

Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act 2002

Public Act 2002 No 7
Date of assent 30 March 2002

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The Parliament of New Zealand enacts as follows:

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.

Part 1 Paid parental leave

4 New paid parental leave provisions inserted in principal Act

- (1) The long Title of the principal Act is amended by inserting, after the words “**pregnancy and parental leave**”, the words “**and to entitle certain employees to up to 12 weeks of paid parental leave**”.
- (2) The principal Act is amended by inserting, after section 71, the following Part:

“Part 7A

“Payment for parental leave

“Preliminary provisions

“71A Purpose

The purpose of this Part is to entitle certain employees to up to 12 weeks of parental leave payments out of public money when they take parental leave from their employment in respect of a child.

“71B Overview

- “(1) Sections 71A to 71C are preliminary provisions relating to the parental leave payment scheme.
- “(2) Section 71D confers entitlements to parental leave payments, primarily on female employees.
- “(3) Section 71E enables those employees to transfer their entitlements to their spouses in certain circumstances.

- “(4) Sections 71F to 71I contain restrictions on entitlements to parental leave payments.
- “(5) Sections 71J to 71P relate to the duration and amount of parental leave payments.
- “(6) Sections 71Q to 71ZA relate to the administration of the parental leave payment scheme.
- “(7) This section is intended only as a guide to the general scheme and effect of this Part.

“**71C Interpretation of this Part**

In this Part, unless the context otherwise requires,—

“**eligible employee** has the meaning given in section 71D(2)

“**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

“**parental leave** includes non-statutory parental leave.

“Entitlement to parental leave payment

“**71D Entitlement to parental leave payment**

- “(1) An employee is entitled to a parental leave payment under this Part if the employee—
 - “(a) has given written notice to his or her employer of his or her wish to take parental leave (either in accordance with this Act or with the alternative provision under which the leave is taken); and
 - “(b) takes parental leave from his or her employment in respect of a child; and
 - “(c) is an eligible employee.
- “(2) An **eligible employee** is—
 - “(a) a female employee who meets the criteria for maternity leave for the child under section 7; or
 - “(b) an employee who meets the criteria for parental leave for the adopted child under section 8 or section 18 or section 24; or
 - “(c) an employee to whom all or part of an entitlement to a parental leave payment is transferred under section 71E; or

- “(d) an employee who succeeds to all or part of an entitlement to a parental leave payment under section 39A.
- “(3) 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.
- “(4) This section is subject to sections 71F to 71I (restrictions on parental leave payments).

“Transfer of entitlement to spouse

“71E Entitlement may be transferred to spouse

- “(1) An eligible employee (within the meaning of section 71D(2)(a) or (b)) 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 if the spouse—
 - “(a) has given written notice to his or her employer of his or her wish to take parental leave (either in accordance with this Act or with the alternative provision under which the leave is taken); and
 - “(b) takes parental leave from his or her employment in respect of the child; and
 - “(c) meets the criteria for parental leave under any of sections 7(b), 8(1)(b), 17(c), 18(1)(b), 23(b), or 24(1)(b).
- “(2) Rights and benefits to non-statutory parental leave (and section 4) are ignored when considering whether the spouse meets the criteria for parental leave for the purpose of this section.
- “(3) To the extent that an employee transfers all or part of his or her entitlement to a parental leave payment to his or her spouse under this section,—
 - “(a) references in this Part to the employee’s entitlement to a parental leave payment are references to the spouse’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; and
 - “(c) the amount of the parental leave payment is calculated according to the earnings of the spouse; and

- “(d) the entitlement that is transferred is deducted from the transferring employee’s entitlement to a parental leave payment.
- “(4) This section is subject to sections 71F to 71I (restrictions on parental leave payments).

“Restrictions on parental leave payments

“71F Subsequent parental leave payments

An employee is not entitled to a parental leave payment if—

- “(a) section 6 applies (restriction on taking of parental leave within 12 months of end of previous period of parental leave for another child); or
- “(b) any of sections 8(2), 18(2), or 24(2) applies (restriction on adoptive parent taking parental leave if they have previously taken parental leave for the same child as a birth parent).

