



# Parental Leave and Employment Protection Amendment Act 2016

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Commencement see section 2

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**The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act is the Parental Leave and Employment Protection Amendment Act 2016.

**2 Commencement**

- (1) Sections 80 to 82 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 April 2016.

### 3 Principal Act

This Act amends the Parental Leave and Employment Protection Act 1987 (the **principal Act**).

### 4 Section 1A amended (Purpose)

- (1) In section 1A(c), delete “employees and self-employed”.
- (2) In section 1A(c), replace “paid parental leave” with “parental leave payments”.

### 5 New section 1B inserted (Outline)

After section 1A, insert:

#### 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 18 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 18 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 18 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 18 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 18 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 18 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 obli-

gations 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.

## 6 Section 2 amended (Interpretation)

- (1) In section 2(1), replace the definition of **employee** with:

**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)

- (2) In section 2(1), definition of **extended leave**, paragraph (b), after “7A”, insert “only”.

- (3) In section 2(1), repeal the definition of **maternity leave**.

- (4) In section 2(1), definition of **parental leave**, paragraph (a)(i), replace “maternity” with “primary carer”.

- (5) In section 2(1), definition of **parental leave**, paragraph (a)(ii), replace “partner’s/paternity” with “partner’s”.

- (6) In section 2(1), definition of **parental leave**, replace paragraph (b) with:

(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

- (7) In section 2(1), repeal the definition of **partner’s/paternity leave**.

- (8) In section 2(1), replace the definition of **self-employed person** with:

**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)
- (9) In section 2(1), insert in their appropriate alphabetical order:
- 6-month employment test** has the meaning given in section 2BA
- 12-month employment test** has the meaning given in section 2BA
- Chief of Defence Force** means the officer appointed under section 8 of the Defence Act 1990
- 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)
- member of the Armed Forces** has the meaning given in section 2(1) of the Armed Forces Discipline Act 1971
- negotiated carer leave** means a period of leave requested by an employee under Part 3A
- parental leave payment threshold test** has the meaning given in section 2BA(4)
- 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
- (10) Repeal section 2(2) and (3).
- 7 Section 2A amended (Multiple employments generally)**
- In section 2A, delete “and parental leave payment”.

**8 Section 2AB amended (Multiple employments of certain medical practitioners)**

In section 2AB(2), delete “and parental leave payment”.

**9 Section 2AC amended (Multiple employments of teachers)**

In section 2AC(1), delete “and parental leave payment”.

**10 Section 2AD amended (Concurrent employment and self-employment)**

(1) In section 2AD(2), delete “and parental leave payment”.

(2) In section 2AD(3), replace “sections 2A and 71CC” with “section 2A”.

**11 Section 2B amended (Multiple births or adoptions)**

(1) In the heading to section 2B, replace “births or adoptions” with “children”.

(2) In section 2B(1)(b), replace “employees and self-employed persons do” with “a person described in subsection (2) or (3) does”.

(3) Replace section 2B(3) with:

(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.

**12 New section 2BA inserted (Thresholds for entitlements)**

After section 2B, insert:

**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).

**13 Section 4 amended (Application of this Act to employees who have non-statutory rights to parental leave)**

In section 4(4), replace “employees” with “persons”.

**14 Section 5 amended (Restriction on parental leave under this Act where employee or employee’s spouse or partner takes parental leave under any other provision)**

In section 5, replace “maternity leave, partner’s/paternity leave” with “primary carer leave, partner’s leave”.

**15 Part 1 heading amended**

In the Part 1 heading, replace “**Maternity**” with “**Primary carer**”.

**16 Sections 7 and 8 replaced**

Replace sections 7 and 8 with:

**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)).

**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.

- (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).

#### **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.

#### **17 Section 9 amended (Duration of maternity leave)**

- (1) In the heading to section 9, replace “maternity” with “primary carer”.
- (2) In section 9(1), replace “Maternity” with “Primary carer”.
- (3) In section 9(2), replace “maternity” with “primary carer” in each place.
- (4) In section 9(3), replace “maternity” with “primary carer” in each place.

