the case of a child born to the employee or to the employee's spouse or partner, the date of confinement; or
  - (ii) in any other case, the first date on which either the employee or the employee's spouse or partner becomes the primary carer in respect of the child; or
- (d) any other date that is agreed on by the employee and that employee's employer

**applicable end date** means,—

- (a) if the employee, or the employee's spouse or partner, qualifies for extended leave under section 23(1)(b)(i) (which applies to employees who meet the 6-month employment test),—
    - (i) in the case of a child born to the employee, or to the employee's spouse or partner, the date on which the child attains the age of 6 months; or
    - (ii) in any other case, the date that is 6 months after the first date on which either the employee, or the employee's spouse or partner, becomes the primary carer in respect of the child; or
  - (b) if the employee, or the employee's spouse or partner, qualifies for extended leave under section 23(1)(b)(ii) (which applies to employees who meet the 12-month employment test),—
    - (i) in the case of a child born to the employee, or to the employee's spouse or partner, the date on which the child attains the age of 12 months; or
    - (ii) in any other case, the date that is the first anniversary of the first date on which either the employee, or the employee's spouse or partner, becomes the primary carer in respect of the child.
- (4) No employee is entitled to start or continue any period of extended leave under this Act after—
- (a) the applicable end date; or
  - (b) the date on which the employee ceases to have care of the child in respect of whom the extended leave is taken.
- (5) Subsection (1) is subject to subsection (4) and section 28.

- (6) Subsection (4) prevails over all other provisions of this Act.

Section 27: replaced, on 1 April 2016, by section 33 of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

## **28 Sharing of extended leave**

- (1) The maximum combined period of extended leave provided by section 26(2) may be shared between an employee and that employee's spouse or partner in any way set out in subsection (2), or in any other manner that is agreed on by the employee and the employee's spouse or partner and their respective employers, provided that—

- (a) neither the employee nor the employee's spouse or partner takes a period of extended leave that exceeds, or periods of extended leave that in total exceed, the amount of extended leave to which that person is individually entitled under section 26(1); and
- (b) the total period formed by adding together all periods of extended leave taken by the employee and the employee's spouse or partner does not exceed the maximum combined period of extended leave provided by section 26(2).

- (2) The ways in which the maximum combined period of extended leave may be shared between an employee and that employee's spouse or partner are—

- (a) the employee or the employee's spouse or partner may take the full maximum combined period of extended leave, and the other not take any period of primary carer or extended leave under this Act;
- (b) the employee and the employee's spouse or partner may each take a period or periods of extended leave, and neither of them take any period of primary carer leave;
- (c) either the employee or the employee's spouse or partner (or both, in the case of a transfer of entitlements) may take a period of primary carer leave, and each of the employee and the employee's spouse or partner may take 1 or more periods of extended leave.

- (3) Subsection (2) is subject to subsection (1).

Section 28: replaced, on 1 April 2016, by section 33 of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

## **29 Extended leave may be taken consecutively or concurrently with leave taken by partner**

Subject to the provisions of this Act, if an employee takes a period of extended leave in accordance with section 28, the period of leave so taken may be taken—

- (a) consecutively with any period of primary carer leave or partner's leave taken by the employee; and



- (b) consecutively or concurrently with any period of primary carer leave, partner's leave, or extended leave taken by the employee's spouse or partner, or with any period for which the employee's spouse or partner receives a parental leave payment, as the case may be.

Section 29: replaced, on 1 April 2016, by section 33 of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

### **30 Termination of extended leave**

*[Repealed]*

Section 30: repealed, on 1 April 2016, by section 33 of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

## **Part 3A**

### **Primary carers not eligible for primary carer leave may request negotiated carer leave**

Part 3A: inserted, on 1 April 2016, by section 34 of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

#### **30A Object of this Part**

The object of this Part is to—

- (a) provide for certain employees who are not entitled to primary carer leave to request a period of leave from their employment to enable them to receive parental leave payments; and
- (b) require an employer to deal with a request as soon as possible, but not later than 1 month after receiving it; and
- (c) provide that an employer may refuse a request only if it cannot be accommodated on certain grounds.

Section 30A: inserted, on 1 April 2016, by section 34 of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

#### *Employee's right to make request*

Heading: inserted, on 1 April 2016, by section 34 of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

#### **30B Employee may make request**

- (1) This section applies to an employee who—
  - (a) is not entitled to primary carer leave; but
  - (b) is entitled to parental leave payments under section 71D(1) if the employee takes leave from the employee's employment for the period during which the employee intends to receive parental leave payments.
- (2) An employee to whom this section applies may make a request to his or her employer for negotiated carer leave.
- (3) The request must be made,—

- (a) in the case of an employee who wishes to take negotiated carer leave in respect of a child to be born to the employee or to the employee's spouse or partner, at least 3 months before the expected date of delivery; or
- (b) in any other case, at least 14 days prior to the date on which the employee intends to become the primary carer in respect of the child.

Section 30B: inserted, on 1 April 2016, by section 34 of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

### **30C Requirements relating to request**

A request for negotiated carer leave must be in writing and must—

- (a) state—
  - (i) the employee's name; and
  - (ii) the date on which the request is made; and
  - (iii) that the request is made under this Part; and
- (b) specify the proposed date on which the employee wishes to begin negotiated carer leave and the proposed duration of the leave; and
- (c) include a statement that the employee—
  - (i) will be the primary carer in respect of the child during the specified period; and
  - (ii) will, if the request for a period of negotiated carer leave is approved, be entitled to receive parental leave payments under the Act for that period; and
- (d) explain, in the employee's view, what changes, if any, the employer may need to make to the employer's arrangements if the employee's request is approved.

Section 30C: inserted, on 1 April 2016, by section 34 of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

#### *Duties of employer*

Heading: inserted, on 1 April 2016, by section 34 of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

### **30D Employer must notify decision as soon as possible**

An employer must deal with a request for negotiated carer leave as soon as possible, but not later than 1 month after receiving it, and—

- (a) notify the employee in writing as to whether the employee's request is approved or refused; and
- (b) if the request is refused,—
  - (i) notify the employee of the ground or grounds specified in section 30E(2) for refusal; and

- (ii) provide an explanation of the reasons why the ground applies or the grounds apply.

Section 30D: inserted, on 1 April 2016, by section 34 of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

### **30E Grounds for refusal of request by employer**

- (1) An employer may refuse a request for negotiated carer leave only if the employer determines that the request cannot be accommodated on 1 or more of the grounds specified in subsection (2).
- (2) The grounds are—
  - (a) inability to reorganise work among existing staff:
  - (b) inability to recruit additional staff:
  - (c) detrimental impact on quality:
  - (d) detrimental impact on performance:
  - (e) planned structural changes:
  - (f) burden of additional costs:
  - (g) detrimental effect on ability to meet customer demand.

Compare: 2000 No 24 s 69AAF(2)

Section 30E: inserted, on 1 April 2016, by section 34 of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

### *Resolving disputes*

Heading: inserted, on 1 April 2016, by section 34 of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

### **30F Limitation on challenging employer**

- (1) An employee may not challenge his or her employer's refusal of a request for negotiated carer leave.
- (2) An employee may challenge his or her employer's failure to respond to a request for negotiated carer leave, or failure to respond adequately to a request, if the employee believes his or her employer has not complied with section 30D.

Section 30F: inserted, on 1 April 2016, by section 34 of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

### **30G Role of Labour Inspector**

- (1) For the purposes of this Part, a Labour Inspector may provide to employees and employers such assistance as he or she considers appropriate in the circumstances.
- (2) This section applies subject to section 30H(2).

Section 30G: inserted, on 1 April 2016, by section 34 of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

**30H Labour Inspectors and mediation**

- (1) This section applies if an employee believes that his or her employer has not complied with section 30D.
- (2) The employee may refer the non-compliance with section 30D—
  - (a) directly to mediation; or
  - (b) to a Labour Inspector, who must, to the extent practicable in the circumstances, assist the employee and employer to resolve the matter.
- (3) If, after completion of the process under subsection (2)(b), the employee is dissatisfied with the result, the employee may refer the matter to mediation.
- (4) For the purposes of subsection (3), non-compliance with section 30D is an employment relationship problem.

Section 30H: inserted, on 1 April 2016, by section 34 of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

**30I Application to Employment Relations Authority**

- (1) This section applies if—
  - (a) an employee believes that his or her employer has not complied with section 30D; and
  - (b) mediation has not resolved the matter.
- (2) The employee may apply to the Employment Relations Authority for a determination as to whether the employer has complied with section 30D.
- (3) An application must be made within 12 months after the relevant date.
- (4) In subsection (3), **relevant date** means,—
  - (a) if the employer notifies a refusal within 1 month after receiving a request, the date of the notification;
  - (b) in any other case, the date that is 1 month after the employer received the employee's request.

Section 30I: inserted, on 1 April 2016, by section 34 of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

**30J Penalty**

- (1) An employer who does not comply with section 30D is liable to a penalty not exceeding \$2,000, imposed by the Employment Relations Authority.
- (2) The penalty is payable to the employee concerned.

Section 30J: inserted, on 1 April 2016, by section 34 of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

## Part 4

### Requirements concerning notice

#### **31 Obligation to notify employer**

- (1) An employee who wishes to take parental leave under this Act shall give written notice to the employee's employer of the employee's wish to take that leave.
- (2) The notice under subsection (1) shall state the proposed date on which the employee wishes to commence leave, and the duration of the leave.
- (3) If the employee wishes to take parental leave in respect of a child to be born to the employee or to the employee's spouse or partner, the notice under subsection (1)—
  - (a) shall be given at least 3 months before the expected date of delivery; and
  - (b) if given by a pregnant employee, shall be accompanied by a certificate from a medical practitioner or a midwife—
    - (i) certifying that the female employee is pregnant; and
    - (ii) stating the expected date of delivery; or
  - (c) if given by the pregnant woman's spouse or partner, shall be accompanied by—
    - (i) a certificate or a copy of a certificate from a medical practitioner or a midwife certifying that the woman named in the certificate is pregnant and stating the expected date of delivery; and
    - (ii) a written assurance from the woman named in the medical certificate that the employee is her spouse or partner and that the employee intends to assume care of the child to be born to her.

Compare: 1980 No 162 s 14(1), (3)

Section 31(3): amended, on 1 April 2016, by section 35 of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 31(3)(b): amended, on 18 September 2004, by section 175(1) of the Health Practitioners Competence Assurance Act 2003 (2003 No 48).

Section 31(3)(b): amended, on 1 July 2002, by section 10 of the Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act 2002 (2002 No 7).

Section 31(3)(b): amended, on 1 July 2002, by section 21 of the Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act 2002 (2002 No 7).

Section 31(3)(c): amended, on 26 April 2005, by section 8 of the Parental Leave and Employment Protection Amendment Act 2005 (2005 No 18).

Section 31(3)(c): amended, on 1 July 2002, by section 21 of the Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act 2002 (2002 No 7).

Section 31(3)(c)(i): amended, on 18 September 2004, by section 175(1) of the Health Practitioners Competence Assurance Act 2003 (2003 No 48).

Section 31(3)(c)(i): amended, on 1 July 2002, by section 10 of the Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act 2002 (2002 No 7).

Section 31(3)(c)(ii): amended, on 26 April 2005, by section 8 of the Parental Leave and Employment Protection Amendment Act 2005 (2005 No 18).

Section 31(3)(c)(ii): amended, on 1 July 2002, by section 21 of the Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act 2002 (2002 No 7).

### **32 Requirements where extended leave sought**

- (1) Where any notice is given in accordance with section 31 by an employee wishing to take any period of extended leave under this Act, that notice shall, in addition to the matters required by that section or by section 33,—
- (a) state whether the employee's spouse or partner is proposing to take any period of extended leave or primary carer leave under this Act:
  - (b) state the name of the employee's spouse or partner and the name and address of the employer of the employee's spouse or partner:
  - (c) state the proposed dates of commencement and expiry of each period of leave proposed to be taken in respect of the child by—
    - (i) the employee; and
    - (ii) the employee's spouse or partner,—
 under this Act or under any provision contained in any Act other than this Act or in any employment agreement:
  - (d) contain an assurance by the employee that the aggregate periods of leave of the kinds specified in subsection (2) that are proposed to be taken in respect of the child by the employee and the employee's spouse or partner will not exceed the maximum combined entitlements of the employee and the employee's spouse or partner set out in section 26(2).
- (2) The kinds of leave referred to in subsection (1)(d) are—
- (a) all primary carer leave (other than primary carer leave in excess of 22 weeks taken under section 9(2)); and
  - (b) all extended leave under this Act; and
  - (c) all leave (other than partner's leave) to which the employee or the employee's spouse or partner is entitled in respect of the child by or under any Act other than this Act or under any employment agreement.

Section 32(1)(a): amended, on 1 April 2016, by section 36(1) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 32(1)(a): amended, on 26 April 2005, by section 8 of the Parental Leave and Employment Protection Amendment Act 2005 (2005 No 18).

Section 32(1)(b): amended, on 26 April 2005, by section 8 of the Parental Leave and Employment Protection Amendment Act 2005 (2005 No 18).

Section 32(1)(c): amended, on 1 July 2002, by section 22 of the Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act 2002 (2002 No 7).

Section 32(1)(c): amended, on 15 May 1991, by section 3 of the Parental Leave and Employment Protection Amendment Act 1991 (1991 No 28).

Section 32(1)(c)(ii): amended, on 26 April 2005, by section 8 of the Parental Leave and Employment Protection Amendment Act 2005 (2005 No 18).

Section 32(1)(d): replaced, on 1 April 2016, by section 36(2) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 32(2): inserted, on 1 April 2016, by section 36(3) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 32(2)(a): amended, on 1 July 2018, by section 9 of the Parental Leave and Employment Protection Amendment Act 2017 (2017 No 45).

### **33 Requirements where primary carer is not biological mother or her spouse or partner**

If an employee, or his or her spouse or partner, intends to be the primary carer in respect of a child to whom the employee or the employee's spouse or partner did not give birth, the notice required to be given under section 31(1) must—

- (a) include a statement by the employee that the employee (or his or her spouse or partner, as applicable) will be the primary carer in respect of the child; and
- (b) be given at least 14 days before the employee (or his or her spouse or partner, as applicable) intends to become the primary carer in respect of the child; and
- (c) be accompanied by any evidence that is prescribed in regulations.

Section 33: replaced, on 1 April 2016, by section 37 of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

### **34 Incomplete notification**

- (1) Where any employee gives a written notice to the employee's employer stating that the employee wishes to take parental leave under this Act and any of the provisions of sections 31 to 33 that apply in respect of any information or assurance to be stated or given in, or any document required to accompany, that notice are not complied with, that notice shall be an incomplete notice for the purposes of subsection (2) and sections 35(2) and 36(2).
- (2) Where an employee gives an incomplete notice within the meaning of subsection (1), the employer of that employee shall, within 7 days after the date on which it comes to that employer's attention that the notice is an incomplete notice, give to the employee a written notice stating that the notice is an incomplete notice and specifying the additional information, documentation, or assurance that the employee is required by any provision of sections 31 to 33 to give to the employer.
- (3) An employee to whom a notice is given under subsection (2) shall, within 14 days after the date on which the employee receives the notice, give to the employer the additional information, documentation, or assurance specified in the notice and required by any provision of sections 31 to 33 to be given to the employer.

**35 Failure to notify employer**

- (1) Subject to section 68, where an employee fails to give notice under section 31(1) within the time required by section 31(3) or section 33, that employee shall not be entitled to take extended leave under this Act unless—
  - (a) that employee gives a written notice under section 31(1) to his or her employer and a period of 3 months beginning with the date of the giving of that notice has expired; or
  - (b) the employer of that employee agrees that the employee may take extended leave under this Act.
- (2) Nothing in subsection (1) shall apply to an employee who gives an incomplete notice to that employee's employer within the time required by section 31(3) or section 33.