“71G Parental tax credit

- “(1) The purpose of this section is to ensure that employees do not receive both a parental leave payment under this Part and a parental tax credit (within the meaning of the Income Tax Act 1994) in respect of the same child.
- “(2) An employee loses his or her entitlement to a parental leave payment under this Part if either or both of the employee or his or her spouse has received any payment of parental tax credit in respect of the child.

“71H Joint adoptions

- “(1) If 2 spouses assume the care of a child with a view to adoption by them both jointly,—
 - “(a) the spouses must jointly nominate which 1 of them is to be primarily entitled to the parental leave payment; and
 - “(b) only the nominated spouse is the eligible employee for the purpose of section 71D(2)(b).
- “(2) However, subsection (1) does not limit section 71E (transfers of entitlement).

“71I Applications for payment

- “(1) An employee is not entitled to a parental leave payment unless the employee makes an application for payment in accordance with this section.
- “(2) The application must—
- “(a) be made before the date on which the employee returns to work or the parental leave otherwise ends; and
 - “(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 employee 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.

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

A parental leave payment is payable—

- “(a) for 1 continuous period not exceeding 12 weeks; or
- “(b) if part of the entitlement is transferred under section 71E, for 1 continuous period per employee, so long as the 2 continuous periods do not together exceed 12 weeks.

“71K Start of parental leave payment

A parental leave payment is payable to an employee for a period that begins on the date of commencement of his or her parental leave.

“71L End of parental leave payment

- “(1) A parental leave payment is payable to an employee for a period that ends on the earlier of—
- “(a) 12 weeks after the date of commencement of his or her parental leave; or
 - “(b) the date on which he or she returns to work or resigns from his or her employment.

- “(2) Subsection (1) applies despite the fact that the employee’s parental leave may end before that date if—
- “(a) the employee’s employment is terminated due to redundancy or dismissal for cause:
 - “(b) the employee has a miscarriage or ceases to have the care of the child:
 - “(c) the employee or the child dies.
- “(3) However, the period for which a parental leave payment is payable to an employee terminates earlier than the date referred to in subsection (1)—
- “(a) if the employee takes parental leave only from fixed term employment (within the meaning of section 66 of the Employment Relations Act 2000), in which case the payment stops on the date on which fixed term employment ends; or
 - “(b) if the employee’s spouse succeeds to the parental leave payment entitlement under section 39A, in which case the payment to the employee stops on the date of succession.
- “(4) This section is subject to section 71E(3) (effect of transfers of entitlement).

“Amount of parental leave payment

“71M Amount of parental leave payment

- “(1) The rate of parental leave payment payable to any employee is the lesser of—
- “(a) \$325 per week (or any adjusted amount set under section 71N or any other amount set under section 71O); or
 - “(b) the greater of—
 - “(i) 100% of the employee’s ordinary pay before the commencement of the parental leave; or
 - “(ii) 100% of the employee’s average weekly earnings.
- “(2) In this Part, unless the context otherwise requires,—
- “**average weekly earnings** and **ordinary pay** mean the total of those amounts in respect of all the employments from which the employee takes parental leave as an eligible employee

“**average weekly earnings** means one fifty-second of the employee’s gross earnings during the year ending with the expected date of delivery (or, in the case of adoption, the date on which the employee assumes the care of the child with a view to adoption), except that, if section 72A applies, the divisor of 52 must be reduced by the number of complete weeks during which the employee was absent from work on leave without pay in a circumstance described in subsection (2) of that section

“**ordinary pay** has the meaning given to it in section 4 of the Holidays Act 1981.

“**71N Annual adjustment of maximum rates of parental leave payment**

- “(1) The rate of parental leave payment that applies under section 71M(1)(a) must be adjusted, by Order in Council, as at 1 July each year by any percentage movement upwards in average ordinary time weekly earnings.
- “(2) In this section, **average ordinary time weekly earnings** means average ordinary time weekly earnings (employees) as determined by the Quarterly Employment Survey published by Statistics New Zealand.
- “(3) The Order in Council must not reduce the amount.
- “(4) The Order in Council comes into force, or is considered to come into force, on 1 July of the calendar year in which it is made, and applies to parental leave payment payable on and after that date.

“**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).
- “(2) The Minister, in making the recommendation, may base his or her decision on any factors that he or she thinks fit.

“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 the 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.