#### **18 Section 10 amended (Date of commencement of maternity leave)**

- (1) In the heading to section 10, replace “maternity” with “primary carer”.
- (2) In section 10, replace “Maternity leave shall begin” with “Primary carer leave begins,”.
- (3) Replace section 10(a) and (b) with:
  - (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

#### **19 Section 11 amended (Right of employee to determine date of commencement of maternity leave)**

- (1) In the heading to section 11, replace “maternity” with “primary carer”.
- (2) In section 11, replace “Maternity” with “Primary carer”.
- (3) In section 11, delete “female”.
- (4) In section 11, replace “6 weeks” with “6 weeks than,”.
- (5) Replace section 11(a) and (b) with:

- (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.

**20 Section 12 replaced (Right of employer and employee to determine date of commencement of maternity leave by agreement)**

Replace section 12 with:

**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.

**21 New cross-heading above section 13 inserted**

Above section 13, insert:

*Provisions applicable to pregnant employees only*

**22 Section 13 amended (Right of medical practitioner or midwife to determine date of commencement of maternity leave)**

- (1) In the heading to section 13, replace “maternity” with “primary carer”.
- (2) In section 13(1) and (2), replace “maternity” with “primary carer” in each place.

**23 Section 14 amended (Right of employer to appoint date of commencement of maternity leave)**

- (1) In the heading to section 14, replace “maternity” with “primary carer”.
- (2) In section 14, replace “maternity” with “primary carer”.

**24 Section 15 amended (Special leave)**

In section 15(1) and (2), replace “maternity” with “primary carer”.

**25 Part 2 heading amended**

In the Part 2 heading, replace “Partner’s/paternity” with “Partner’s”.

**26 Sections 17 and 18 replaced**

Replace sections 17 and 18 with:

**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.

**27 Section 19 amended (Duration of partner's/paternity leave)**

- (1) In the heading to section 19, replace “**Partner's/paternity**” with “**Partner's**”.
- (2) In section 19, replace “Partner's/paternity” with “Partner's”.
- (3) In section 19(a), replace “if section 17(c)(i) or section 18(1)(b)(i) applies to the employee” with “if the employee meets the 12-month employment test”.
- (4) In section 19(b), replace “if section 17(c)(ii) or section 18(1)(b)(ii) applies to the employee” with “if the employee meets the 6-month employment test”.

**28 Sections 19A to 19B repealed**

Repeal sections 19A to 19B.

**29 Section 20 replaced (Date of commencement of partner's/paternity leave)**

Replace section 20 with:

**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.

**30 Section 21 replaced (Right of employee to determine date of commencement of partner's/paternity leave)**

Replace section 21 with:

**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.

**31 Section 22 amended (Right of employer and employee to determine date of commencement of partner's/paternity leave by agreement)**

- (1) In the heading to section 22, replace “**partner's/paternity**” with “**partner's**”.
- (2) In section 22, replace “Partner's/paternity” with “Partner's”.

**32 Sections 23 and 24 replaced**

Replace sections 23 and 24 with:

**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.

### 33 Sections 26 to 30 replaced

Replace sections 26 to 30 with:

#### 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 18 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.

**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.

## **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).

**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.

**34 New Part 3A inserted**

After section 30, insert:

**Part 3A**  
**Primary carers not eligible for primary carer leave may request negotiated carer leave**

**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.

*Employee's right to make request*

**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.

### **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.

#### *Duties of employer*

### **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.

**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)

*Resolving disputes***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.

**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).

**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.

**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.

**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.

**35 Section 31 amended (Obligation to notify employer)**

In section 31(3), replace “Except where the employee is proposing to adopt a child,” with “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,”.

**36 Section 32 amended (Requirements where extended leave sought)**

- (1) In section 32(a), replace “maternity” with “primary carer”.
- (2) Replace section 32(d) with:
  - (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).
- (3) In section 32, insert as subsection (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 18 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.

**37 Section 33 replaced (Requirements where child to be adopted)**

Replace section 33 with:

**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.

**38 Section 37 replaced (Requirement where female employee wishes to commence maternity leave early)**

Replace section 37 with:

**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)

**39 Section 39 amended (Employee's notice in relation to return to work)**

After section 39(2), insert:

- (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.

**40 Section 42 amended (Employer's obligations in respect of remuneration and holiday pay)**

In section 42(2), after "average weekly earnings", insert "(as defined in section 5(1) of the Holidays Act 2003)".