**36 Obligation to notify employee**

- (1) Subject to subsection (2), every employer who receives a notice under section 31(1) shall, within 21 days after the receipt of the notice, give to the employee who gave that notice a written notice in the prescribed form—
  - (a) stating whether the employee is entitled to take parental leave; and
  - (b) where an employer states that the employee is not entitled to take parental leave, stating the reasons why the employee is not so entitled; and
  - (c) stating that, until the end of the employee's parental leave, the employee's position in the employment of the employer—
    - (i) can be kept open; or
    - (ii) cannot be kept open; and
  - (d) where the employer states that the employee's position cannot be kept open, informing the employee—
    - (i) that the employee may dispute the employer's statement that the employee's position cannot be kept open; and
    - (ii) that the employer will, for the period of 26 weeks beginning with the day after the date on which the parental leave ends, give the employee preference over other applicants for any position which is vacant and which is substantially similar to the position held by the employee at the beginning of the parental leave; and
  - (e) informing the employee of the substance of Parts 1 to 3 and of section 45, and, in particular, of the employee's rights and obligations under sections 11, 21, and 29.
- (2) Where an employer receives a notice that is an incomplete notice that employer shall, within 21 days after the date of the receipt by the employer of the additional information, documentation, or assurance specified in the notice given



under section 34(2), give to the employee a notice complying with subsection (1) of this section.

- (3) Where any employee receives a notice given under subsection (1) or under subsection (1) (as applied by subsection (2)) and the employee disputes any statement given in that notice, that employee may invoke any procedure set out in Part 7.

Compare: 1980 No 162 s 15

### **37 Requirement where employee wishes to begin primary carer leave early**

- (1) This section applies to an employee who—
- (a) has given notice that the employee wishes to take parental leave under this Act; and
  - (b) intends to exercise the option conferred by section 11 by beginning his or her primary carer leave early.
- (2) The employee must give his or her employer not less than 21 days' notice in writing of the day on which the employee wishes his or her primary carer leave to begin.

Compare: 1980 No 162 s 10(2)

Section 37: replaced, on 1 April 2016, by section 38 of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

### **38 Employer's notice in relation to return to work and preference for appointment**

Within 21 days after the beginning of an employee's parental leave, the employer of the employee shall give to the employee written notice stating—

- (a) the date on which the employee's parental leave will end; and
- (b) either—
  - (i) where the employer is able to keep the employee's position open until the end of the employee's parental leave, the date on which, if the employee decides to return to work at the end of the parental leave, the employee will be required to return to work, being the date of the next working day after the date on which the employee's parental leave ends; or
  - (ii) in any other case, the period of 26 weeks during which the employer will give the employee preference over other applicants for any position which is vacant and which is substantially similar to the position held by the employee at the beginning of the employee's parental leave; and
- (c) where paragraph (b)(i) applies, the employee's obligations under section 39; and

(d) the employee's rights under section 45.

Compare: 1980 No 162 s 17

### **39 Employee's notice in relation to return to work**

(1) Every employee who is on parental leave and whose position is being kept open by the employer, shall, not later than 21 days before the date on which the employee's parental leave ends, give to the employer written notice stating whether or not the employee will be returning to work at the end of the employee's parental leave.

(2) Where an employee chooses,—

(a) pursuant to section 45(1)(f), to return to work before the date on which the employee is required to return to work at the end of the parental leave; or

(b) pursuant to section 45(1)(g), to end any period of parental leave and begin the period of preference before the date on which the period of preference would otherwise begin,—

the employee shall give to the employer not less than 21 days' notice in writing of the date on which the employee intends to return to work or begin the period of preference, as the case may be.

(3) Subsection (1) does not apply if the employee's employment agreement requires the employee to give a longer period of notice of resignation to the employer.

Compare: 1980 No 162 s 18

Section 39(3): inserted, on 1 April 2016, by section 39 of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

### **39A Succession to employee's entitlements**

*[Repealed]*

Section 39A: repealed, on 1 July 2006, by section 17 of the Parental Leave and Employment Protection (Paid Parental Leave for Self-Employed Persons) Amendment Act 2006 (2006 No 20).

## **Part 5**

### **Rights and obligations after commencement of parental leave**

#### **40 Presumption that employee's position can be kept open in the case of first period of parental leave not exceeding 4 weeks**

(1) Where an employee takes a continuous period of parental leave—

(a) that does not exceed 4 weeks (inclusive of any public or statutory holiday falling within the period); and

(b) that is the first period of parental leave taken by the employee in respect of the child; and

- (c) of which the employee's employer has had no less notice than the period of notice required by section 31(3) or section 33, as the case may be,—  
the employer shall be presumed, in any proceedings under this Act, to be able to keep open for the employee, until the end of that period of parental leave, the employee's position in the employment of the employer unless the employer proves that the employee's position cannot be kept open because of the occurrence of a redundancy situation.
- (2) For the purposes of determining under subsection (1) whether an employer has had no less notice of a period of parental leave than the period of notice required by section 31(3) or section 33, as the case may be, it shall be sufficient if the employer had notice that a period of parental leave not exceeding 4 weeks would be taken by the employee, notwithstanding that the employer did not have the requisite notice of the exact date on which the period of parental leave would commence, and the exact date on which it would cease.
- (3) The reference in subsection (1) to the employee's position in the employment of the employer shall be a reference to the position ordinarily held by the employee, and shall not include any position to which the employee was temporarily transferred under section 16.

**41 Presumption that employee's position can be kept open in the case of other periods of parental leave**

- (1) Where an employee takes a period of parental leave (other than a period of parental leave referred to in section 40) the employer shall be presumed in any proceedings under this Act, to be able to keep open for the employee, until the end of the employee's parental leave, the employee's position in the employment of the employer unless the employer proves that the employee's position cannot be kept open—
- (a) because a temporary replacement is not reasonably practicable due to the key position occupied within the employer's enterprise by the employee;  
or
- (b) because of the occurrence of a redundancy situation.
- (2) In determining whether or not a position is a key position for the purposes of subsection (1)(a), regard may be had, among other things, to—
- (a) the size of the employer's enterprise; and
- (b) the training period or skills required in the job.
- (3) The reference in subsection (1) to the employee's position in the employment of the employer shall be a reference to the position ordinarily held by the employee, and shall not include any position to which the employee was temporarily transferred under section 16.

Compare: 1980 No 162 s 16

**42 Employer's obligations in respect of remuneration and holiday pay**

- (1) Subject to subsections (2) and (3), the employer of an employee who takes any form of parental leave in accordance with this Act shall not be obliged to pay that employee any remuneration for—
- (a) any period of the employee's parental leave under this Act; or
  - (b) any period during which the employee is entitled under this Act, following any period of parental leave, to preference in obtaining employment with the employer.
- (2) If an employee becomes entitled to an annual holiday on pay during—
- (a) a period of parental leave under this Act; or
  - (b) a period of preference in obtaining employment; or
  - (c) the period of 12 months commencing with the date on which the employee returns to work after a period of parental leave under this Act or a period of preference in obtaining employment,—

the employee is, despite anything in section 21 of the Holidays Act 2003, entitled to holiday pay for that holiday only at the rate of the employee's average weekly earnings (as defined in section 5(1) of the Holidays Act 2003) for the 12 months immediately before the end of the last pay period before the annual holiday is taken or paid out.

**(3) [Repealed]**

Compare: 1980 No 162 s 7

Section 42(2): substituted, on 1 April 2004, by section 91(2) of the Holidays Act 2003 (2003 No 129).

Section 42(2): amended, on 1 April 2016, by section 40 of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 42(2): amended, on 1 April 2011, by section 18 of the Holidays Amendment Act 2010 (2010 No 126).

Section 42(3): repealed, on 1 April 2004, by section 91(2) of the Holidays Act 2003 (2003 No 129).

**43 Continuity of employment**

Where an employee resumes service with the same employer at the end of a period of parental leave or while the employee is entitled, following parental leave, to preference in obtaining employment with the employee's employer—

- (a) the employee's service, for the purpose of any rights and benefits that are conditional on unbroken service, shall not be broken—
  - (i) by the taking of parental leave; or
  - (ii) by the employee being without a position in the employer's service during part of the period of preference; or
  - (iii) by both; and

- (b) any period during which the employee was on parental leave and any period during which the employee was entitled, following parental leave, to preference in obtaining employment with the employer shall count,—
  - (i) subject to section 42, as time served under the employee's employment agreement; and
  - (ii) subject to section 44, as service for the purpose of any superannuation scheme to which the employee belongs in the employee's capacity as an employee of the employer.

Compare: 1980 No 162 s 22

Section 43(b)(i): amended, on 1 July 2002, by section 22 of the Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act 2002 (2002 No 7).

#### 44 Contributions to superannuation schemes

Nothing in section 43(b)(ii) shall—

- (a) entitle an employee to have any period counted as service for the purposes of a superannuation scheme if the employee is required to pay contributions in respect of that period and has not done so; or
- (b) relieve an employee from any obligation under a superannuation scheme to pay contributions in respect of any period during which the employee is on parental leave or during which the employee is entitled, following parental leave, to preference in obtaining employment with the employee's employer.

Compare: 1980 No 162 s 23

#### 45 Early ending and extension of parental leave

- (1) Subject to compliance with section 39(2), an employee who is on parental leave may,—
  - (a) if the employee or the employee's spouse or partner suffers a miscarriage; or
  - (b) if the child is stillborn or dies; or
  - (c) if the employee or the employee's spouse or partner fails to become or ceases to be the primary carer in respect of the child; or
  - (d) *[Repealed]*
  - (e) if the employer consents,—  
choose—
    - (f) where the employee's position is being kept open by the employer, to end the parental leave by returning to work before the date on which the employee is required to return to work at the end of the parental leave; or
    - (g) in any other case, to end the parental leave and begin the period of preference.

- (2) If a female employee is on primary carer leave under section 8 in relation to a child to whom she gave birth, her employer may, in giving consent under subsection (1)(e), make it conditional on the employee giving to the employer, before the employee ends her primary carer leave under subsection (1)(f) or (g), a certificate from a medical practitioner to the effect that she is fit to return to work.
- (3) Subject to subsection (4), an employee who is on parental leave may, if the employer consents, extend the parental leave until a specified date which shall thereafter be the date on which the employee's parental leave will end.
- (4) Without limiting any right of an employee to take a period of leave otherwise than by virtue of this Act, and subject to section 9(2), nothing in subsection (3) of this section shall entitle an employee to extend any period of parental leave with the result that,—
  - (a) in the case of a period of primary carer leave, the period of primary carer leave exceeds 22 weeks:
  - (b) in the case of a period of partner's leave, the duration of partner's leave exceeds—
    - (i) 1 week if the employee meets the 6-month employment test:
    - (ii) 2 weeks if the employee meets the 12-month employment test; or
  - (c) in the case of a period of extended leave, the period of extended leave, when aggregated with all leave of the kinds specified in section 32(2) that is taken or proposed to be taken by the employee and the employee's spouse or partner in respect of the child, exceeds the maximum combined entitlements of the employee and the employee's spouse or partner set out in section 26(2).

Compare: 1980 No 162 s 19

Section 45(1)(a): amended, on 26 April 2005, by section 8 of the Parental Leave and Employment Protection Amendment Act 2005 (2005 No 18).

Section 45(1)(c): replaced, on 1 April 2016, by section 41(1) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 45(1)(d): repealed, on 1 April 2016, by section 41(1) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 45(2): replaced, on 1 April 2016, by section 41(2) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 45(4)(a): amended, on 1 July 2018, by section 10 of the Parental Leave and Employment Protection Amendment Act 2017 (2017 No 45).

Section 45(4)(a): amended, on 1 April 2016, by section 41(3) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 45(4)(b): replaced, on 1 April 2016, by section 41(4) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 45(4)(c): replaced, on 1 April 2016, by section 41(4) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

**46 Failure to return to work**

If an employee who takes up parental leave and whose position is kept open by the employer—

- (a) fails, without good cause, to return to work at the end of that period of parental leave; or
- (b) informs the employer, before the end of that period of parental leave, that the employee has decided not to return to work at the end of the period of parental leave,—

the employee's employment shall, subject to any agreement between the employer and the employee, be deemed to have been at an end as from the day on which the period of parental leave began.

Compare: 1980 No 162 s 20

**47 Failure to accept employment**

If an employee who has taken parental leave fails, without reasonable excuse, to take up, on the date specified by the employer or within 7 days thereafter, any position substantially similar to the position ordinarily held by the employee before taking parental leave that is offered to the employee by the employee's employer during the period of 26 weeks beginning with the day after the date on which the period of parental leave ends, that employee's employment shall be deemed to have been at an end as from the day on which the period of parental leave began.

Compare: 1980 No 162 s 21

**48 Workers employed to replace employees on parental leave**

Where a temporary employee is employed to replace an employee who is on parental leave, the employer shall, before employing the temporary employee, inform the temporary employee in writing—

- (a) that the temporary employee is being employed on a temporary basis in the place of an employee who is on parental leave; and
- (b) that the employee may return to work, in accordance with section 45, before the date on which the employee is required to return to work at the end of the parental leave.

Compare: 1980 No 162 s 26

**Part 6**  
**Protection of employment**

**49 Dismissal by reason of pregnancy or parental leave prohibited**

- (1) No employer shall terminate the employment of any employee—
  - (a) by reason of, in the case of a female employee,—

- (i) her pregnancy; or
  - (ii) her state of health during her pregnancy, unless her state of health during her pregnancy is materially affected by causes not related to her pregnancy; or
  - (b) by reason of, in the case of any employee,—
    - (i) the employee indicating that the employee wishes to take parental leave under this Act or rights and benefits in the nature of parental leave under any provision other than this Act; or
    - (ii) the employee, or the employee's spouse or partner, becoming the primary carer in respect of a child; or
  - (c) during the employee's absence on parental leave or during the period of 26 weeks beginning with the day after the date on which any period of parental leave ends.
- (2) It shall not be a contravention of subsection (1) for an employer to terminate the employment of an employee—
- (a) with the employee's consent; or
  - (b) where solely on account of—
    - (i) the pregnancy of a female employee or the employee's spouse or partner; or
    - (ii) the employee becoming the primary carer in respect of a child,—
- the employee absents himself or herself from work (other than with the agreement of the employee's employer or in accordance with section 13 or section 14) for any period which the employee is not entitled to take as leave by reason of any provision of this Act or any entitlement to parental leave contained in any provision other than this Act.

Compare: 1980 No 162 s 27

Section 49(1)(b)(ii): replaced, on 1 April 2016, by section 42(1) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 49(2)(b)(i): amended, on 26 April 2005, by section 8 of the Parental Leave and Employment Protection Amendment Act 2005 (2005 No 18).

Section 49(2)(b)(ii): replaced, on 1 April 2016, by section 42(2) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

## 50 Special defences relating to dismissal

Where—

- (a) it is alleged in any proceedings under this Act that an employer has, in contravention of section 49(1), terminated the employment of an employee; and
- (b) it is proved in those proceedings that the employer terminated the employee's employment either—
  - (i) during the employee's absence on parental leave; or



- (ii) during the period of 26 weeks beginning with the day after the date on which any period of the employee's parental leave ended,—

the defences set out in sections 51 and 52 shall be available to the employer.

Compare: 1980 No 162 s 28

### **51 Special defences relating to dismissal during parental leave**

Where the termination is proved to have taken place during the employee's absence on parental leave, it shall be a defence for the employer to prove—

- (a) that,—
  - (i) in the case of a period of parental leave to which section 40(1) applies, on the ground of the occurrence of a redundancy situation that occurred in the employer's business after the employer gave the employee notice in terms of section 36(1)(c)(i), the employer was unable to keep the employee's position open; or
  - (ii) in the case of other periods of parental leave, on the ground of circumstances (of the type referred to in section 41) that occurred in the employer's business after the employer gave the employee notice in terms of section 36(1)(c)(i), the employer was unable to keep the employee's position open; and
- (b) that the employer terminated the employee's employment on account of a redundancy situation of such nature that there was no prospect of the employer being able to appoint the employee to a position which was vacant and which was substantially similar to the position held by the employee at the beginning of the employee's parental leave; and
- (c) that the employer had not, in the period commencing with the beginning of the employee's parental leave and ending with the termination of the employee's employment, prejudicially affected either the employee's seniority or the employee's superannuation rights.