“Administration

“71Q Payments must come out of public money

There must, from time to time, be paid out of the 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

“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 1994, a pay period, in respect of an instalment of the payment, is the period for which the payment is made.

“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.

“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.

“71U Obligation to notify early return to work, etc

- “(1) An employee must give notice if, during the period for which the employee is receiving a parental leave payment under this Part,—
- “(a) the employee returns to work; or
 - “(b) the employee’s fixed term employment ends; or
 - “(c) the employee resigns from his or her employment.
- “(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.

“71V Non-return to work does not affect payment

- “(1) An employee is not required to refund any parental leave payment under this Part because the employee—
- “(a) does not return to work at the end of his or her parental leave; or
 - “(b) does not accept employment offered by the employer during the period of preference in obtaining employment.
- “(2) Sections 46 and 47 do not apply for the purpose of this Part.

“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 em-

ployer 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.

“(2) The employee or the employer must comply with a request under this section within a reasonable period to be set by the department.

“**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

“**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

“**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, 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 summary conviction to a fine not exceeding \$5,000.

“Compare: 2001 No 49 s 308

“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 a member of the senior executive service 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.”

5 Regulations

- (1) Section 73 of the principal Act is amended by inserting, after paragraph (a), the following paragraphs:
 - “(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 employees and employers must give in, or the documents that employees or employers

must attach to, an application for, or other notice relating to, a parental leave payment:

- “(ac) prescribing the way in which adjustments must be made under section 71N and making the adjustments required under that section:
 - “(ad) increasing the amount under section 71O:
 - “(ae) extending the class or classes of person entitled to a parental leave payment under Part 7A:”.
- (2) Section 73 of the principal Act is amended by adding the following subsections:
- “(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) Regulations made under subsection (1)(ad) or (ae),—
 - “(a) if made on or before 30 June in any year, expire on the close of December of that year except in so far as they are expressly confirmed by Act of Parliament passed during that year; and
 - “(b) if made on or after 1 July in any year, expire on the close of 31 December in the following year except in so far as they are expressly confirmed by Act of Parliament passed before the end of that following year.
 - “(5) The expiry of regulations under subsection (4) does not affect the validity of any act done pursuant to, or in accordance with, the regulations before the date on which the regulations expire.
 - “(6) A failure to comply with subsection (3) does not affect the validity of any regulation made under this Act.”
- (3) Any consultation undertaken before the commencement of this section in respect of the making of any regulations is to be treated as consultation for the purpose of section 73(3) of the principal Act.

6 Amendments to other Acts relating to parental leave payments

The Acts specified in Schedule 1 are amended as shown in that schedule.

Part 2 Other miscellaneous amendments to principal Act

7 Interpretation

- (1) Section 2(1) of the principal Act is amended by repealing the definition of **employee**, and substituting the following definition:

“**employee** has the meaning given in section 5 of the Employment Relations Act 2000”.

- (2) Section 2(1) of the principal Act is amended by repealing the definition of **spouse**, and substituting the following definition:

“**spouse** means either partner to—

“(a) a legal marriage; or

“(b) a de facto relationship within the meaning of section 2D of the Property (Relationships) Act 1976”.

- (3) Section 2(1) of the principal Act is amended by repealing the definition of **union**, and substituting the following definition:

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

- (4) Section 2(1) of the principal Act is amended by inserting the following definitions, in their appropriate alphabetical order:

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

“**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

“**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”.

- (5) Section 2(1) of the principal Act is amended by omitting from the definitions of **extended leave**, **maternity leave**, and **parental leave** the expression “Parts VI and VII”, and substituting in each case the expression “Parts VI to 7A”.

- (6) Section 2 of the principal Act is amended by adding the following subsection:
- “(3) Section 72A applies if it is necessary, for the purpose of applying any of the provisions of sections 7(b), 8(1)(b), 17(c), 18(1)(b), 23(b), and 24(1)(b), to ascertain whether an employee will have been in the employment of the same employer for at least an average of 10 hours a week during a 12-month period.”

8 New sections inserted

- (1) The principal Act is amended by inserting, after section 2, the following sections:

“2A Interpretation: multiple employments

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.