**41 Section 45 amended (Early ending and extension of parental leave)**

- (1) Replace section 45(1)(c) and (d) with:
  - (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
- (2) Replace section 45(2) with:
  - (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) In section 45(4)(a), replace "maternity" with "primary carer" in each place.
- (4) Replace section 45(4)(b) and (c) with:
  - (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).

**42 Section 49 amended (Dismissal by reason of pregnancy or parental leave prohibited)**

- (1) Replace section 49(1)(b)(ii) with:
  - (ii) the employee, or the employee's spouse or partner, becoming the primary carer in respect of a child; or
- (2) Replace section 49(2)(b)(ii) with:
  - (ii) the employee becoming the primary carer in respect of a child,—

**43 Section 54 amended (Dismissal for cause not affected)**

Replace section 54(b) with:

- (b) the employee or the employee's spouse or partner becoming the primary carer in respect of a child; or

**44 Section 55 amended (Interim order)**

Replace section 55(2)(b) with:

- (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).

**45 Section 56 amended (Parental leave complaints)**

Replace section 56(2)(b) with:

- (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

**46 Section 70A amended (Labour Inspectors may make determinations in respect of employees)**

- (1) In section 70A(1)(a), replace “in the employment of” with “employed by”.
- (2) In section 70A(1)(a), replace “lesser” with “6-month”.
- (3) After section 70A(1)(a), insert:

(ab) determine, at the request of the department, whether an employee meets the parental leave payment threshold test; or

- (4) Replace section 70A(1)(b) with:

(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

**47 Section 70G amended (Labour Inspectors may make determinations in respect of self-employed persons)**

Replace section 70G(1)(a) with:

(a) determine whether a self-employed person meets the parental leave payment threshold test; and

**48 Section 71A replaced (Purpose)**

Replace section 71A with:

**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 18 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.

#### 49 New section 71AB inserted (Application to members of Armed Forces)

After section 71A, insert:

##### 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.

#### 50 Section 71B amended (Overview)

- (1) In section 71B(1), after “leave”, insert “payment”.
- (2) Replace section 71B(3) with:
- (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.
- (3) In section 71B(4), replace “employees and self-employed” with “eligible”.
- (4) In section 71B(4), replace “sections 71D and 71DA” with “section 71D”.

#### 51 Section 71C amended (Interpretation of this Part)

- (1) In section 71C, replace the definition of **employee’s average weekly earnings** with:
- employee’s average weekly income from work** means an amount calculated in accordance with the method set out in section 71CAA
- (2) In section 71C, definition of **ordinary weekly pay**, replace “from which the employee takes parental leave as an eligible employee” with “that in combination mean the employee is entitled to receive parental leave payments”.

- (3) In section 71C, replace the definition of **self-employed person's average weekly earnings** with:

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

**52 Section 71CA amended (Definition of eligible employee)**

Replace section 71CA(1) with:

- (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.

**53 New section 71CAA inserted (Calculation of employee's average weekly income from work)**

After section 71CA, insert:

**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).

**54 Section 71CB amended (Definition of eligible self-employed person)**

- (1) Replace section 71CB(1) with:

- (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) In section 71CB(2), replace “71E(3) and (4)” with “71E(2)”.

- (3) Repeal section 71CB(3).

**55 New section 71CBA inserted (Calculation of self-employed person's average weekly income from work)**

After section 71CB, insert:

**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).

**56 Section 71CC repealed (Multiple self-employment)**

Section 71CC is repealed.

**57 New section 71CE inserted**

After section 71CD, insert:

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

- (1) An employee is not to be treated as having returned to work because he or she performs 40 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 40 hours of paid work for his or her employer during a period of 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.

**58 Sections 71D and 71DA replaced**

Replace sections 71D and 71DA with:

**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).

*Entitlement to preterm baby payments*

**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).
- (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.

**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.

**59 Section 71E replaced (Entitlement may be transferred to spouse or partner)**

Replace section 71E with:

**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.

**60 Section 71F replaced (Subsequent parental leave payments)**

Replace section 71F with:

**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).

**61 Section 71G amended (Parental tax credit)**

- (1) In section 71G(1), replace “an employee or a self-employed person” with “a person”.
- (2) Replace section 71G(2) with:
  - (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.

**62 Section 71H repealed (Joint adoptions)**

Repeal section 71H.

**63 Section 71I amended (Applications for payment)**

- (1) Replace section 71I(1) with:
  - (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) Replace section 71I(2)(a) with:
  - (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).