Compare: 1980 No 162 s 29

### **52 Special defence relating to dismissal during the 26 weeks following parental leave**

Where the termination of employment is proved to have taken place during the period of 26 weeks beginning with the day after the date on which any period of the employee's parental leave ended, it shall be a defence for the employer to prove—

- (a) the matters set out in paragraphs (b) and (c) of section 51; and
- (b) that, during the period between the end of the period of the employee's parental leave and the termination of the employee's employment, the employer had (despite being prepared to accord the employee preference over other applicants) been unable to appoint the employee to a position

which was vacant and which was substantially similar to the position held by the employee at the beginning of the employee's period of parental leave.

Compare: 1980 No 162 s 30

### **53 Redundancy payments not affected**

Nothing in this Act shall affect any redundancy payment payable pursuant to the provisions of any Act or of any order or employment agreement.

Compare: 1980 No 162 s 31

Section 53: amended, on 1 July 2002, by section 22 of the Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act 2002 (2002 No 7).

Section 53: amended, on 15 May 1991, by section 4 of the Parental Leave and Employment Protection Amendment Act 1991 (1991 No 28).

### **54 Dismissal for cause not affected**

Nothing in this Act shall affect any right of an employer to dismiss an employee for a substantial reason not related to—

- (a) the pregnancy of the employee or the pregnancy of the employee's spouse or partner; or
- (b) the employee or the employee's spouse or partner becoming the primary carer in respect of a child; or
- (c) the employee's rights under this Act.

Compare: 1980 No 162 s 32

Section 54(a): substituted, on 26 April 2005, by section 4 of the Parental Leave and Employment Protection Amendment Act 2005 (2005 No 18).

Section 54(b): replaced, on 1 April 2016, by section 43 of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

## **Part 7**

### **Remedies available to employees**

#### **55 Interim order**

- (1) Where any employee alleges that the employee's employer has, within the preceding 2 months and in contravention of section 49(1), terminated the employee's employment or given the employee notice terminating the employee's employment, the employee may apply *ex parte* to the Employment Relations Authority for an interim order reinstating the employee in the employee's position or cancelling the notice terminating the employee's employment.
- (2) Subject to subsection (3), every interim order made under subsection (1) shall expire on a date to be specified in the order, being the later of—
  - (a) a date not later than 26 weeks after the date on which the order is made;
  - or

- (b) a date not later than 26 weeks after—
  - (i) the expected date of delivery of the child (in the case of a child born to the employee or to the employee's spouse or partner); or
  - (ii) the first date on which either the employee or the employee's spouse or partner becomes the primary carer in respect of the child (in any other case).
- (3) An interim order made under subsection (1) may be renewed by the Employment Relations Authority from time to time on the *ex parte* application of the employee in whose favour it was made if the Employment Relations Authority is satisfied that the employee is taking reasonable steps to use the procedures available to the employee under sections 57 to 67.
- (4) An officer of the Employment Relations Authority shall send a copy of the interim order and of every decision renewing the interim order to the employer by registered letter.

Section 55: substituted, on 15 May 1991, by section 5 of the Parental Leave and Employment Protection Amendment Act 1991 (1991 No 28).

Section 55(1): amended, on 1 July 2002, by section 14(1) of the Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act 2002 (2002 No 7).

Section 55(1): amended, on 2 October 2000, by section 240 of the Employment Relations Act 2000 (2000 No 24).

Section 55(2)(b): replaced, on 1 April 2016, by section 44 of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 55(3): amended, on 2 October 2000, by section 240 of the Employment Relations Act 2000 (2000 No 24).

Section 55(4): amended, on 2 October 2000, by section 240 of the Employment Relations Act 2000 (2000 No 24).

## 56 Parental leave complaints

- (1) Where any employee alleges that the employee's employer—
  - (a) is not justified in stating, in the notice given to the employee under section 36, that the employee is not entitled to take any period of parental leave or that the employee's position cannot be kept open; or
  - (b) has, in contravention of section 49(1), terminated the employee's employment or given the employee notice terminating the employee's employment; or
  - (c) has taken other action, or has omitted to do something, that affects, to the employee's disadvantage, the employee's rights and benefits in respect of parental leave or a parental leave payment; or
  - (d) has exercised, without reasonable justification, the powers conferred on the employer by section 14 or section 16,—

that allegation shall be a parental leave complaint to which this section applies, and the employee may use, in respect of that parental leave complaint, the procedures provided in sections 57 to 67.

- (2) A parental leave complaint to which this section applies shall not be made—
- (a) after the expiration of 26 weeks from the date on which the subject matter of the complaint arose; or
  - (b) after the expiration of 26 weeks from—
    - (i) the expected date of delivery of the child (in the case of a child to be born to the employee or to the employee's spouse or partner); or
    - (ii) the first date on which either the employee or the employee's spouse or partner became the primary carer in respect of the child (in any other case); or
  - (c) after the expiration of 8 weeks from the expiry of any period of parental leave taken by the employee,—
- whichever is the later.
- (3) The procedures provided in sections 57 to 67 may be used before or after the making of an interim order under section 55.
- (4) A parental leave complaint to which this section applies is not a personal grievance within the meaning of section 103 of the Employment Relations Act 2000.

Compare: 1980 No 162 s 34

Section 56(1): amended, on 1 July 2002, by section 14(2) of the Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act 2002 (2002 No 7).

Section 56(1)(c): substituted, on 1 July 2002, by section 15 of the Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act 2002 (2002 No 7).

Section 56(2)(b): replaced, on 1 April 2016, by section 45 of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 56(4): substituted, on 2 October 2000, by section 240 of the Employment Relations Act 2000 (2000 No 24).

## **57 Procedures for settlement of parental leave complaints**

- (1) The procedures for the settlement of a parental leave complaint shall be in accordance with this section and sections 58 to 67.
- (2) As soon as practicable after a parental leave complaint arises, the employee shall submit the complaint to the employee's immediate supervisor, affording the immediate supervisor an opportunity to remedy the cause of the complaint, the intent being that it is desirable, if the circumstances permit it, to settle the complaint rapidly and as near as possible to the point of origin.
- (3) Where any such attempt at settlement has failed, or where the complaint is of such a nature that a direct discussion between the employee and the employee's immediate supervisor would be inappropriate, the employee shall either—
  - (a) notify the branch secretary or secretary or a duly authorised representative of any union to which the employee belongs or could belong; or

- (b) where the employee elects to act on his or her own behalf or to appoint an agent or barrister or solicitor to act on his or her behalf, forthwith take the matter up, or arrange for that agent, barrister, or solicitor, as the case may be, to take up the matter on his or her behalf, with the employer or the representative of the employer.
- (4) Where the person notified under subsection (3)(a) considers that there is some substance in the parental leave complaint, that person shall forthwith take the matter up with the employer or the representative of the employer.
- (5) If the matter is not disposed of in discussion with the employer or the representative of the employer, the complaint shall be reduced to writing in a statement setting out all the facts relied on. The statement shall establish the nature of the employee's complaint, and of the issues, for all subsequent consideration of the case.

Compare: 1980 No 162 s 35

#### **58 Power to refer complaint to Employment Relations Authority**

- (1) Where a parental leave complaint is not disposed of between the parties, it may be referred to the Employment Relations Authority.
- (2) The Employment Relations Authority must, subject to any decision to provide mediation services, proceed to hear and determine the complaint and, in doing so, must consider—
  - (a) the written statement of the complaint required by section 57(5); and
  - (b) any evidence or submissions given by or on behalf of the parties; and
  - (c) such other matters as the Employment Relations Authority thinks fit.

Section 58: substituted, on 2 October 2000, by section 240 of the Employment Relations Act 2000 (2000 No 24).

#### **59 Role of institutions**

Where any parental leave complaint comes before the Employment Relations Authority, sections 177 to 184 of the Employment Relations Act 2000 apply in relation to that parental leave complaint and sections 214 and 215 of that Act apply in relation to appeals to the Court of Appeal.

Section 59: substituted, on 2 October 2000, by section 240 of the Employment Relations Act 2000 (2000 No 24).

#### **60 Decisions**

*[Repealed]*

Section 60: repealed, on 15 May 1991, by section 7 of the Parental Leave and Employment Protection Amendment Act 1991 (1991 No 28).

**61 Appeals to Labour Court in respect of decision of complaint committee**

*[Repealed]*

Section 61: repealed, on 15 May 1991, by section 7 of the Parental Leave and Employment Protection Amendment Act 1991 (1991 No 28).

**62 Appeals to Court of Appeal on question of law**

*[Repealed]*

Section 62: repealed, on 15 May 1991, by section 7 of the Parental Leave and Employment Protection Amendment Act 1991 (1991 No 28).

**63 Court of Appeal may refer appeals back for reconsideration**

*[Repealed]*

Section 63: repealed, on 15 May 1991, by section 7 of the Parental Leave and Employment Protection Amendment Act 1991 (1991 No 28).

**64 Duty to promote settlement**

It shall be the duty of every party to a parental leave complaint—

- (a) to promote the settlement of the complaint under the procedures provided in sections 57 to 67; and
- (b) to abstain from any action that might impede the effective functioning of the procedures.

Compare: 1980 No 162 s 41

**65 Remedies**

In the case of any alleged breach of any of the provisions of this Act, any decision made for the purposes of this Act may, if it includes a finding that any of the provisions of this Act have been breached by the employer, provide for any 1 or more of the following:

- (a) the reinstatement of the employee in the employee's former position or in a position not less advantageous to the employee:
- (b) the reimbursement to the employee of a sum equal to the whole or any part of any wages lost by the employee:
- (c) the payment to the employee of compensation by the employer.

Compare: 1980 No 162 s 42

Section 65: amended, on 1 July 2002, by section 16 of the Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act 2002 (2002 No 7).

**66 Reinstatement**

Where the remedy of reinstatement is provided by the Employment Relations Authority or the Employment Court, the employee must be reinstated immediately or on such date as is specified by the Employment Relations Authority or the Employment Court and, despite any appeal against the determination of the

Employment Relations Authority or the Employment Court, the provisions for reinstatement remain in full force pending the determination of the appeal.

Section 66: substituted, on 2 October 2000, by section 240 of the Employment Relations Act 2000 (2000 No 24).

## 67 Power to refer complaint to Labour Court

*[Repealed]*

Section 67: repealed, on 15 May 1991, by section 9 of the Parental Leave and Employment Protection Amendment Act 1991 (1991 No 28).

## 68 Non-compliance with formal requirements

- (1) An employer must not unreasonably refuse to allow an employee to exercise any rights and benefits in respect of parental leave or a parental leave payment that the employee would be entitled to exercise but for an irregularity.
- (2) In this section, **irregularity** means—
  - (a) omitting to do something required by or under this Act or under the alternative provision under which the leave is taken; or
  - (b) doing something required by or under this Act or the alternative provision under which the leave is taken before or after the time when it is required to be done; or
  - (c) otherwise doing anything irregularly in matter of form.
- (3) An employee, employer, or self-employed person, or a person acting on behalf of an employee, employer, or self-employed person, may apply to the Employment Relations Authority or the court for relief in respect of an irregularity.
- (4) The Employment Relations Authority or the court must grant relief to an employee in respect of a failure to comply with the notice requirements of this Act or of the alternative provision under which the leave is taken if satisfied that—
  - (a) the employee's failure to comply with the notice requirements was in good faith; and
  - (b) the extent to which the employee did or did not comply with the notice requirements was reasonable in all of the circumstances of the case.
- (5) The Employment Relations Authority or the court may grant relief in respect of any other irregularity if it thinks it is reasonable to do so, having regard to the nature of the irregularity, the good faith or otherwise of the parties, and any other matters it thinks proper.
- (6) The Employment Relations Authority or the court may grant relief—
  - (a) by amending or waiving the irregularity, extending the time within which anything is to be or may be done, confirming the right of an employee or self-employed person to exercise rights in respect of parental leave or a parental leave payment (as applicable), or granting other relief as is reasonable:

- (b) subject to terms, if any, that the Authority or the court, in the circumstances of each case, thinks fit.

Section 68: substituted, on 1 July 2002, by section 17 of the Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act 2002 (2002 No 7).

Section 68(3): substituted, on 1 July 2006, by section 18(1) of the Parental Leave and Employment Protection (Paid Parental Leave for Self-Employed Persons) Amendment Act 2006 (2006 No 20).

Section 68(6): substituted, on 1 July 2006, by section 18(2) of the Parental Leave and Employment Protection (Paid Parental Leave for Self-Employed Persons) Amendment Act 2006 (2006 No 20).

## 69 Penalties

*[Repealed]*

Section 69: repealed, on 15 May 1991, by section 9 of the Parental Leave and Employment Protection Amendment Act 1991 (1991 No 28).

## 70 Enforcement of judgments

- (1) A certificate under the hand of the Registrar of the court, specifying the amount payable under any order for the payment of money made under this Act by the court, and the persons by whom and to whom it is payable, may be filed in the District Court, and, subject to subsection (2), shall then be enforceable in the same manner as a judgment given by the District Court in an action for the recovery of a debt.
- (2) No proceedings shall be taken under the Imprisonment for Debt Limitation Act 1908 against any person for failing or refusing to pay any penalty imposed on that person under this Act.

Compare: 1980 No 162 s 46

Section 70(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

### *Role of Labour Inspectors in relation to employees*

Heading: inserted, on 1 July 2002, by section 18 of the Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act 2002 (2002 No 7).

Heading: amended, on 1 July 2006, by section 46 of the Parental Leave and Employment Protection (Paid Parental Leave for Self-Employed Persons) Amendment Act 2006 (2006 No 20).

## 70A Labour Inspectors may make determinations in respect of employees

- (1) A Labour Inspector may—
- (a) determine, if the employee and employer fail to agree, whether an employee will have been employed by the same employer for at least an average of 10 hours a week during a 12-month period (or 6-month period, as the case may be) in accordance with section 72A for the purpose of eligibility for parental leave; or
- (ab) determine, at the request of the department, whether an employee meets the parental leave payment threshold test; or



- (b) determine, at the request of the department or if the employee and employer fail to agree, an employee's ordinary pay or average weekly income from work for the purpose of section 71M(1); or
  - (c) serve a demand notice as provided in section 70B; or
  - (d) otherwise enforce the rights and benefits in respect of parental leave or a parental leave payment under this Act.
- (2) A Labour Inspector must, as soon as practicable after making a determination, serve a copy on the employee and the employer.
- (3) The consequences of a determination are that it is prima facie evidence of the matter determined.

Section 70A: inserted, on 1 July 2002, by section 18 of the Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act 2002 (2002 No 7).

Section 70A heading: substituted, on 1 July 2006, by section 19(1) of the Parental Leave and Employment Protection (Paid Parental Leave for Self-Employed Persons) Amendment Act 2006 (2006 No 20).

Section 70A(1)(a): amended, on 1 April 2016, by section 46(1) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 70A(1)(a): amended, on 1 April 2016, by section 46(2) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 70A(1)(a): amended, on 1 December 2004, by section 17 of the Parental Leave and Employment Protection Amendment Act 2004 (2004 No 89).