“2B Interpretation: multiple births or adoptions

- “(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 employees do not receive both a parental leave payment under Part 7A and a parental tax credit (within the meaning of the Income Tax Act 1994) 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) In the case of adoption, a person who assumes (with a view to adoption by that person or by that person and that person’s spouse jointly) the care of 2 or more children within 1 month is treated as if the person had assumed the care of only the youngest of those children within that month.”
- (2) The principal Act is amended by repealing section 25.

9 New section 4 substituted

The principal Act is amended by repealing section 4, and substituting the following section:

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

- “(1) Parts I to V 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 I to V; 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 VI to 7A apply to all employees.”

10 Role of midwives

The principal Act is amended as shown in Schedule 2.

11 Adjustments to eligibility criteria based on average hours of work and allowing for periods of authorised leave

The principal Act is amended by omitting from sections 7(b), 8(1)(b), 17(c), 18(1)(b), 23(b), and 24(1)(b) the words “for at least 10 hours in each week”, and substituting in each case the words “for at least an average of 10 hours a week during that period”.

12 New section 39A inserted

The principal Act is amended by inserting, after section 39, the following section:

“39A Succession to employee’s entitlements

- “(1) A spouse 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 becomes the sole guardian of the child, to the exclusion of the employee.
- “(2) However, the spouse may succeed only if—
- “(a) the spouse meets the criteria for parental leave under any of sections 7(b), 8(1)(b), 17(c), 18(1)(b), 23(b), or 24(1)(b); and
 - “(b) the spouse gives reasonable notice to his or her employer, and to the department (if the employee had applied for a parental leave payment under Part 7A), of his or her wish to succeed under this section.
- “(3) The spouse succeeds under this section on the later of—
- “(a) the date of the employee’s death or the date when the spouse becomes sole guardian, as the case may be; or
 - “(b) the date on which the employee’s bereavement leave expires (if any).
- “(4) The first payment of parental leave payment to the spouse includes an amount for the period from the date of succession if the notice to the department is received on or after that date.
- “(5) 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.”

13 Employer’s obligations in respect of remuneration and holiday pay

Section 42(3) of the principal Act is amended by omitting the words “section 24(1) of the Holidays Act 1981”, and substituting the words “section 7A(2) of the Holidays Act 1981”.

14 State employees

- (1) Section 55(1) of the principal Act is amended by omitting the words “(not being a State employee)”.
- (2) Section 56(1) of the principal Act is amended by omitting the words “(not being a State employee)”.
- (3) Section 2(1) of the principal Act is consequentially amended by repealing the definitions of **State employee** and **State services**.

15 Parental leave complaints

Section 56(1) of the principal Act is amended by repealing paragraph (c), and substituting the following paragraph:

- “(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”.

16 Remedies

Section 65 of the principal Act is amended by omitting the words “any decision made under section 60 or section 61(3) or section 63(3) of this Act”, and substituting the words “any decision made for the purposes of this Act”.

17 New section 68 substituted

The principal Act is amended by repealing section 68, and substituting the following section:

“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 or an employer, or any person acting on behalf of an employee or employer, 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 the employee to exercise rights and benefits in respect of parental leave or a parental leave payment, or granting any other relief as is reasonable:
- “(b) subject to terms, if any, that the Court, in the circumstances of each case, thinks fit.”

18 New heading and sections 70A to 70F inserted

The principal Act is amended by inserting, after section 70, the following heading and sections:

“Role of Labour Inspectors

“70A Role of Labour Inspectors

- “(1) A Labour Inspector may—
- “(a) determine, if the employee and employer fail to agree, whether an employee will have been in the employment of the same employer for at least an average of 10 hours

- a week during a 12-month period in accordance with section 72A for the purpose of eligibility for parental leave; or
- “(b) determine, if the employee and employer fail to agree, an employee’s ordinary pay or average weekly earnings for the purpose of section 71M; 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.

“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)

“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)

“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)

“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 em-

ployee has the entitlement specified in the determination or demand notice.

“Compare: 2000 No 24 s 226(1)

“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”.

19 New section 72 substituted

- (1) The principal Act is amended by repealing section 72, and substituting the following section:

“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) in respect of public holidays, of the same amount as, or of a greater amount than, the amount referred to in section 42(3).