- (3) In section 71I(2)(d), delete "employee or self-employed".

**64 Section 71IA amended (Discretion to approve irregular applications)**

- (1) In section 71IA(1), replace "an employee or a self-employed person" with "a person".
- (2) In section 71IA(2)(b), delete "employee or self-employed".
- (3) In section 71IA(5)(d), replace "employee" with "person".

**65 Section 71J amended (Duration of parental leave payment)**

- (1) In section 71J(b), delete "employee or self-employed".
- (2) In section 71J, insert as subsection (2):
- (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).

**66 Section 71K replaced (Start of parental leave payment)**

Replace section 71K with:

**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), if a preterm baby payment is payable in respect of a child, and if no parental leave payment has been made in respect of that child, the period in relation to which a parental leave payment is payable does not begin until the day after the date on which the preterm baby payment period ends.

**67 Section 71L replaced (End of parental leave payment for employees)**

Replace section 71L with:

**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) 18 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) Subsections (1)(b) and (c) do not apply, and parental leave payments continue to be payable until the date specified in subsection (1)(a), 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).

**68 Section 71LA repealed (End of parental leave payment for self-employed persons)**

Repeal section 71LA.

**69 Section 71M amended (Amount of parental leave payment)**

- (1) In section 71M(1), before “employee”, insert “eligible”.
- (2) In section 71M(1)(a), replace “\$325” with “\$516.85”.
- (3) In section 71M(1)(a), replace “section 71N” with “section 71N(1)”.
- (4) In section 71M(1)(b)(i), after “parental leave”, insert “payments”.
- (5) In section 71M(1)(b)(ii), replace “average weekly earnings” with “average weekly income from work”.
- (6) In section 71M(1A)(a), replace “\$357.30” with “\$516.85”.
- (7) In section 71M(1A), before “self-employed”, insert “eligible”.
- (8) In section 71M(1A)(a), replace “section 71N” with “section 71N(1)”.
- (9) In section 71M(1A)(b)(i), replace “average weekly earnings” with “average weekly income from work”.
- (10) In section 71M(1A)(b)(ii), replace “section 71OA” with “section 71N(4)”.
- (11) In section 71M(1B), replace “\$357.30” with “\$516.85”.
- (12) In section 71M(1B), replace “section 71N” with “section 71N(1)”.

**70 Section 71N replaced (Annual adjustment of maximum rates of parental leave payment)**

Replace section 71N with:

**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) must be adjusted as at 1 July each year by any percentage movement upward in average ordinary time weekly earnings using the method specified in subsection (2).
- (2) The adjustment required by subsection (1) must be made as follows:
  - (a) the percentage movement on which the adjustment is based must be the annual percentage movement in the February average ordinary time weekly earnings (employees) immediately before the 1 July date on which the adjustment is to take effect, as published 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 must be based on the percentage movement in the February average ordinary time weekly earnings (employees) between the February series before the date of the last adjustment and the February series before the 1 July 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) must be set 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 publish the adjusted rates for employees and the rates set for self-employed persons on an Internet site maintained by or on behalf of the department.

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

Repeal section 71OA.

**72 Section 71P amended (Amount of payment not affected by other non-statutory entitlements)**

In section 71P(1), replace “the employee” with “an employee”.

**73 Section 71U amended (Obligation to notify early return to work, etc)**

Replace section 71U(1) and (1A) with:

- (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.

**74 Section 71V repealed (Non-return to work does not affect payment)**

Repeal section 71V.

**75 Section 71Z amended (Offence to mislead department)**

In section 71Z(3), replace “\$5,000” with “\$15,000”.

**76 Section 71ZB amended (Review of department’s decisions about parental leave payment)**

In section 71ZB(4), delete “employee or self-employed”.

**77 Section 72A amended (Eligibility criteria based on average hours of work and allowing for periods of authorised leave)**

- (1) Repeal section 72A(1).
- (2) In section 72A(2)(e), replace “on maternity leave” with “a pregnant employee who is on primary carer leave”.

**78 Section 72B amended (Succession to spouse’s or partner’s entitlements)**

- (1) Replace section 72B(1)(b) with:

- (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) Replace section 72B(2)(b) with:

- (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) Replace section 72B(3) with:

- (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) After section 72B(4), insert:
- (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.