Section 70A(1)(ab): inserted, on 1 April 2016, by section 46(3) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 70A(1)(b): replaced, on 1 April 2016, by section 46(4) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

## **70B Demand notice**

- (1) A Labour Inspector may serve on an employer a demand notice, in the prescribed form, if—
- (a) either—
    - (i) an employee makes a complaint to the Labour Inspector that an employer has denied the employee's entitlement to take parental leave in a case where the Labour Inspector has previously made a determination that the employee is entitled to take leave; or
    - (ii) the Labour Inspector believes on reasonable grounds that an employer has denied the employee's entitlement to take parental leave; and
  - (b) the Labour Inspector has given the employer not less than 7 days to comment on the complaint or the grounds for the Labour Inspector's belief; and
  - (c) the Labour Inspector, after considering any comments made by the employer under paragraph (b), is satisfied that the employee is entitled to take parental leave; and

- (d) the Labour Inspector is satisfied that the employer is not prepared to acknowledge the employee's entitlement to parental leave in a reasonable manner or within a reasonable time.
- (2) A demand notice must be served—
- (a) by giving it to the employer concerned; or
  - (b) if the employer does not accept the demand notice, by leaving it in the employer's presence and drawing the employer's attention to it.

Compare: 2000 No 24 s 224(1), (2)

Section 70B: inserted, on 1 July 2002, by section 18 of the Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act 2002 (2002 No 7).

### **70C Objections to determination or demand notice**

- (1) An employer or an employee may lodge with the Employment Relations Authority an objection to a determination or a demand notice.
- (2) An objection must be lodged with the Authority within 28 days after the determination or demand notice is served on the employer or employee who makes the objection.
- (3) A demand notice has the consequences specified in section 70D—
- (a) if no objection is lodged before the close of the period specified in subsection (2); or
  - (b) if any objection lodged before the close of the period specified in subsection (2) is withdrawn (whether before or after the close of that period).

Compare: 2000 No 24 s 225(1)–(3)

Section 70C: inserted, on 1 July 2002, by section 18 of the Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act 2002 (2002 No 7).

### **70D Consequences of demand notice**

The consequences of a demand notice are that it—

- (a) imposes a legal requirement on the employer to comply with it; and
- (b) is prima facie evidence that the employee has the entitlement specified in the notice; and
- (c) may be enforced by the making by the Employment Relations Authority of a compliance order under section 137 of the Employment Relations Act 2000.

Compare: 2000 No 24 s 225(4)

Section 70D: inserted, on 1 July 2002, by section 18 of the Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act 2002 (2002 No 7).

**70E Authority to determine entitlement to parental leave on objection**

The function of the Employment Relations Authority in respect of an objection is to determine whether or not the employee has the entitlement specified in the determination or demand notice.

Compare: 2000 No 24 s 226(1)

Section 70E: inserted, on 1 July 2002, by section 18 of the Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act 2002 (2002 No 7).

**70F Withdrawal of demand notice**

A demand notice may be withdrawn at any time by a Labour Inspector, but the withdrawal of a demand notice does not prevent another demand notice being served in relation to the same matter.

Compare: 2000 No 24 s 227

Section 70F: inserted, on 1 July 2002, by section 18 of the Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act 2002 (2002 No 7).

*Role of Labour Inspectors in relation to self-employed persons*

Heading: inserted, on 1 July 2006, by section 20 of the Parental Leave and Employment Protection (Paid Parental Leave for Self-Employed Persons) Amendment Act 2006 (2006 No 20).

**70G Labour Inspectors may make determinations in respect of self-employed persons**

- (1) A Labour Inspector may, if requested by the department,—
  - (a) determine whether a self-employed person meets the parental leave payment threshold test; and
  - (b) determine a self-employed person's average weekly earnings for the purpose of section 71M(1A).
- (2) The department may, for the purposes of obtaining a determination under this section, supply to the Labour Inspector any information provided by the self-employed person.
- (3) The Labour Inspector may, for the purposes of carrying out the Inspector's functions under this section, request the self-employed person to provide any further information relevant to the matter being determined by the Labour Inspector.
- (4) A Labour Inspector must, as soon as practicable after making a determination, serve a copy on the self-employed person and the department.
- (5) The consequence of a determination is that it is prima facie evidence of the matter determined.

Section 70G: inserted, on 1 July 2006, by section 20 of the Parental Leave and Employment Protection (Paid Parental Leave for Self-Employed Persons) Amendment Act 2006 (2006 No 20).

Section 70G(1)(a): replaced, on 1 April 2016, by section 47 of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

*State employees*

Heading: inserted, on 1 July 2006, by section 46 of the Parental Leave and Employment Protection (Paid Parental Leave for Self-Employed Persons) Amendment Act 2006 (2006 No 20).

**71 Procedures available to State employees**

Nothing in this Act shall limit the procedures by which State employees may enforce their conditions of employment and those procedures may be used, where appropriate, to enforce the rights conferred on State employees by this Act.

Compare: 1980 No 162 s 47

## **Part 7A**

### **Payment for parental leave**

Part 7A: inserted, on 1 July 2002, by section 4(2) of the Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act 2002 (2002 No 7).

*Preliminary provisions*

Heading: inserted, on 1 July 2002, by section 4(2) of the Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act 2002 (2002 No 7).

**71A Purpose**

The purpose of this Part is to entitle certain persons who become the primary carer in respect of a child, and who stop working or take a period of leave, to—

- (a) up to 22 weeks of parental leave payments out of public money; and
- (b) additional preterm baby payments out of public money if the child is born before the end of the 36th week of gestation.

Section 71A: replaced, on 1 April 2016, by section 48 of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 71A(a): amended, on 1 July 2018, by section 11 of the Parental Leave and Employment Protection Amendment Act 2017 (2017 No 45).

**71AB Application to members of Armed Forces**

- (1) Except as provided in subsection (3), this Part applies to a member of the Armed Forces, in New Zealand or otherwise, as if the member were an employee in the employment of the Chief of Defence Force.
- (2) In this Part,—
  - (a) references to an employee must be read as including a member of the Armed Forces; and
  - (b) references to an employer must be read as including, for the purposes of members of the Armed Forces, the Chief of Defence Force; and
  - (c) references to an employment agreement must be read as including, for the purposes of members of the Armed Forces, conditions of service set by the Chief of Defence Force in accordance with the Defence Act 1990.

- (3) Despite subsection (1), sections 71P and 71T do not apply to a member of the Armed Forces.

Section 71AB: inserted, on 1 April 2016, by section 49 of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

### **71B Overview**

- (1) Section 71A and this section are preliminary provisions relating to the parental leave payment scheme.
- (2) Sections 71C to 71CD are interpretation provisions for this Part.
- (3) Section 71D confers entitlements to parental leave payments on eligible persons who are the primary carers in respect of children under the age of 6 years.
- (3A) Sections 71DA and 71DB confer entitlements to preterm baby payments on persons who are the primary carers of preterm babies and provide for extended keeping-in-touch hours in respect of those carers.
- (4) Sections 71E and 71EA enable eligible persons to transfer their entitlements under section 71D, in certain circumstances, to their spouse or partner.
- (5) Sections 71F to 71H contain restrictions on entitlements to parental leave payments.
- (6) Sections 71I and 71IA cover the making of an application for payment and provide the department with a discretion to approve irregular applications.
- (7) Sections 71J to 71P relate to the duration and amount of parental leave payments.
- (8) Sections 71Q to 71ZB relate to the administration of the parental leave payment scheme.
- (9) This section is intended only as a guide to the general scheme and effect of this Part.

Section 71B: substituted, on 1 July 2006, by section 21 of the Parental Leave and Employment Protection (Paid Parental Leave for Self-Employed Persons) Amendment Act 2006 (2006 No 20).

Section 71B(1): amended, on 1 April 2016, by section 50(1) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 71B(3): replaced, on 1 April 2016, by section 50(2) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 71B(3A): inserted, on 1 April 2016, by section 50(2) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 71B(4): amended, on 1 April 2016, by section 50(3) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 71B(4): amended, on 1 April 2016, by section 50(4) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

*Interpretation*

Heading: inserted, on 1 July 2006, by section 46 of the Parental Leave and Employment Protection (Paid Parental Leave for Self-Employed Persons) Amendment Act 2006 (2006 No 20).

**71C Interpretation of this Part**

In this Part, unless the context otherwise requires,—

**eligible employee** has the meaning given in section 71CA

**eligible self-employed person** has the meaning given in section 71CB

**employee's average weekly income from work** means an amount calculated in accordance with the method set out in section 71CAA

**net income** has the same meaning as in section YA 1 of the Income Tax Act 2007, and includes a distribution from a trust

**non-statutory parental leave** means any rights and benefits in the nature of parental leave for which provision is made otherwise than by this Act

**ordinary weekly pay** means the total of the amounts of ordinary weekly pay in respect of all the employments that in combination mean the employee is entitled to receive parental leave payments and is determined on the basis of section 8 of the Holidays Act 2003

**parental leave**, in relation to an employee, includes non-statutory parental leave

**self-employed person's average weekly income from work** means an amount calculated in accordance with the method set out in section 71CBA.

Section 71C: inserted, on 1 July 2002, by section 4(2) of the Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act 2002 (2002 No 7).

Section 71C **eligible employee**: substituted, on 1 July 2006, by section 22(2) of the Parental Leave and Employment Protection (Paid Parental Leave for Self-Employed Persons) Amendment Act 2006 (2006 No 20).

Section 71C **eligible self-employed person**: inserted, on 1 July 2006, by section 22(1) of the Parental Leave and Employment Protection (Paid Parental Leave for Self-Employed Persons) Amendment Act 2006 (2006 No 20).

Section 71C **employee's average weekly earnings**: repealed, on 1 April 2016, by section 51(1) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 71C **employee's average weekly income from work**: inserted, on 1 April 2016, by section 51(1) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 71C **net income**: inserted, on 1 July 2006, by section 22(1) of the Parental Leave and Employment Protection (Paid Parental Leave for Self-Employed Persons) Amendment Act 2006 (2006 No 20).

Section 71C **net income**: amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), by section ZA 2(1) of the Income Tax Act 2007 (2007 No 97).

Section 71C **ordinary weekly pay**: inserted, on 1 July 2006, by section 22(1) of the Parental Leave and Employment Protection (Paid Parental Leave for Self-Employed Persons) Amendment Act 2006 (2006 No 20).

Section 71C **ordinary weekly pay**: amended, on 1 April 2016, by section 51(2) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 71C **parental leave**: substituted, on 1 July 2006, by section 22(2) of the Parental Leave and Employment Protection (Paid Parental Leave for Self-Employed Persons) Amendment Act 2006 (2006 No 20).

Section 71C **self-employed person's average weekly earnings**: repealed, on 1 April 2016, by section 51(3) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 71C **self-employed person's average weekly income from work**: inserted, on 1 April 2016, by section 51(3) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

### 71CA Definition of eligible employee

- (1) In this Part, **eligible employee** means a person who—
  - (a) is the primary carer in respect of a child; and
  - (b) meets the parental leave payment threshold test.
- (2) Rights and benefits to non-statutory parental leave (and section 4) are ignored when considering whether a person is an eligible employee under this section.

Section 71CA: inserted, on 1 July 2006, by section 23 of the Parental Leave and Employment Protection (Paid Parental Leave for Self-Employed Persons) Amendment Act 2006 (2006 No 20).

Section 71CA(1): replaced, on 1 April 2016, by section 52 of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

### 71CAA Calculation of employee's average weekly income from work

- (1) An employee's average weekly income from work must be determined by—
  - (a) calculating the sum of the employee's gross weekly earnings, from all employments, for the 26 weeks out of the relevant 52-week period in respect of which the highest amounts were earned by the employee (whether or not those weeks were consecutive); and
  - (b) dividing the amount calculated in accordance with paragraph (a) by 26.
- (2) In subsection (1), **relevant 52-week period**, in respect of an eligible employee, means the 52 weeks immediately preceding—
  - (a) the expected date of delivery of the child (in the case of a child to be born to the employee or to the employee's spouse or partner); or
  - (b) the first date on which either the employee or the employee's spouse or partner becomes the primary carer in respect of the child (in any other case).

Section 71CAA: inserted, on 1 April 2016, by section 53 of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

### 71CB Definition of eligible self-employed person

- (1) In this Part, **eligible self-employed person** means a self-employed person who—
  - (a) is the primary carer in respect of a child; and
  - (b) meets the parental leave payment threshold test.

- (2) For the purposes of subsection (1) and section 71E(2), a person is treated as being self-employed for an hour, despite not working as a self-employed person for that hour, if the person is—
- (a) entitled to a payment of weekly compensation under the Accident Compensation Act 2001; or
  - (b) on parental leave before the expected date of delivery of the child; or
  - (c) unable to work because of any other circumstances that are considered by a Labour Inspector not to disrupt the normal pattern of the person's self-employment.

(3) *[Repealed]*

Section 71CB: inserted, on 1 July 2006, by section 23 of the Parental Leave and Employment Protection (Paid Parental Leave for Self-Employed Persons) Amendment Act 2006 (2006 No 20).

Section 71CB(1): replaced, on 1 April 2016, by section 54(1) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 71CB(2): amended, on 1 April 2016, by section 54(2) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 71CB(2)(a): amended on 3 March 2010, pursuant to section 5(1)(b) of the Accident Compensation Amendment Act 2010 (2010 No 1).

Section 71CB(3): repealed, on 1 April 2016, by section 54(3) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

**71CBA Calculation of self-employed person's average weekly income from work**

- (1) An eligible self-employed person must elect whether to determine their average weekly income from work over a 12-month period or over a 6-month period.
- (2) An eligible self-employed person's average weekly income from work over a 12-month period is one fifty-second of that person's net income from self-employment over the 12 months immediately preceding—
- (a) the expected date of delivery of the child (in the case of a child to be born to the self-employed person or to the self-employed person's spouse or partner); or
  - (b) the first date on which either the self-employed person or the self-employed person's spouse or partner becomes the primary carer in respect of the child (in any other case).
- (3) An eligible self-employed person's average weekly income from work over a 6-month period is one twenty-sixth of that person's net income from self-employment over the 6 months immediately preceding—
- (a) the expected date of delivery of the child (in the case of a child to be born to the self-employed person or to the self-employed person's spouse or partner); or
  - (b) the first date on which either the self-employed person or the self-employed person's spouse or partner becomes the primary carer in respect of the child (in any other case).



- (4) The divisor of 52 in subsection (2) and the divisor of 26 in subsection (3) must be reduced by the number of complete weeks during which the eligible self-employed person was not working in a circumstance described in section 71CB(2).

Section 71CBA: inserted, on 1 April 2016, by section 55 of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

### **71CC Multiple self-employment**

*[Repealed]*

Section 71CC: repealed, on 1 April 2016, by section 56 of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

### **71CD Return to work by self-employed person**

In this Part, a self-employed person is not to be treated as having returned to work because he or she—

- (a) receives income for work done before the period of parental leave; or
- (b) receives income because of work done by other people during the period of parental leave; or
- (c) carries out work in the nature of oversight or occasional administrative tasks in the business in which the person is self-employed.

Section 71CD: inserted, on 1 July 2006, by section 23 of the Parental Leave and Employment Protection (Paid Parental Leave for Self-Employed Persons) Amendment Act 2006 (2006 No 20).

#### *Keeping-in-touch days*

Heading: inserted, on 1 April 2016, by section 57 of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

### **71CE Keeping-in-touch days**

- (1) An employee is not to be treated as having returned to work because he or she performs 52 hours or fewer of paid work for his or her employer during the employee's parental leave payment period, if that work is performed on keeping-in-touch days in accordance with subsection (2).
- (2) An employee may perform 1 or more hours of paid work for his or her employer on a keeping-in-touch day if—
  - (a) both the employee and the employer consent to the employee performing work for the employer on that day; and
  - (b) the day is not within 28 days after the date on which the child in respect of whom the employee took parental leave was born.
- (3) An employee is treated as having returned to work, and all parental leave payments received by the employee in respect of a period after the date on which the employee is treated as having returned to work are recoverable under section 71X as an overpayment, if the employee—

- (a) performs paid work for his or her employer within 28 days after the date of birth of the child; or
  - (b) performs more than a total of 52 hours of paid work for his or her employer during a period of paid parental leave.
- (4) Subsections (2)(b) and (3)(a) do not apply to an employee if the parental leave payment the employee receives is in respect of a child born before the end of the 36th week of gestation.