- “(2) This section applies despite section 33 of the Holidays Act 1981.”

- (2) Section 33 of the Holidays Act 1981 is consequentially amended by omitting the expression “section 72(4)”, and substituting the expression “section 72(1)”.

20 New section 72A inserted

The principal Act is amended by inserting, after section 72, the following section:

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

- “(1) An employee is treated as being in the employment of the same employer for at least an average of 10 hours a week during a

- 12-month period if the employee is in the employment of that employer—
- “(a) No less than an average of 10 hours a week during that period; and
 - “(b) either no less than 1 hour in every week during that period or no less than 40 hours in every month during that period.
- “(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 Injury Prevention, Rehabilitation, and Compensation Act 2001 for that hour; or
 - “(d) on protected voluntary service or training (within the meaning of the Volunteers Employment Protection Act 1973) for that hour; or
 - “(e) on maternity 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.”

21 Gender-neutral language

The principal Act is amended as set out in Schedule 3.

22 Terminology updates

The principal Act is amended as set out in Schedule 4.

Schedule 1 s 6
**Amendments to other Acts relating to
paid parental leave**
Employment Relations Act 2000 (2000 No 24)

Insert in section 223(1), after paragraph (d):

“(da) the Parental Leave and Employment Protection Act 1987;
and.”

The item relating to the definition of homemaker was repealed, as from 1 December 2004, by section 7(4) Employment Relations Amendment Act (No 2) 2004 (2004 No 86). *See* section 73 of that Act for the transitional provisions.

Income Tax Act 1994 (1994 No 164)

The item relating to the Income Tax Act 1994 was repealed, as from 1 April 2005, by section YA 2 Income Tax Act 2004 (2004 No 35).

**Injury Prevention, Rehabilitation, and Compensation Act
2001 (2001 No 49)**

Insert in section 11(1), after paragraph (a):

“(aa) any parental leave payments paid under Part 7A of the Parental Leave and Employment Protection Act 1987; or”

Add to clause 44 of Schedule 1:

“(6) Parental leave must not be treated as paid leave for the purposes of this clause only because the person may be entitled to a payment in respect of the leave under Part 7A of the Parental Leave and Employment Protection Act 1987.”

Social Security Act 1964 (1964 No 136)

Insert in paragraph (d) of the definition of **income** in section 3, after subparagraph (iv):

“(iva) any parental leave payments paid under Part 7A of the Parental Leave and Employment Protection Act 1987.”.

Schedule 2

s 10

**Amendments to principal Act relating to
role of midwives**

Section 2(1)

Repeal the definition of **expected date of delivery** and substitute:

“**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”.

Insert, after the definition of **maternity leave**:

“**midwife** means a person whose name for the time being appears in that part of the Register of Nurses kept under section 16 of the Nurses Act 1977 that relates to registered midwives”.

Section 9

Omit from subsection (2)(a) the words “medical practitioner’s”.

Section 13

Repeal and substitute:

“**13 Right of medical practitioner or midwife to determine date of commencement of maternity leave**

“(1) If a registered medical practitioner or midwife considers that the female employee, being pregnant, should begin her maternity 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 maternity leave.

- “(2) If the female employee gives that certificate to her employer, her maternity 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 31

Insert in subsection (3), after the words “certificate from a registered medical practitioner” in both places where they appear, the words “or a midwife”.

Schedule 3

s 21

Amendments to principal Act: gender-neutral language

Section 2(1)

Omit from paragraph (a)(ii) of the definition of **parental leave** the words “paternity leave” and substitute the words “partner’s/paternity leave”.

Repeal the definition of **paternity leave** and substitute:

“**partner’s/paternity leave**—

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

Section 5

Omit the words “paternity leave” and substitute the words “partner’s/paternity leave”.

Part 2

Omit from the heading the words “Paternity leave” and substitute the words “Partner’s/paternity leave”.

Section 17 and heading to section 17

Omit the words “paternity leave” in both places where they occur and substitute in each case the words “partner’s/paternity leave”.

Omit the word “male” in both places where it occurs.

Section 18 and heading to section 18

Omit the words “paternity leave” wherever they occur and substitute in each case the words “partner’s/paternity leave”.

Omit the words “adoptive father” and substitute the words “other adoptive parent”.