**79 Section 72C amended (Date of succession to spouse's or partner's entitlements)**

In section 72C(2), replace “section 72B(3)” with “section 72B(3A)”.

**80 Section 73 amended (Regulations)**

- (1) Replace section 73(1)(ab) with:
  - (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:
- (2) After section 73(1)(aba), insert:
  - (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:
- (3) Repeal section 73(1)(ac) and (ada).

**81 Schedule 1AA amended**

In Schedule 1AA, after Part 2, insert the Part 3 set out in Schedule 1 of this Act.

**82 Consequential amendments to Parental Leave and Employment Protection Amendment Act 2014**

- (1) This section amends the Parental Leave and Employment Protection Amendment Act 2014.
- (2) Repeal sections 21, 22, 23, 24, 25, 27, 29, and 30.
- (3) In section 26, delete “and (c)(i)”.

**83 Consequential amendments to other enactments**

Amend the enactments specified in Schedule 2 as set out in that schedule.

## Schedule 1

### Amendments to Schedule 1AA

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#### Part 3

#### Transitional provisions relating to amendments to this Act made by Parental Leave and Employment Protection Amendment Act 2016

#### 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.



## Schedule 2

### Consequential amendments

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#### **Employment Relations Act 2000 (2000 No 24)**

After section 161(1)(qb), insert:

- (qc) determining whether an employer has complied with section 30D of the Parental Leave and Employment Protection Act 1987:

After section 179B, insert:

#### **179C Limitations on consideration by Employment Court of matters arising under section 30D of Parental Leave and Employment Protection Act 1987**

- (1) This section applies to a reference to the Authority under section 30I of the Parental Leave and Employment Protection Act 1987 for a determination as to whether the employer has complied with section 30D of that Act.
- (2) The Authority may not refer a question of law to the court under section 177 if the question of law arises during an investigation of the Authority into a reference referred to in subsection (1).
- (3) No matter, or part of a matter, may be removed to the court under section 178 if the matter, or the part of the matter, arises during an investigation of the Authority into a reference referred to in subsection (1).
- (4) No party who is dissatisfied with a determination, or any part of a determination, of the Authority of a reference referred to in subsection (1) may elect, under section 179, to have the matter heard by the court.

#### **Income Tax Act 2007 (2007 No 97)**

In section CF 1(f), after “parental leave payment”, insert “or preterm baby payment”.

Replace section MA 7(2)(c) with:

- (c) a person is treated as employed in any week in relation to which the person receives parental leave payments or preterm baby payments under Part 7A of the Parental Leave and Employment Protection Act 1987 for the number of hours that the person would have worked in a week that the person normally worked in their last period of employment before that week:

In section MD 9(3)(b), after “parental leave payment”, insert “or preterm baby payment”.

Replace section MD 11(5)(b) with:

- (b) becomes the primary carer (as defined in the Parental Leave and Employment Protection Act 1987) in respect of 2 or more children within a 4-week period.

In section MD 11(1)(b)(ii), after “parental leave payment”, insert “or preterm baby payment”.

**Income Tax Act 2007 (2007 No 97)**—*continued*

In section RD 5, replace the heading above subsection (7) with:

*Parental leave and preterm baby payments*

In section RD 5(7), after “parental leave payment”, insert “or preterm baby payment”.

**Tax Administration Act 1994 (1994 No 166)**

Repeal section 24D.

In section 85H(1)(a) and (b), after “parental leave payments”, insert “or preterm baby payments”, in each place.

In section 85H(2), after “parental leave payment”, insert “or preterm baby payment”.

In section 85H(3), after “paid parental leave”, insert “or for preterm baby payments”.

In section 85H(5), definition of **applicant**, after “parental leave payment”, insert “or preterm baby payment”.

In section 85H(5), definition of **applicant information**, in paragraph (a), after “parental leave payments”, insert “or preterm baby payments”.

In section 85I(1), after “parental leave payments”, insert “or preterm baby payments”.

In section 85I(1)(b), after “payment of parental leave”, insert “or for preterm baby payments”.

In section 85I(3), after “parental leave payment”, insert “or preterm baby payment”.

**Legislative history**

8 March 2016	Divided from Employment Standards Legislation Bill (Bill 53–2) as Bill 53–3A
10 March 2016	Third reading
17 March 2016	Royal assent

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