Section 71CE: inserted, on 1 April 2016, by section 57 of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 71CE(1): amended, on 1 July 2018, by section 12 of the Parental Leave and Employment Protection Amendment Act 2017 (2017 No 45).

Section 71CE(3)(b): amended, on 1 July 2018, by section 12 of the Parental Leave and Employment Protection Amendment Act 2017 (2017 No 45).

Section 71CE(3)(b): amended, on 1 June 2017, by section 8 of the Regulatory Systems (Workplace Relations) Amendment Act 2017 (2017 No 13).

#### *Entitlement to parental leave payment*

Heading: inserted, on 1 July 2002, by section 4(2) of the Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act 2002 (2002 No 7).

### **71D Entitlement to parental leave payments**

- (1) A person is entitled to a parental leave payment under this Part, if—
- (a) the person is—
    - (i) an eligible employee or an eligible self-employed person; or
    - (ii) a person to whom all or part of an entitlement to a parental leave payment is transferred under section 71E; or
    - (iii) a person who succeeds to all or part of an entitlement to a parental leave payment under section 72B; and
  - (b) during the period in relation to which the person receives parental leave payments, the person—
    - (i) is not employed or self-employed; or
    - (ii) takes parental leave from their employment or self-employment.
- (2) Despite subsection (1), a person who becomes the primary carer in respect of a child who is under the age of 6 years is not entitled to parental leave payments in respect of that child if—
- (a) the person has previously received parental leave payments in respect of that child; or
  - (b) the person's spouse or partner has previously received parental leave payments in respect of that child (unless the person's entitlement arises from a transfer under section 71E or by succession under section 72B).
- (3) This section is subject to sections 71F to 71IA (restrictions on parental leave payments and making an application for payment).

Section 71D: replaced, on 1 April 2016, by section 58 of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

*Entitlement to preterm baby payments*

Heading: inserted, on 1 April 2016, by section 58 of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

**71DA Entitlement to preterm baby payment**

- (1) A person is entitled to a preterm baby payment under this section if—
  - (a) the person is entitled to a parental leave payment under section 71D in respect of a child; and
  - (b) that child is born alive before the end of the 36th week of gestation.
- (2) A preterm baby payment is payable for 1 continuous period that corresponds to the number of weeks, up to a maximum of 13, between—
  - (a) the date of birth of the child; and
  - (b) the date on which the 36th week of gestation would have ended had the child not been born prematurely.
- (3) A preterm baby payment in respect of a child is payable for a period that begins,—
  - (a) in the case of a child born to the person or to the person’s spouse or partner, on the date of the child’s birth; or
  - (b) in the case of any other person who becomes the primary carer in respect of the child, on the date on which that person becomes the primary carer in respect of the child.
- (4) A preterm baby payment in respect of a child is payable for a period that ends on the earliest of—
  - (a) the date on which the 36th week of gestation would have ended had the child not been born prematurely; and
  - (b) the date on which the person returns to work as an employee or a self-employed person; and
  - (c) the date on which the person ceases to be the primary carer in respect of the child.
- (5) If a person who is receiving a parental leave payment in respect of a child becomes entitled to a preterm baby payment in respect of that child,—
  - (a) the person’s parental leave payment must be suspended for the period in relation to which a preterm baby payment is made to the person; and
  - (b) the requirement in section 71J(1) that a parental leave payment be made for a continuous period does not apply; and
  - (c) any week in relation to which a preterm baby payment is made must not be counted when determining the date on which the parental leave payment ends under section 71L(1)(a).

- (5A) A person may return to work as an employee or a self-employed person after becoming entitled to a preterm baby payment, in which case—
- (a) either,—
    - (i) if the person receives a preterm baby payment, the preterm baby payment period ends on the date on which the person returns to work; or
    - (ii) if the person does not receive a preterm baby payment, the person's parental leave payment period is suspended on the date on which the person returns to work; and
  - (b) the person's parental leave payment period resumes on the date on which the person resumes parental leave (which must be no later than the original expected date of delivery, had the child not been born prematurely).
- (6) Subsection (4)(c) does not apply to the biological mother of a preterm baby.
- (7) Sections 71E, 71G to 71IA, 71M to 71S, 71U to 71ZB, and 72B apply to a preterm baby payment as if that payment were a parental leave payment.

Section 71DA: replaced, on 1 April 2016, by section 58 of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 71DA(5A): inserted, on 1 June 2017, by section 9 of the Regulatory Systems (Workplace Relations) Amendment Act 2017 (2017 No 13).

#### **71DB Additional keeping-in-touch hours for primary carers who receive preterm baby payments**

- (1) An employee who receives a preterm baby payment may, during the period in relation to which the employee receives that payment (the **payment period**), perform paid work for his or her employer as follows:
- (a) the employee may work up to a total of 3 hours multiplied by the number of weeks in the payment period (the **permitted number of hours**):
  - (b) the employee may work on any day in the payment period, if both the employee and the employer consent to the employee working on that day.
- (2) The permitted number of hours of paid work under this section is in addition to the number of hours of paid work permitted under section 71CE(1).
- (3) An employee is not to be treated as having returned to work because the employee performs up to the permitted number of hours of paid work for the employer.
- (4) If an employee performs more than the permitted number of hours of paid work for the employer during the payment period:
- (a) the employee is treated as having returned to work on the day after the date on which the permitted number of hours is exceeded; and

- (b) all preterm baby payments received by the employee in respect of a period after the date on which the permitted number of hours is exceeded are recoverable under section 71X as an overpayment; but
- (c) the employee's entitlement to a parental leave payment under this Part is not affected.

Section 71DB: inserted, on 1 April 2016, by section 58 of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

#### *Transfer of entitlement to spouse or partner*

Heading: inserted, on 1 July 2002, by section 4(2) of the Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act 2002 (2002 No 7).

Heading: amended, on 26 April 2005, by section 8 of the Parental Leave and Employment Protection Amendment Act 2005 (2005 No 18).

### **71E Entitlement may be transferred to spouse or partner**

- (1) An eligible employee or an eligible self-employed person (the **transferor**) may transfer all or part of his or her entitlement to a parental leave payment in respect of a child to his or her spouse or partner if subsection (2) applies to the spouse or partner.
- (2) This subsection applies if the spouse or partner is a person who—
  - (a) has or intends to have primary responsibility for the day-to-day care of the child; and
  - (b) meets the parental leave payment threshold test; and
  - (c) stops working as an employee or a self-employed person, including by taking a period of parental leave, for the period in relation to which the entitlements are transferred.

Section 71E: replaced, on 1 April 2016, by section 59 of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

### **71EA Effect of transfer of entitlement to spouse or partner**

To the extent that an employee or a self-employed person transfers all or part of his or her entitlement to a parental leave payment to his or her spouse or partner under section 71E,—

- (a) references in this Part to the employee's or self-employed person's entitlement to a parental leave payment are references to the spouse's or partner's entitlement to a parental leave payment; and
- (b) references in this Part to the period of parental leave are references to the period of parental leave taken by the spouse or partner; and
- (c) the amount of the parental leave payment is calculated according to the earnings of the spouse or partner; and
- (d) the entitlement that is transferred is deducted from the transferring employee's or self-employed person's entitlement to a parental leave payment.

Section 71EA: inserted, on 1 July 2006, by section 26 of the Parental Leave and Employment Protection (Paid Parental Leave for Self-Employed Persons) Amendment Act 2006 (2006 No 20).

### *Restrictions on parental leave payments*

Heading: inserted, on 1 July 2002, by section 4(2) of the Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act 2002 (2002 No 7).

#### **71F Subsequent parental leave payments**

A person is not entitled to a parental leave payment in respect of a child if—

- (a) fewer than 6 months have elapsed after the end of the period for which the person received a parental leave payment for another child; or
- (b) section 71D(2) applies (which prevents a person receiving parental leave payments more than once in respect of the same child).

Section 71F: replaced, on 1 April 2016, by section 60 of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

#### **71G Parental tax credit**

- (1) The purpose of this section is to ensure that a person does not receive both a parental leave payment under this Part and a parental tax credit (within the meaning of the Income Tax Act 2007) in respect of the same child.
- (2) A person loses his or her entitlement to a parental leave payment under this Part if the person or his or her spouse or partner has received, or both the person and his or her spouse or partner have received, any payment of parental tax credit in respect of the child.

Section 71G: inserted, on 1 July 2002, by section 4(2) of the Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act 2002 (2002 No 7).

Section 71G(1): amended, on 1 April 2016, by section 61(1) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 71G(1): amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), pursuant to section ZA 1(1) of the Income Tax Act 2007 (2007 No 97).

Section 71G(1): amended, on 1 July 2006, by section 28(1) of the Parental Leave and Employment Protection (Paid Parental Leave for Self-Employed Persons) Amendment Act 2006 (2006 No 20).

Section 71G(2): replaced, on 1 April 2016, by section 61(2) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

#### **71H Joint adoptions**

*[Repealed]*

Section 71H: repealed, on 1 April 2016, by section 62 of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

*Applications for parental leave payment*

Heading: inserted, on 1 July 2006, by section 46 of the Parental Leave and Employment Protection (Paid Parental Leave for Self-Employed Persons) Amendment Act 2006 (2006 No 20).

**71I Applications for payment**

- (1) A person is not entitled to a parental leave payment unless he or she makes an application for payment in accordance with this section.
- (2) The application must—
  - (a) be made by the employee or self-employed person before the earliest of the following:
    - (i) the date on which the person returns to work;
    - (ii) the date on which the child attains the age of 12 months (in the case of a child born to the person or to the person's spouse or partner);
    - (iii) the date that is the first anniversary of the first date on which either the person or the person's spouse or partner became the primary carer in respect of the child (in any other case).
  - (b) be made in the manner prescribed in regulations; and
  - (c) specify the matters, and be accompanied by the documents, prescribed in regulations; and
  - (d) state whether or not the person wishes to transfer all or part of the entitlement under section 71E.
- (3) An employer must comply with any provision in the regulations that requires the employer to specify matters in, or attach documents to, or sign, an application under this section.
- (4) This section is subject to section 71IA.

Section 71I: inserted, on 1 July 2002, by section 4(2) of the Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act 2002 (2002 No 7).

Section 71I(1): replaced, on 1 April 2016, by section 63(1) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 71I(2)(a): replaced, on 1 April 2016, by section 63(2) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 71I(2)(d): amended, on 1 April 2016, by section 63(3) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 71I(2)(d): amended, on 1 July 2006, by section 30(2) of the Parental Leave and Employment Protection (Paid Parental Leave for Self-Employed Persons) Amendment Act 2006 (2006 No 20).

Section 71I(4): added, on 1 July 2006, by section 30(3) of the Parental Leave and Employment Protection (Paid Parental Leave for Self-Employed Persons) Amendment Act 2006 (2006 No 20).

**71IA Discretion to approve irregular applications**

- (1) The department may approve the making of a parental leave payment to a person despite an irregularity in his or her application for the payment.

- (2) In deciding whether to approve the making of a parental leave payment under subsection (1), the department must have regard to—
- (a) the extent of the irregularity (including whether the extent of the irregularity was reasonable in all of the circumstances); and
  - (b) whether the person was acting in good faith.
- (3) However, the department may not exercise its discretion under this section if the matter giving rise to the irregularity is disputed between an employee and an employer.
- (4) The department may, in order to approve the application, amend or waive the irregularity or extend the time within which anything is to be or may be done, subject to terms, if any, that the department thinks fit in the circumstances of the application.
- (5) In this section, **irregularity** means—
- (a) failing to make the application for payment before the relevant date in section 71I; or
  - (b) applying in a manner other than that prescribed in the regulations; or
  - (c) failing to specify all the matters or include all the documents prescribed in the regulations; or
  - (d) failing to state whether the person wishes to transfer all or part of the entitlement under section 71E; or
  - (e) otherwise applying irregularly in matter of form.

Section 71IA: inserted, on 1 July 2006, by section 31 of the Parental Leave and Employment Protection (Paid Parental Leave for Self-Employed Persons) Amendment Act 2006 (2006 No 20).

Section 71IA(1): amended, on 1 April 2016, by section 64(1) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 71IA(2)(b): amended, on 1 April 2016, by section 64(2) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 71IA(5)(d): amended, on 1 April 2016, by section 64(3) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

### *Duration of parental leave payment*

Heading: inserted, on 1 July 2002, by section 4(2) of the Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act 2002 (2002 No 7).

## **71J Duration of parental leave payment**

- (1) A parental leave payment is payable—
- (a) for 1 continuous period not exceeding 22 weeks; or
  - (b) if part of the entitlement is transferred under section 71E, for 1 continuous period per person, so long as the 2 continuous periods do not together exceed 22 weeks.



- (2) This section is subject to section 71DA(5)(b) (which applies to a person who becomes entitled to a preterm baby payment while receiving a parental leave payment).

Section 71J: inserted, on 1 July 2002, by section 4(2) of the Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act 2002 (2002 No 7).

Section 71J(1)(a): amended, on 1 July 2018, by section 13 of the Parental Leave and Employment Protection Amendment Act 2017 (2017 No 45).

Section 71J(1)(b): amended, on 1 July 2018, by section 13 of the Parental Leave and Employment Protection Amendment Act 2017 (2017 No 45).

Section 71J(1)(b): amended, on 1 April 2016, by section 65(1) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 71J(1)(b): amended, on 1 July 2006, by section 32 of the Parental Leave and Employment Protection (Paid Parental Leave for Self-Employed Persons) Amendment Act 2006 (2006 No 20).

Section 71J(2): inserted, on 1 April 2016, by section 65(2) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

### **71K Start of parental leave payment**

- (1) A parental leave payment in respect of a child is payable for a period that begins—
- (a) in the case of a child born to the person or to the person's spouse or partner, on the earlier of—
    - (i) the date the person commences parental leave; and
    - (ii) the date of confinement; and
  - (b) in any other case, on the date on which the person becomes the primary carer in respect of the child.
- (2) Despite subsection (1),—
- (a) an employee who takes a period of paid leave at the start of his or her parental leave period may elect to start his or her parental leave payment period on the day after the date on which that period of paid leave ends;
  - (b) if a person becomes entitled to a preterm baby payment under section 71DA(1) and that person's parental leave payment period has not begun, subsection (3) applies instead of subsection (1).
- (3) If this subsection applies, the period in relation to which a parental leave payment is payable to the person in respect of the child does not begin until the earlier of—
- (a) the date the person commences parental leave; and
  - (b) the original expected date of delivery, had the child not been born prematurely.

Section 71K: replaced, on 1 April 2016, by section 66 of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 71K(2): replaced, on 1 June 2017, by section 10 of the Regulatory Systems (Workplace Relations) Amendment Act 2017 (2017 No 13).

Section 71K(3): inserted, on 1 June 2017, by section 10 of the Regulatory Systems (Workplace Relations) Amendment Act 2017 (2017 No 13).

### **71L End of parental leave payment**

- (1) A parental leave payment is payable to a person in respect of a child for a period that ends on the earlier of—
  - (a) 22 weeks after the date on which parental leave payments began in accordance with section 71K; or
  - (b) the date on which the person returns to work as an employee or a self-employed person; or
  - (c) the date on which the person ceases to be the primary carer in respect of the child.
- (2) Subsection (1)(c) does not apply, and parental leave payments continue to be payable until the earlier of the dates specified in subsection (1)(a) and (b), if the person receiving the parental leave payments is the biological mother of the child to whom the payments relate and—
  - (a) she has a miscarriage or ceases to be the primary carer in respect of the child; or
  - (b) the child dies.
- (3) This section is subject to section 71EA (effect of transfer of entitlement to spouse or partner) and section 71DA(5)(c) (entitlement to preterm baby payment).

Section 71L: replaced, on 1 April 2016, by section 67 of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 71L(1)(a): amended, on 1 July 2018, by section 14 of the Parental Leave and Employment Protection Amendment Act 2017 (2017 No 45).