Omit the word “male” from subsection (1).

Omit the words “by him or by him and his spouse jointly” from subsection (1)(a) and substitute the words “by that employee or by that employee and that employee’s spouse jointly”.

Insert in subsection (1)(b), after the word “he”, the words “or she”.

Omit from subsection (2) the words “A male” and substitute the word “An”.

Insert in subsection (2), after the word “he”, the words “or she”.

Section 19 and heading to section 19

Omit the words “paternity leave” in both places where they occur and substitute in each case the words “partner’s/paternity leave”.

Section 20 and heading to section 20

Omit the words “paternity leave” in both places where they occur and substitute in each case the words “partner’s/paternity leave”.

Omit the words “by him or by him and his spouse jointly” from paragraph (b) and substitute the words “by that employee or by that employee and that employee’s spouse jointly”.

Section 21 and heading to section 21

Omit the words “paternity leave” in both places where they occur and substitute in each case the words “partner’s/paternity leave”.

Omit the word “male”.

Section 22 and heading to section 22

Omit the words “paternity leave” in both places where they occur and substitute in each case the words “partner’s/paternity leave”.

Omit the words “male employee and his employer” and substitute the words “employee and his or her employer”.

Section 26(4)

Repeal and substitute:

“(4) The taking by an employee of any partner’s/paternity leave in accordance with this Act does not reduce the period of extended leave to which that employee or his or her spouse is entitled in accordance with this Act.”

Section 28

Omit the words “paternity leave” and substitute the words partner’s/paternity leave.

Section 29

Omit the words “a male” from paragraph (b) and substitute the word “an”.

Omit the words “paternity leave” wherever they occur and substitute in each case the words “partner’s/paternity leave”.

Section 31(3)

Omit the words “a female employee” from paragraph (b) and substitute the words “a pregnant employee”.

Omit the words “a male employee” from paragraph (c) and substitute the words “the pregnant woman’s spouse”.

Omit the words “the male employee” in both places where they occur in paragraph (c) and substitute in each case the words “the employee”.

Section 32(d)(ii)

Omit the words “paternity leave” and substitute the words “partner’s/paternity leave”.

Section 45(4)

Omit the words “paternity leave” wherever they occur and substitute in each case the words “partner’s/paternity leave”.

Schedule 4
Amendments to principal Act:
terminology updates

s 22

Section 2(1)

Repeal the definition of the term **contract of employment**.

Insert, in its appropriate alphabetical order:

“**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”.

Omit from paragraph (b)(ii) of the definition of **extended leave** the words “contract of employment” and substitute the words “employment agreement”.

Omit from paragraph (b)(ii) of the definition of **maternity leave** the words “contract of employment” and substitute the words “employment agreement”.

Omit from paragraph (b)(ii) of the definition of **parental leave** the words “contract of employment” and substitute the words “employment agreement”.

Section 5

Omit the words “contract of employment” and substitute the words “employment agreement”.

Section 6(a)(ii)

Omit the words “contract of employment” and substitute the words “employment agreement”.

Section 8(2)(b)

Omit the words “contract of employment” and substitute the words “employment agreement”.

Section 18(2)(b)

Omit the words “contract of employment” and substitute the words “employment agreement”.

Section 24(2)(b)

Omit the words “contract of employment” and substitute the words “employment agreement”.

Section 32(c) and (d)

Omit the words “contract of employment” and substitute in each case the words “employment agreement”.

Section 43(b)(i)

Omit the words “contract of employment” and substitute the words “employment agreement”.

Omit the words “(not being a contract of apprenticeship or a contract within the meaning of the Technicians Training Act 1967)”.

Section 45(4)(c)(ii)

Omit the words “contract of employment” and substitute the words “employment agreement”.

Section 53

Omit the words “contract of employment” and substitute the words “employment agreement”.

Schedule

Omit from clause 2 the words “contract of employment” and substitute the words “employment agreement”.

Legislative history

10 December 2001	Introduction (Bill 182-1)
13 December 2001	First reading and referral to Social Services Committee
14 March 2002	Reported from Social Services Committee (Bill 182-2)
21 March 2002	Second reading
26 March 2002	Committee of the whole House
28 March 2002	Third reading
30 March 2002	Royal assent