Section 71L(2): amended, on 1 June 2017, by section 11 of the Regulatory Systems (Workplace Relations) Amendment Act 2017 (2017 No 13).

### **71LA End of parental leave payment for self-employed persons**

*[Repealed]*

Section 71LA: repealed, on 1 April 2016, by section 68 of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

### *Amount of parental leave payment*

Heading: inserted, on 1 July 2002, by section 4(2) of the Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act 2002 (2002 No 7).

### **71M Amount of parental leave payment**

- (1) The rate of parental leave payment payable to any eligible employee is the lesser of—
  - (a) \$564.38 per week (or any adjusted amount set under section 71N(1) or any other amount set under section 71O); and

- (b) the greater of—
  - (i) 100% of the employee's ordinary weekly pay before the commencement of the parental leave payments; and
  - (ii) 100% of the employee's average weekly income from work.
- (1A) The rate of parental leave payment payable to any eligible self-employed person is the lesser of—
  - (a) \$564.38 per week (or any adjusted amount set under section 71N(1) or any other amount set under section 71O); and
  - (b) the greater of—
    - (i) 100% of the self-employed person's average weekly income from work; and
    - (ii) the minimum amount of parental leave payment for a self-employed person set under section 71N(4).
- (1B) The rate of parental leave payment payable to a person who is eligible for a parental leave payment as an employee and also as a self-employed person may not exceed \$564.38 per week (or any adjusted amount set under section 71N(1) or any other amount set under section 71O), despite subsections (1) and (1A).
- (2) *[Repealed]*

Section 71M: inserted, on 1 July 2002, by section 4(2) of the Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act 2002 (2002 No 7).

Section 71M(1): amended, on 1 April 2016, by section 69(1) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 71M(1)(a): \$564.38 is the adjusted amount for the purposes of section 71M(1)(a), on 1 July 2018, pursuant to section 71N(5). Adjustments to the rate of parental leave payment payable to any eligible employee are published and maintained by the Ministry of Business, Innovation, and Employment.

Section 71M(1)(a): amended, on 1 April 2016, by section 69(3) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 71M(1)(a): \$516.85 is the adjusted amount for the purposes of section 71M(1)(a), on 1 July 2015, by regulation 3 of the Parental Leave and Employment Protection (Rate of Parental Leave Payment) Regulations 2015 (LI 2015/109).

Section 71M(1)(a): amended, on 1 July 2006, by section 36(1) of the Parental Leave and Employment Protection (Paid Parental Leave for Self-Employed Persons) Amendment Act 2006 (2006 No 20).

Section 71M(1)(b)(i): amended, on 1 April 2016, by section 69(4) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 71M(1)(b)(i): amended, on 1 July 2006, by section 36(2) of the Parental Leave and Employment Protection (Paid Parental Leave for Self-Employed Persons) Amendment Act 2006 (2006 No 20).

Section 71M(1)(b)(i): amended, on 1 April 2004, by section 91(2) of the Holidays Act 2003 (2003 No 129).

Section 71M(1)(b)(ii): amended, on 1 April 2016, by section 69(5) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 71M(1A): inserted, on 1 July 2006, by section 36(3) of the Parental Leave and Employment Protection (Paid Parental Leave for Self-Employed Persons) Amendment Act 2006 (2006 No 20).

Section 71M(1A): amended, on 1 April 2016, by section 69(7) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 71M(1A)(a): \$564.38 is the adjusted amount for the purposes of section 71M(1A)(a), on 1 July 2018, pursuant to section 71N(5). Adjustments to the rate of parental leave payment payable to any eligible self-employed person are published and maintained by the Ministry of Business, Innovation, and Employment.

Section 71M(1A)(a): amended, on 1 April 2016, by section 69(8) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 71M(1A)(a): \$516.85 is the adjusted amount for the purposes of section 71M(1A)(a), on 1 July 2015, by regulation 3 of the Parental Leave and Employment Protection (Rate of Parental Leave Payment) Regulations 2015 (LI 2015/109).

Section 71M(1A)(b)(i): amended, on 1 April 2016, by section 69(9) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 71M(1A)(b)(ii): amended, on 1 April 2016, by section 69(10) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 71M(1A)(b)(ii): \$147.50 is the minimum amount of parental leave payment for a self-employed person for the purposes of section 71M(1A)(b)(ii), on 1 July 2015, by regulation 4 of the Parental Leave and Employment Protection (Rate of Parental Leave Payment) Regulations 2015 (LI 2015/109).

Section 71M(1B): inserted, on 1 July 2006, by section 36(3) of the Parental Leave and Employment Protection (Paid Parental Leave for Self-Employed Persons) Amendment Act 2006 (2006 No 20).

Section 71M(1B): \$564.38 is the adjusted amount for the purposes of section 71M(1B), on 1 July 2018, pursuant to section 71N(5). Adjustments to the rate of parental leave payment payable to any person who is eligible for a parental leave payment as an employee and also as a self-employed person are published and maintained by the Ministry of Business, Innovation, and Employment.

Section 71M(1B): amended, on 1 April 2016, by section 69(11) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 71M(1B): amended, on 1 April 2016, by section 69(12) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 71M(2): repealed, on 1 July 2006, by section 36(4) of the Parental Leave and Employment Protection (Paid Parental Leave for Self-Employed Persons) Amendment Act 2006 (2006 No 20).

## **71N Annual adjustment of parental leave payment rates**

- (1) The rates of parental leave payment that apply to eligible employees under section 71M(1)(a) and eligible self-employed persons under section 71M(1A)(a) and persons who are eligible for a parental leave payment as an employee and as a self-employed person under section 71M(1B) are adjusted, by this section, by increasing the rate by the same percentage as any percentage movement upward in average ordinary time weekly earnings as calculated under subsection (2).
- (2) The adjustment required by subsection (1) is calculated as follows:
  - (a) the percentage movement is 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 in the Quarterly Employment Survey; and

- (b) if, in that 12-month period, there is a downward percentage movement in average ordinary time weekly earnings (employees), as published in that survey,—
  - (i) no adjustment takes effect under subsection (1) on the following 1 July; and
  - (ii) an adjustment on any succeeding 1 July is 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 date on which the next adjustment is to take effect; and
- (c) any correction to the Quarterly Employment Survey that is published after 15 May in the current year must be disregarded until the adjustment that takes effect on 1 July in the following year.
- (3) In subsection (2), **Quarterly Employment Survey** means the Quarterly Employment Survey published by Statistics New Zealand or, if that survey ceases to be published, any measure certified by the Government Statistician as being equivalent to that survey.
- (4) The minimum rate of parental leave payment that applies to self-employed persons under section 71M(1A)(b)(ii) is adjusted, by this section, as at 1 July each year, as a weekly amount that is equivalent to 10 hours' work at the highest rate of the minimum wage that applies under the Minimum Wage Act 1983 at that date.
- (5) The Minister must, as soon as practicable after 1 July each year,—
  - (a) publish the adjusted rates for employees and self-employed persons on an Internet site maintained by or on behalf of the department; and
  - (b) advise the Chief Parliamentary Counsel of those rates.

Section 71N: replaced, on 1 April 2016, by section 70 of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 71N(1): amended, on 1 June 2017, by section 12(1) of the Regulatory Systems (Workplace Relations) Amendment Act 2017 (2017 No 13).

Section 71N(2): amended, on 1 June 2017, by section 12(2) of the Regulatory Systems (Workplace Relations) Amendment Act 2017 (2017 No 13).

Section 71N(2)(a): amended, on 1 June 2017, by section 12(3) of the Regulatory Systems (Workplace Relations) Amendment Act 2017 (2017 No 13).

Section 71N(2)(b)(ii): amended, on 1 June 2017, by section 12(4) of the Regulatory Systems (Workplace Relations) Amendment Act 2017 (2017 No 13).

Section 71N(4): amended, on 1 June 2017, by section 12(5) of the Regulatory Systems (Workplace Relations) Amendment Act 2017 (2017 No 13).

Section 71N(5): replaced, on 1 June 2017, by section 12(6) of the Regulatory Systems (Workplace Relations) Amendment Act 2017 (2017 No 13).

**71O Discretionary increases in payment amount by Order in Council**

- (1) The Governor-General may, at any time, by Order in Council made on the recommendation of the Minister, increase the rate of parental leave payment that applies under section 71M(1)(a) and section 71M(1A)(a).
- (2) The Minister, in making the recommendation, may base his or her decision on any factors that he or she thinks fit.

Section 71O: inserted, on 1 July 2002, by section 4(2) of the Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act 2002 (2002 No 7).

Section 71O(1): amended, on 1 July 2006, by section 38 of the Parental Leave and Employment Protection (Paid Parental Leave for Self-Employed Persons) Amendment Act 2006 (2006 No 20).

**71OA Annual adjustment of minimum rates of parental leave payment for self-employed persons**

*[Repealed]*

Section 71OA: repealed, on 1 April 2016, by section 71 of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

**71P Amount of payment not affected by other non-statutory entitlements**

- (1) An entitlement to a parental leave payment under this Part is not affected or reduced by any other entitlement that an employee may have under the terms of any employment agreement.
- (2) An employer must not, without the agreement of the employee, reduce any other entitlement that the employee may have under the terms of any employment agreement because of the employee's entitlement to a payment under this Part.
- (3) An employer who fails to comply with this section is liable to a penalty imposed by the Employment Relations Authority under the Employment Relations Act 2000 in respect of each employee to whom the purported reduction applies.
- (4) Sections 133 to 136 of the Employment Relations Act 2000 apply with necessary modifications.

Section 71P: inserted, on 1 July 2002, by section 4(2) of the Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act 2002 (2002 No 7).

Section 71P(1): amended, on 1 April 2016, by section 72 of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

*Administration*

Heading: inserted, on 1 July 2002, by section 4(2) of the Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act 2002 (2002 No 7).

**71Q Payments must come out of public money**

There must, from time to time, be paid out of a Crown Bank Account, from money appropriated by Parliament for the purpose, all money required to be

expended in providing parental leave payments under, and making other payments in connection with, this Part.

Compare: 1964 No 136 s 124

Section 71Q: inserted, on 1 July 2002, by section 4(2) of the Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act 2002 (2002 No 7).

Section 71Q: amended, on 25 January 2005, pursuant to section 65R(3) of the Public Finance Act 1989 (1989 No 44).

### **71R Method of payment**

- (1) A parental leave payment is payable in arrears on the days or dates in the month that the chief executive from time to time determines.
- (2) Every instalment of the payment must be paid into the New Zealand bank account specified by the applicant for the purpose unless the chief executive in any particular case otherwise determines.
- (3) For the purpose of the PAYE rules under the Income Tax Act 2007, a pay period, in respect of an instalment of the payment, is the period for which the payment is made.

Section 71R: inserted, on 1 July 2002, by section 4(2) of the Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act 2002 (2002 No 7).

Section 71R(3): amended, on 1 April 2008 (effective for 2008–09 income year and later income years, except when the context requires otherwise), pursuant to section ZA 1(1) of the Income Tax Act 2007 (2007 No 97).

### **71S Backdating of payments**

The first payment of a parental leave payment includes an amount in respect of the period from the start of the parental leave if the application is received on or after the date of commencement of the parental leave.

Section 71S: inserted, on 1 July 2002, by section 4(2) of the Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act 2002 (2002 No 7).

### **71T Obligation of employer to notify employee of payment entitlements**

Every employer who receives a notice of an employee's wish to take parental leave must, within 21 days after the receipt of the notice, inform the employee of the substance of this Part by giving the employee a notice in a form prescribed by the department.

Section 71T: inserted, on 1 July 2002, by section 4(2) of the Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act 2002 (2002 No 7).

### **71U Obligation to notify early return to work, etc**

- (1) A person must give notice to the department if, during the period for which the person is receiving a parental leave payment under this Part, the person returns to work as an employee or as a self-employed person.

(1A) *[Repealed]*

- (2) The notification must be made in the manner prescribed in regulations and specify the matters, and be accompanied by the documents, prescribed in regulations.

Section 71U: inserted, on 1 July 2002, by section 4(2) of the Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act 2002 (2002 No 7).

Section 71U(1): replaced, on 1 April 2016, by section 73 of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 71U(1A): repealed, on 1 April 2016, by section 73 of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

### **71V Non-return to work does not affect payment**

*[Repealed]*

Section 71V: repealed, on 1 April 2016, by section 74 of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

### **71W Obligation to supply information**

- (1) The department may, by written notice, request an employee who has applied for a parental leave payment, and any employer of that employee, to supply to the department any information in the employee's or the employer's (as the case may be) possession relating to the employee's entitlement or continued entitlement to payment under this Part.
- (1A) The department may, by written notice, request a self-employed person who has applied for a parental leave payment to supply to the department any information in the self-employed person's possession relating to that person's entitlement or continued entitlement to payment under this Part.
- (2) The employee, employer, or self-employed person must comply with a request under this section within a reasonable period to be set by the department.

Section 71W: inserted, on 1 July 2002, by section 4(2) of the Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act 2002 (2002 No 7).

Section 71W(1A): inserted, on 1 July 2006, by section 41(1) of the Parental Leave and Employment Protection (Paid Parental Leave for Self-Employed Persons) Amendment Act 2006 (2006 No 20).

Section 71W(2): amended, on 1 July 2006, by section 41(2) of the Parental Leave and Employment Protection (Paid Parental Leave for Self-Employed Persons) Amendment Act 2006 (2006 No 20).

### **71X Recovery of debts by department**

- (1) A sum (an **overpayment**) paid under this Part is a debt due to the department if the sum was—
- (a) paid to a person in excess of the amount to which the person is entitled under this Part; or
  - (b) paid to a person who has no entitlement to it under this Part.
- (2) The department may—
- (a) recover the debt by way of proceedings; or



- (b) deduct all or part of the debt from any amount payable to that person under this Part.
- (3) This section is subject to section 71Y (recovery of payments).

Compare: 2001 No 49 s 248

Section 71X: inserted, on 1 July 2002, by section 4(2) of the Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act 2002 (2002 No 7).

### **71Y Recovery of payments**

The department may not recover any payment or part of a payment under this Part that was paid as a result of an error not intentionally contributed to by the recipient if the recipient—

- (a) received the payment in good faith; and
- (b) has so altered his or her position in reliance on the validity of the payment that it would be inequitable to require repayment.

Compare: 2001 No 49 s 251

Section 71Y: inserted, on 1 July 2002, by section 4(2) of the Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act 2002 (2002 No 7).

### **71Z Offence to mislead department**

- (1) A person commits an offence who, for the purpose described in subsection (2),—
  - (a) makes any statement knowing it to be false in any material particular; or
  - (b) does or says anything (including failing to provide information requested under section 71W), or omits to do or say anything, with the intention of misleading or attempting to mislead the department or any other person concerned in the administration of this Act.
- (2) The purpose is for that person or another person to receive or to continue to receive any payment or entitlement under this Part.
- (3) A person who commits an offence against this section is liable on conviction to a fine not exceeding \$15,000.
- (4) A charging document in respect of an offence against this section may be filed at any time within 6 months after the earlier of—
  - (a) the date when the alleged offence first became known to the department; and
  - (b) the date when the alleged offence should reasonably have become known to the department.

Compare: 2001 No 49 s 308

Section 71Z: inserted, on 1 July 2002, by section 4(2) of the Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act 2002 (2002 No 7).

Section 71Z(1)(b): amended, on 1 July 2006, by section 42(1) of the Parental Leave and Employment Protection (Paid Parental Leave for Self-Employed Persons) Amendment Act 2006 (2006 No 20).

Section 71Z(3): amended, on 1 April 2016, by section 75 of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 71Z(3): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 71Z(4): added, on 1 July 2006, by section 42(2) of the Parental Leave and Employment Protection (Paid Parental Leave for Self-Employed Persons) Amendment Act 2006 (2006 No 20).

Section 71Z(4): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

### **71ZA Chief executive may delegate**

- (1) The chief executive may delegate the administration of all or any part of this Part to 1 or more persons.
- (2) The delegation must be in writing.
- (3) Section 41 of the State Sector Act 1988 applies if the delegation is to a chief executive or to an employee (as those terms are defined in that Act).
- (4) If the delegation is to another person,—
  - (a) the delegation may not include the power to delegate under this section; and
  - (b) subject to any general or special directions given or conditions imposed by the chief executive, the person to whom the delegation is made may administer this Part in the same manner and with the same effect as if this Act (and not the delegation) so provided; and
  - (c) every person purporting to act under the delegation is, in the absence of proof to the contrary, presumed to be acting in accordance with the terms of the delegation.

Section 71ZA: inserted, on 1 July 2002, by section 4(2) of the Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act 2002 (2002 No 7).

Section 71ZA(3): amended, on 25 January 2005, by section 19(1) of the State Sector Amendment Act (No 2) 2004 (2004 No 114).

### **71ZB Review of department's decisions about parental leave payment**

- (1) An employee or a self-employed person may apply to the Employment Relations Authority for a review of a decision made by the department relating to—
  - (a) the person's entitlement to a parental leave payment;
  - (b) whether a parental leave payment may be transferred to the person under section 71E;
  - (c) the amount of parental leave payment made to the person;
  - (d) the deduction or recovery of overpayments by the department under section 71X.
- (2) An application for review must be made within 12 months after the date on which the decision is notified to the employee or self-employed person.
- (3) The Authority may confirm, modify, or reverse the decision of the department.

- (4) An application for review under this section may be made in respect of a decision described in subsection (1) that is notified to the person after the commencement of this section.

Section 71ZB: inserted, on 1 July 2006, by section 43 of the Parental Leave and Employment Protection (Paid Parental Leave for Self-Employed Persons) Amendment Act 2006 (2006 No 20).

Section 71ZB(4): amended, on 1 April 2016, by section 76 of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

## Part 8

### Miscellaneous provisions

#### 72 Contracting out: holiday pay while on parental leave

- (1) Any employment agreement may, in addressing the matter of holiday pay for an employee who takes any period of parental leave otherwise than in accordance with this Act, provide that the employee is entitled to holiday pay,—
- (a) in respect of annual holidays, at the same rate as, or at a higher rate than, the rate referred to in section 42(2).
- (b) *[Repealed]*

- (2) *[Repealed]*

Section 72: substituted, on 1 July 2002, by section 19(1) of the Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act 2002 (2002 No 7).

Section 72(1)(b): repealed, on 1 April 2004, by section 91(2) of the Holidays Act 2003 (2003 No 129).

Section 72(2): repealed, on 1 April 2004, by section 91(2) of the Holidays Act 2003 (2003 No 129).

#### 72A Eligibility criteria based on average hours of work and allowing for periods of authorised leave

- (1) *[Repealed]*
- (2) An employee is treated as being in the employment of an employer for an hour, despite being absent from work, if the employee would normally have been at work for that employer for that hour but is—
- (a) absent on leave with pay for that hour; or
- (b) on leave without pay (other than parental leave) with the employer's agreement for that hour; or
- (c) entitled to a payment of weekly compensation under the Accident Compensation Act 2001 for that hour; or
- (d) on volunteers leave (within the meaning of the Volunteers Employment Protection Act 1973) for that hour; or
- (e) a pregnant employee who is on primary carer leave before the expected date of delivery of the child for that hour (except in a case to which section 6 refers); or

- (f) absent because of any other circumstances that are considered by a Labour Inspector not to disrupt the normal pattern of the employee's employment.
- (3) The hours that the employee would normally have been at work must be calculated—
- (a) in accordance with the terms of the employee's employment; or
- (b) by reference to the employee's hours of work before any period of leave without pay began, in the case of a period of leave without pay that started longer than 12 months ago.
- (4) **Week** means the employee's ordinary working week.

Section 72A: inserted, on 1 July 2002, by section 20 of the Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act 2002 (2002 No 7).

Section 72A(1): repealed, on 1 April 2016, by section 77(1) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 72A(2)(c): amended on 3 March 2010, pursuant to section 5(1)(b) of the Accident Compensation Amendment Act 2010 (2010 No 1).

Section 72A(2)(d): substituted, on 1 April 2004, by section 15 of the Volunteers Employment Protection Amendment Act 2004 (2004 No 12).

Section 72A(2)(e): amended, on 1 April 2016, by section 77(2) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

## 72B Succession to spouse's or partner's entitlements

- (1) A spouse or partner of an employee may succeed to the employee's rights to parental leave and to a parental leave payment under this Act if, at any time after the employee gives notice to his or her employer of a wish to take parental leave,—
- (a) the employee dies; or
- (b) the spouse or partner becomes the person who has permanent primary responsibility for the care, development, and upbringing of the child, to the exclusion of the employee.
- (2) The spouse or partner of a self-employed person may succeed to the self-employed person's rights to a parental leave payment under this Act if, at any time after the self-employed person commences parental leave,—
- (a) the self-employed person dies; or
- (b) the spouse or partner becomes the person who has permanent primary responsibility for the care, development, and upbringing of the child, to the exclusion of the self-employed person.
- (3) The spouse or partner (the **successor**) may succeed to the employee's parental leave entitlements if, and only if, the successor is an employee and—
- (a) meets the criteria for parental leave under any of section 8, 17, or 23; and

- (b) gives reasonable notice to his or her employer of his or her wish to succeed under this section.
- (3A) The spouse or partner (the **successor**) may succeed to the employee's or self-employed person's parental leave payment entitlements if, and only if, the successor—
  - (a) meets the parental leave payment threshold test; and
  - (b) stops working as an employee or a self-employed person, including by taking a period of parental leave, for the period in relation to which the parental leave payments are made; and
  - (c) gives reasonable notice to the department of his or her wish to succeed to a parental leave payment under this section.
- (4) A succession under this section is treated, for the purpose of Part 7A, as if it were a transfer under section 71E, and that Part applies with necessary modifications.
- (5) Subsections (1) and (2) are subject to subsections (3) and (3A).
- (6) This section applies to a member of the Armed Forces as if the member of the Armed Forces were an employee of the Chief of Defence Force, except that a member of the Armed Forces may not succeed to the member's spouse's or partner's entitlement to parental leave.

Section 72B: inserted, on 1 July 2006, by section 44 of the Parental Leave and Employment Protection (Paid Parental Leave for Self-Employed Persons) Amendment Act 2006 (2006 No 20).

Section 72B(1)(b): replaced, on 1 April 2016, by section 78(1) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 72B(2)(b): replaced, on 1 April 2016, by section 78(2) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 72B(3): replaced, on 1 April 2016, by section 78(3) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 72B(3A): inserted, on 1 April 2016, by section 78(3) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 72B(5): inserted, on 1 April 2016, by section 78(4) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 72B(6): inserted, on 1 April 2016, by section 78(4) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

## **72C Date of succession to spouse's or partner's entitlements**

- (1) The date of succession to the entitlements of an employee or self-employed person is the later of—
  - (a) the date of the death of the employee or self-employed person or the date when the spouse or partner becomes sole guardian, as the case may be; and
  - (b) the date on which the bereavement leave of the spouse or partner expires (if any).

- (2) The first payment of parental leave payment to the spouse or partner includes an amount for the period from the date of succession if the notice to the department referred to in section 72B(3A) is received on or after that date.

Section 72C: inserted, on 1 July 2006, by section 44 of the Parental Leave and Employment Protection (Paid Parental Leave for Self-Employed Persons) Amendment Act 2006 (2006 No 20).

Section 72C(2): amended, on 1 April 2016, by section 79 of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

### **72D Application of Employment Relations Act 2000 in case of self-employed persons**

Part 10 of the Employment Relations Act 2000 applies to the extent applicable and with all necessary modifications to an application in respect of a self-employed person made to the Employment Relations Authority or Employment Court under this Act.

Section 72D: inserted, on 1 July 2006, by section 44 of the Parental Leave and Employment Protection (Paid Parental Leave for Self-Employed Persons) Amendment Act 2006 (2006 No 20).

### **73 Regulations**

- (1) The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:
- (a) prescribing forms for the purposes of this Act:
  - (aa) prescribing the manner in which an application for, or other notices relating to, a parental leave payment must be made:
  - (ab) prescribing the information that must be given in, or the documents that must be attached to, an application for, or other notice relating to, a parental leave payment:
  - (aba) prescribing the information that self-employed persons must give in, or the documents that self-employed persons must attach to, an application for, or other notices relating to, a parental leave payment:
  - (abb) prescribing the evidence that must be provided to an employer by an employee who requests parental leave in respect of a child to whom the employee, or the employee's spouse or partner, does not give birth:
  - (abc) prescribing the information that must be given in, or the documents that must be attached to, an application for, or other notice relating to, a pre-term baby payment:
  - (ac) *[Repealed]*
  - (ad) increasing the amount under section 71O:
  - (ada) *[Repealed]*
  - (ae) extending the class or classes of person entitled to a parental leave payment under Part 7A:
  - (b) prescribing procedures and practices for the implementation of this Act:

- (c) providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for the due administration thereof.
- (2) No regulations may be made under this section about parental leave payments unless they are made in accordance with a recommendation of the Minister.
- (3) The Minister must not make that recommendation without first consulting with any persons or organisations that the Minister considers appropriate, having regard to the subject matter of the proposed regulations.
- (4) *[Repealed]*
- (5) *[Repealed]*
- (6) A failure to comply with subsection (3) does not affect the validity of any regulation made under this Act.

Compare: 1980 No 162 s 48

Section 73(1)(aa): inserted, on 31 March 2002, by section 5(1) of the Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act 2002 (2002 No 7).

Section 73(1)(ab): replaced, on 18 March 2016, by section 80(1) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 73(1)(aba): inserted, on 17 May 2006, by section 45(1) of the Parental Leave and Employment Protection (Paid Parental Leave for Self-Employed Persons) Amendment Act 2006 (2006 No 20).

Section 73(1)(abb): inserted, on 18 March 2016, by section 80(2) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 73(1)(abc): inserted, on 18 March 2016, by section 80(2) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 73(1)(ac): repealed, on 18 March 2016, by section 80(3) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 73(1)(ad): inserted, on 31 March 2002, by section 5(1) of the Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act 2002 (2002 No 7).

Section 73(1)(ada): repealed, on 18 March 2016, by section 80(3) of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

Section 73(1)(ae): inserted, on 31 March 2002, by section 5(1) of the Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act 2002 (2002 No 7).

Section 73(2): added, on 31 March 2002, by section 5(2) of the Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act 2002 (2002 No 7).

Section 73(3): added, on 31 March 2002, by section 5(2) of the Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act 2002 (2002 No 7).

Section 73(4): repealed, on 1 January 2016, by section 14 of the Legislation (Confirmable Instruments) Amendment Act 2015 (2015 No 120).

Section 73(5): repealed, on 1 January 2016, by section 14 of the Legislation (Confirmable Instruments) Amendment Act 2015 (2015 No 120).

Section 73(6): added, on 31 March 2002, by section 5(2) of the Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act 2002 (2002 No 7).

### **73A Regulations are confirmable instruments**

- (1) This section applies to regulations if they are—

- (a) regulations made under sections 71O and 73(1)(ad); or
  - (b) regulations made under section 73(1)(ae).
- (2) The explanatory note of the regulations must indicate that—
- (a) they are a confirmable instrument under section 47B of the Legislation Act 2012; and
  - (b) they are revoked at a time stated in the note, unless earlier confirmed by an Act of Parliament; and
  - (c) the stated time is the applicable deadline under section 47C(1)(a) or (b) of that Act.

Section 73A: inserted, on 1 January 2016, by section 14 of the Legislation (Confirmable Instruments) Amendment Act 2015 (2015 No 120).

#### **74 Repeal**

The Maternity Leave and Employment Protection Act 1980 is hereby repealed.

#### **75 Consequential amendments**

*[Repealed]*

Section 75: repealed, on 1 April 2004, pursuant to section 91(1) of the Holidays Act 2003 (2003 No 129).

#### **76 Transitional provisions**

- (1) Notwithstanding any provision to the contrary in this Act, nothing in section 7 or section 17 or section 23 shall entitle an employee to take any parental leave under this Act in respect of a child the expected date of delivery of whom is before 1 January 1988.
- (2) Notwithstanding any provision to the contrary in this Act, nothing in section 8 or section 18 or section 24 shall entitle an employee to take any parental leave under this Act in respect of a child of whom the employee assumed care before 1 January 1988 with a view to adoption by that employee or by that employee and that employee's spouse jointly.

#### **77 Savings provisions**

- (1) Notwithstanding the repeal of the Maternity Leave and Employment Protection Act 1980 by section 74, a female employee shall be entitled after the commencement of this Act to take maternity leave in accordance with that Act in respect of a child—
  - (a) the expected date of delivery of whom is on or after 1 October 1987 but before 1 January 1988; or
  - (b) of whom the employee assumes care on or after 1 October 1987 but before 1 January 1988 with a view to adoption by that employee or by that employee and that employee's spouse jointly,—



and the female employee shall be entitled to the same rights and benefits as the rights and benefits to which the female employee would have been entitled if the maternity leave had been taken before the repeal of the Maternity Leave and Employment Protection Act 1980.

- (2) The repeal of the Maternity Leave and Employment Protection Act 1980 by section 74 shall not affect, reduce, or extinguish—
- (a) any rights or entitlements conferred, or any obligations imposed, by that Act on a female employee who—
    - (i) is on maternity leave under that Act on 1 October 1987; or
    - (ii) is absent on 1 October 1987 during a period of preference in obtaining employment in the employment of that employee's employer following any period of maternity leave taken under that Act; or
    - (iii) commences, after 1 October 1987, maternity leave under that Act in accordance with subsection (1):
  - (b) any obligations imposed, or any rights conferred, by that Act on an employer of a female employee referred to in paragraph (a).
- (3) All matters and proceedings—
- (a) commenced before the repeal of the Maternity Leave and Employment Protection Act 1980:
  - (b) commenced after the repeal of the Maternity Leave and Employment Protection Act 1980 in relation to—
    - (i) the rights, entitlements, or obligations of any female employee to whom subsection (2)(a) relates; or
    - (ii) the obligations or rights of any employer to whom subsection (2)(b) relates,—

may be continued and determined in accordance with the provisions of the Maternity Leave and Employment Protection Act 1980.

**Schedule 1AA**  
**Transitional provisions relating to amendments to this Act coming  
into force on and after 1 April 2015**

s 2C

Schedule 1AA: inserted, on 20 May 2014, by section 5 of the Parental Leave and Employment Protection Amendment Act 2014 (2014 No 27).

**Part 1**  
**Transitional provision relating to amendments to this Act made by  
sections 6 to 18 of Parental Leave and Employment Protection  
Amendment Act 2014**

**1 Application of sections 6 to 18 of Parental Leave and Employment  
Protection Amendment Act 2014**

- (1) The amendments made by sections 6 to 18 of the Parental Leave and Employment Protection Amendment Act 2014 apply to an employee or self-employed person who takes parental leave in respect of a child if—
  - (a) the expected date of delivery of the child is on or after 1 April 2015; or
  - (b) the child is born on or after 1 April 2015; or
  - (c) in the case of adoption, the date on which the employee or self-employed person, or his or her spouse or partner, with a view to adoption, assumes the care of the child, is on or after 1 April 2015.
- (2) An employee or self-employed person to whom the amendments referred to in subclause (1) apply may, before 1 April 2015,—
  - (a) give notice of a wish to take parental leave, in which case the employee may begin his or her parental leave before 1 April 2015 as if those amendments were already in force; and
  - (b) apply for a parental leave payment under Part 7A as if those amendments were already in force.

Compare: 2004 No 89 ss 4, 26

## Part 2

### **Transitional provision relating to amendments to this Act made by sections 19 to 31 of Parental Leave and Employment Protection Amendment Act 2014**

#### **2 Application of sections 19 to 31 of Parental Leave and Employment Protection Amendment Act 2014**

- (1) The amendments made by sections 19 to 31 of the Parental Leave and Employment Protection Amendment Act 2014 apply to an employee or self-employed person who takes parental leave in respect of a child if—
  - (a) the expected date of delivery of the child is on or after 1 April 2016; or
  - (b) the child is born on or after 1 April 2016; or
  - (c) in the case of adoption, the date on which the employee or self-employed person, or his or her spouse or partner, with a view to adoption, assumes the care of the child is on or after 1 April 2016.
- (2) An employee or self-employed person to whom the amendments referred to in subclause (1) apply may, before 1 April 2016,—
  - (a) give notice of a wish to take parental leave, in which case the employee may begin his or her parental leave before 1 April 2016 as if those amendments were already in force; and
  - (b) apply for a parental leave payment under Part 7A as if those amendments were already in force.

Compare: 2004 No 89 ss 4, 26

## Part 3

### **Transitional provisions relating to amendments to this Act made by Parental Leave and Employment Protection Amendment Act 2016**

Schedule 1AA Part 3: inserted, on 18 March 2016, by section 81 of the Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8).

#### **3 Application of Parental Leave and Employment Protection Amendment Act 2016**

- (1) The amendments made by the Parental Leave and Employment Protection Amendment Act 2016 apply to a person who takes parental leave or applies for a parental leave payment in respect of a child if,—
  - (a) in the case of a child born to the person or to the person's spouse or partner,—
    - (i) the expected date of delivery of the child is on or after 1 April 2016; or
    - (ii) the child is born on or after 1 April 2016; or

- (b) in any other case, the person or his or her spouse or partner becomes the primary carer in respect of a child on or after 1 April 2016.
- (2) A person to whom the amendments referred to in subclause (1) apply may, before 1 April 2016,—
  - (a) give notice of a request to take parental leave, in which case the person may begin his or her parental leave before 1 April 2016 as if those amendments were already in force; and
  - (b) apply for a parental leave payment under Part 7A as if those amendments were already in force.

## **Part 4**

### **Provisions relating to Part 1 of Parental Leave and Employment Protection Amendment Act 2017**

Schedule 1AA Part 4: inserted, on 5 December 2017, by section 4 of the Parental Leave and Employment Protection Amendment Act 2017 (2017 No 45).

#### **4 Application of Part 1 of Parental Leave and Employment Protection Amendment Act 2017**

- (1) This Act, as amended by Part 1 of the Parental Leave and Employment Protection Amendment Act 2017, applies to a person who takes parental leave or applies for a parental leave payment in respect of a child if,—
  - (a) in the case of a child born to the person or to the person's spouse or partner,—
    - (i) the expected date of delivery of the child is on or after 1 July 2018; or
    - (ii) the child is born on or after 1 July 2018; or
  - (b) in any other case, the person or his or her spouse or partner becomes the primary carer in respect of a child on or after 1 July 2018.
- (2) A person referred to in subclause (1) may, before 1 July 2018,—
  - (a) give notice of a request to take parental leave, in which case the person may begin the parental leave before 1 July 2018 as if those amendments were already in force; and
  - (b) apply for a parental leave payment under Part 7A as if those amendments were already in force.

**Part 5**  
**Provisions relating to Part 2 of Parental Leave and Employment  
Protection Amendment Act 2017**

Schedule 1AA Part 5: inserted, on 5 December 2017, by section 4 of the Parental Leave and Employment Protection Amendment Act 2017 (2017 No 45).

**5 Application of Part 2 of Parental Leave and Employment Protection  
Amendment Act 2017**

- (1) This Act, as amended by Part 2 of the Parental Leave and Employment Protection Amendment Act 2017, applies to a person who takes parental leave or applies for a parental leave payment in respect of a child if,—
  - (a) in the case of a child born to the person or to the person's spouse or partner,—
    - (i) the expected date of delivery of the child is on or after 1 July 2020; or
    - (ii) the child is born on or after 1 July 2020; or
  - (b) in any other case, the person or his or her spouse or partner becomes the primary carer in respect of a child on or after 1 July 2020.
- (2) A person referred to in subclause (1) may, before 1 July 2020,—
  - (a) give notice of a request to take parental leave, in which case the person may begin the parental leave before 1 July 2020 as if those amendments were already in force; and
  - (b) apply for a parental leave payment under Part 7A as if those amendments were already in force.

## Schedule 1

### Change of employer

s 2(2)

- 1 If a trade or business or an undertaking (whether or not it is an undertaking established by or under an Act) is transferred from one person to another (whether before or after the date of the commencement of this Act),—
  - (a) the period of employment of an employee in the trade or business or undertaking at the time of the transfer shall count as a period of employment with the transferee; and
  - (b) the transfer shall not break the continuity of the period of employment of any employee in the trade or business or undertaking; and
  - (c) any employer who employed any employee in the trade or business or undertaking at any time before the transfer and the transferee shall be deemed, in relation to the employee, to be the same employer.
- 2 If by or under any Act, whether passed before or after the date of the commencement of this Act, an employment agreement between any body corporate and an employee is modified and some other body corporate is substituted as the employer,—
  - (a) the employee's period of employment at the time when the substitution takes effect shall count as a period of employment with the second-mentioned body corporate; and
  - (b) the substitution shall not break the continuity of the period of employment of the employee; and
  - (c) the first-mentioned body corporate and the second-mentioned body corporate shall be deemed, in relation to the employee, to be the same employer.

Schedule 1 clause 2: amended, on 1 July 2002, by section 22 of the Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act 2002 (2002 No 7).
- 3 If, on the death of an employer, an employee is taken into the employment of the personal representatives or trustees of the deceased (whether before or after the commencement of this Act),—
  - (a) the employee's period of employment at the time of the death shall count as a period of employment with the employer's personal representatives or trustees; and
  - (b) the death shall not break the continuity of the period of employment of the employee; and
  - (c) the employer and the employer's personal representatives or trustees shall be deemed, in relation to the employee, to be the same employer.

- 4 If there is a change (whether before or after the commencement of this Act) in the partners, personal representatives, or trustees who employ any employee,—
  - (a) the employee's period of employment at the time of the change shall count as a period of employment with the partners, personal representatives, or trustees after the change; and
  - (b) the change shall not break the continuity of the period of employment of the employee; and
  - (c) the partners, personal representatives, or trustees who employed the employee before the change and the partners, personal representatives, or trustees who employ the employee after the change shall be deemed, in relation to the employee, to be the same employers.
  
- 5 If (whether before or after the commencement of this Act) an employee of an employer is taken into the employment of another employer who, at the time when the employee enters that other employer's employment is an associated employer of the first-mentioned employer,—
  - (a) the employee's period of employment at that time shall count as a period of employment with the associated employer; and
  - (b) the taking of the employee into the employment of the associated employer shall not break the continuity of the period of employment; and
  - (c) the first-mentioned employer and the associated employer shall be deemed, in relation to the employee, to be the same employer.
  
- 6 For the purposes of clause 5, any 2 employers are to be treated as associated if one is a company of which the other (directly or indirectly) has control, or if both are companies of which a third person (directly or indirectly) has control; and the expression **associated employer** shall be construed accordingly.

## Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act 2002

Public Act	2002 No 7
Date of assent	30 March 2002
Commencement	see section 2

### 1 Title

- (1) This Act is the Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act 2002.
- (2) In this Act, the Parental Leave and Employment Protection Act 1987 is called “the principal Act”.

### 2 Commencement

- (1) Section 5 comes into force on the day after the date on which this Act receives the Royal assent.
- (2) The rest of this Act comes into force on 1 July 2002.

### 3 Application

- (1) This Act applies 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) An employee to whom this Act applies may, before 1 July 2002,—
  - (a) give notice of a wish to take parental leave, in which case the employee may begin his or her parental leave before 1 July 2002 as if this Act were already in force; and
  - (b) apply for a parental leave payment under Part 7A, in which case section 71S applies to the first payment of parental leave payment after 1 July 2002.
- (3) However, no person is obliged to comply with any obligation connected with the paid parental leave scheme under Part 7A until 1 July 2002.



## **Parental Leave and Employment Protection Amendment Act 2004**

Public Act	2004 No 89
Date of assent	8 November 2004
Commencement	see section 2

### **1 Title**

- (1) This Act is the Parental Leave and Employment Protection Amendment Act 2004.
- (2) In this Act, the Parental Leave and Employment Protection Act 1987 is called “the principal Act”.

### **2 Commencement**

- (1) Sections 4, 8, 23, and 26 come into force on the day after the date on which this Act receives the Royal assent.
- (2) Part 2 (except for section 26) and Schedule 2 come into force on 1 December 2005.
- (3) The rest of this Act comes into force on 1 December 2004.

## **Part 1**

### **Amendments that come into force on 1 December 2004**

### **3 Purpose of this Part**

The purpose of this Part is—

- (a) to clarify that the employment of a teacher in more than 1 State or integrated school (whether at the same time or consecutively) is 1 employment under the principal Act; and
- (b) to provide that the employment of certain medical practitioners by more than 1 district health board is 1 employment under the principal Act; and
- (c) to provide, for the period from 1 December 2004 to 30 November 2005, an entitlement to 13 weeks of maternity leave and parental leave payments for employees who have worked for their employer for at least an average of 10 hours a week for the immediately preceding 6 months; however these employees are not entitled to extended leave; and
- (d) to provide an entitlement to 1 week of unpaid partner’s/paternity leave for employees who have worked for their employer for at least an average of 10 hours a week for the immediately preceding 6 months; however these employees are not entitled to extended leave; and

- (e) to allow extended partner's/paternity leave for the period of parental leave payments for certain employees who have worked for their employer for at least an average of 10 hours a week for the immediately preceding 6 months; and
- (f) to increase, for the period from 1 December 2004 to 30 November 2005, the duration of parental leave payments from 12 to 13 weeks.

#### **4 Application of this Part**

- (1) This Part applies 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 December 2004; or
  - (b) the child is born on or after 1 December 2004; or
  - (c) in the case of adoption, the date on which the employee or the employee's spouse or partner, with a view to adoption, assumes the care of the child, is on or after 1 December 2004.
- (2) An employee to whom this Part applies may, before 1 December 2004,—
  - (a) give notice of a wish to take parental leave (under section 23 if applicable) in which case the employee may begin his or her parental leave before 1 December 2004 as if this Part were already in force; and
  - (b) take special leave in accordance with section 15 of the principal Act; and
  - (c) apply for a parental leave payment under Part 7A of the principal Act as if this Part were already in force.

Section 4(1)(c): amended, on 26 April 2005, by section 9(1) of the Parental Leave and Employment Protection Amendment Act 2005 (2005 No 18).

#### **23 Giving of notice: transitional provision**

- (1) This section applies to an employee who is entitled to parental leave as a result of the commencement of this Part and who is unable to give the notice required under—
  - (a) section 31(1) of the principal Act because there is less than 3 months between the commencement of this Part and the expected date of delivery; or
  - (b) section 33(a) or (b) of the principal Act within 14 days of receiving the relevant notice or of the relevant order being made, because the notice was received or the order was made before the commencement of this Part.
- (2) An employee to whom this section applies:
  - (a) is not required to give notice under section 31 or section 33 within the time periods referred to in those sections, but must give the notice as soon as practicable:

- (b) may give notice under section 31 or 33 (as applicable) before the commencement of this Part as if this Part were already in force.

## **Part 2**

### **Amendments that come into force on 1 December 2005**

#### **25 Purpose of this Part**

The purpose of this Part is to increase, from 1 December 2005,—

- (a) the duration of maternity leave from 13 to 14 weeks for employees who have worked for their employer for at least an average of 10 hours a week for the immediately preceding 6 months; however, these employees are not entitled to extended leave; and
- (b) the duration of parental leave payments from 13 to 14 weeks.

#### **26 Application of this Part**

- (1) This Part applies 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 December 2005; or
  - (b) the child is born on or after 1 December 2005; or
  - (c) in the case of adoption, the date on which the employee, or the employee's spouse or partner, with a view to adoption, assumes the care of the child is on or after 1 December 2005.
- (2) An employee to whom this Part applies may, before 1 December 2005,—
  - (a) give notice of a wish to take parental leave (under section 23 if applicable) in which case the employee may begin his or her parental leave before 1 December 2005 as if this Part were already in force; and
  - (b) apply for a parental leave payment under Part 7A of the principal Act as if this Part were already in force.

Section 26(1)(c): amended, on 26 April 2005, by section 9(2) of the Parental Leave and Employment Protection Amendment Act 2005 (2005 No 18).

# Parental Leave and Employment Protection (Paid Parental Leave for Self-Employed Persons) Amendment Act 2006

Public Act	2006 No 20
Date of assent	16 May 2006
Commencement	see section 2

## 1 Title

This Act is the Parental Leave and Employment Protection (Paid Parental Leave for Self-Employed Persons) Amendment Act 2006.

## 2 Commencement

- (1) Sections 3, 5, 37, and 45 come into force on the day after the date on which this Act receives the Royal assent.
- (2) The rest of this Act comes into force on 1 July 2006.

## Part 1 Preliminary provisions

### 4 Purpose

- (1) The main purpose of this Act is to entitle certain self-employed persons to parental leave payments and provide for the administration of those payments.
- (2) This Act also makes other amendments including—
  - (a) reducing, from 12 months to 6 months, the minimum period before an employee is entitled to a subsequent period of parental leave and a parental leave payment; and
  - (b) adding a power for the department to accept an application for parental leave payments despite an irregularity in the application; and
  - (c) allowing a right of review by the Employment Relations Authority in respect of entitlement to a parental leave payment.

### 5 Application of this Act

- (1) This Act applies to an employee or a self-employed person who takes parental leave 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 a self-employed person to whom this Act applies may, before 1 July 2006, apply for a parental leave payment under Part 7A of the Parental Leave and Employment Protection Act 1987 or apply to have an entitlement to a payment transferred to him or her, as if this Act were already in force.

## Reprints notes

### 1 *General*

This is a reprint of the Parental Leave and Employment Protection Act 1987 that incorporates all the amendments to that Act as at the date of the last amendment to it.

### 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 Amendment Act 2017 (2017 No 45)  
Regulatory Systems (Workplace Relations) Amendment Act 2017 (2017 No 13): Part 2  
District Court Act 2016 (2016 No 49): section 261  
Parental Leave and Employment Protection Amendment Act 2016 (2016 No 8)  
Legislation (Confirmable Instruments) Amendment Act 2015 (2015 No 120): section 14  
Parental Leave and Employment Protection (Rate of Parental Leave Payment) Regulations 2015 (LI 2015/109): regulations 3, 4  
Parental Leave and Employment Protection Amendment Act 2014 (2014 No 27)  
Companies Amendment Act 2013 (2013 No 111): section 14  
Legislation Act 2012 (2012 No 119): section 77(3)  
Criminal Procedure Act 2011 (2011 No 81): section 413  
Holidays Amendment Act 2010 (2010 No 126): section 18  
Accident Compensation Amendment Act 2010 (2010 No 1): section 5(1)(b)  
Income Tax Act 2007 (2007 No 97): sections ZA 1(1), ZA 2(1)  
Parental Leave and Employment Protection (Paid Parental Leave for Self-Employed Persons) Amendment Act 2006 (2006 No 20)  
Parental Leave and Employment Protection Amendment Act 2005 (2005 No 18)  
State Sector Amendment Act (No 2) 2004 (2004 No 114): section 19(1)  
Parental Leave and Employment Protection Amendment Act 2004 (2004 No 89)  
Volunteers Employment Protection Amendment Act 2004 (2004 No 12): section 15  
Holidays Act 2003 (2003 No 129): section 91(2)  
Health Practitioners Competence Assurance Act 2003 (2003 No 48): section 175(1)

Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act 2002 (2002 No 7)  
Employment Relations Act 2000 (2000 No 24): section 240  
Parental Leave and Employment Protection Amendment Act 1991 (1991 No 28)  
Public Finance Act 1989 (1989 No 44): section 65R(3)