

Parental Leave and Employment Protection Amendment Regulations 2006

Preamble

At Wellington this 23rd day of May 2006

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

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1 Title

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

2 Commencement

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

3 Principal regulations amended

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

4 Application of amendments made by these regulations

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

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

5 Application

Regulation 3 is amended by revoking subclauses (2) and (3) and substituting the following subclause:

- “(2) The amendments to these regulations made by the Parental Leave and Employment Protection Amendment Regulations 2006 apply in accordance with regulation 4 of those regulations.”

6 New regulation 7 substituted

Regulation 7 is revoked and the following regulation substituted:

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

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

7 Information that mothers must give

- (1) Regulation 8 is amended by inserting the following subclause after subclause (1):
- “(1A) A mother who applies for a parental leave payment as a self-employed person must also specify, on the application for a parental leave payment,—

- “(a) her current or estimated tax code; and
 - “(b) the parental leave commencement date and, in the case of a mother who is intending to take a period of parental leave of less than 14 weeks, the date on which she intends to return to work; and
 - “(c) that she has worked as a self-employed person for at least an average of 10 hours a week over the immediately preceding 6 months or the immediately preceding 12 months before the expected date of delivery of the child (or, in the case of adoption, the date on which she, with a view to adoption, first assumes care of the child); and
 - “(d) if the mother is engaged in multiple self-employment, which of the following categories she falls within:
 - “(i) she is engaged in more than 1 type of work concurrently during either a 6-month or 12-month period:
 - “(ii) she is engaged in more than 1 type of work consecutively during either a 6-month or 12-month period with the break between the types of work being no greater than 30 days; and
 - “(e) that she will not work while receiving parental leave payments, subject to section 71CD of the Act.”
- (2) Regulation 8(2) is amended by inserting “and (1A) (as the case may be)” after “subclause (1)”.

8 New regulation 8A inserted

The following regulation is inserted after regulation 8:

- “8A Documents that must be provided with application if mother is self-employed**
- “(1) An application for a parental leave payment made by a mother as a self-employed person must be accompanied by—
- “(a) a certificate or a copy of a certificate from a medical practitioner or a midwife stating that the mother is pregnant and stating the expected date of delivery; or
 - “(b) in the case of adoption,—
 - “(i) a letter from a Social Worker (as defined in section 2 of the Adoption Act 1955) stating that the self-employed person is keeping or will be keep-

- ing a child in the self-employed person's home with a view to adoption; or
- “(ii) a certified copy of an interim order of a court under section 6(1)(b) of the Adoption Act 1955; or
 - “(iii) a copy of a statutory declaration to the effect that the self-employed person has assumed the care of a child with a view to adoption by the self-employed person, or by the self-employed person and her spouse or partner jointly.
- “(2) The application must also be accompanied by either—
- “(a) a statement and declaration by a chartered accountant in respect of the mother in the form set out in form 5 of the Schedule; or
 - “(b) a declaration made by the mother, in accordance with the Oaths and Declarations Act 1957, in the form set out in form 6 of the Schedule.”

9 Information that employers must give

Regulation 9(2)(d)(i) is amended by omitting “; or” and substituting “; and”.

10 New regulation 10 substituted

Regulation 10 is revoked and the following regulation is substituted:

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

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

11 Information that mothers and spouses must give on transfer application

- (1) The heading to regulation 11 is amended by inserting “or partners” after “spouses”.
- (2) Regulation 11 is amended by revoking subclause (3) and substituting the following subclauses:
 - “(3) If the mother’s spouse or partner to whom all or part of the entitlement to a parental leave payment is to be transferred is a self-employed person, the mother must specify on the transfer application that the self-employed person is her spouse or partner and the spouse or partner must specify—
 - “(a) his or her current or estimated tax code; and
 - “(b) the date that the spouse or partner will commence parental leave and, in the case of a spouse or partner who intends to take a period of parental leave of less than 14 weeks, the date on which he or she intends to return to work; and
 - “(c) that he or she has worked as a self-employed person for at least an average of 10 hours a week over the immediately preceding 6 months or the immediately preceding 12 months before the expected date of delivery of the child (or, in the case of adoption, the date on which he or she, with a view to adoption, first assumes care of the child); and
 - “(d) if the spouse or partner is engaged in multiple self-employment, which of the following categories he or she falls within:
 - “(i) he or she is engaged in more than 1 type of work concurrently during either a 6-month or 12-month period:
 - “(ii) he or she is engaged in more than 1 type of work consecutively during a 6-month or 12-month period with the break between the types of work being no greater than 30 days; and
 - “(e) that he or she will not work while receiving parental leave payments, subject to the exceptions in section 71CD of the Act; and
 - “(f) that he or she intends to assume care of the child to be born to his or her spouse or partner, or intends to assume

(with a view to adopt) the care of a child who is not more than 5 years of age.

- “(4) The mother and the spouse or partner must make a statement that the information given under subclauses (1) to (3) (as the case may be) is correct.”

12 New regulation 11A inserted

The following regulation is inserted after regulation 11:

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

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

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

13 Information that employers must give on transfer application

- (1) Regulation 12(1) is amended by omitting “the employer” and substituting “an employer”.
- (2) Regulation 12(2)(d)(i) is amended by omitting “; or” and substituting “; and”.

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

Regulation 13(1) is amended by omitting “section 39A” and substituting “section 72B”.

15 Notices about early return to work, etc

- (1) Regulation 14 is amended by omitting subclause (1) and substituting the following subclause:

- “(1) This regulation applies to a mother or her spouse or partner if, during the period for which either of them is receiving a parental leave payment under the Act,—
- “(a) the one receiving the payment returns to work as an employee or self-employed person; or
 - “(b) the fixed term employment agreement of the one receiving the payment ends; or
 - “(c) the one receiving the payment resigns from his or her employment or ceases to be self-employed.”
- (2) Regulation 14(2)(b) is amended by inserting “or of cessation of self-employment” after “effect”.

16 New forms added to Schedule

The Schedule is amended by adding the form 5 and form 6 set out in the Schedule of these regulations.

Schedule

r 16

New form 5 and form 6 added to principal regulations

“Form 5

rr 8A(2), 11A

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

“

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

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

Information to be provided in respect of self-employed person

[*State name of self-employed person*] of [*state place of abode and occupation*]

Form 5—continued

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

*Delete if inapplicable.

Declaration by chartered accountant

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

.....
 Signature of chartered accountant

 Name of chartered accountant

 Date

“Form 6 rr 8A(2), 11A
 “Declaration to be made by self-employed
 persons”

“

Form 6—*continued*

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

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

Declaration by self-employed person

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

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

Form 6—*continued*

- expected date of delivery of my child (or children); or
 date on which I will assume the care of a child (or children) with a view to adoption

are or will be \$[*state amount*],—

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

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

.....

Justice of the Peace

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

Diane Morcom,
Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations amend the Parental Leave and Employment Protection Regulations 2002 (the **principal regulations**). Most of the amendments come into force on 1 July 2006.

The amendments apply in respect of children born, expected to be born, or adopted on or after 1 July 2006. However, applications for parental leave payments and the transfer of parental leave payments may be made before that date.

These regulations set out the information and documents that must be provided in respect of a self-employed person who is applying for a parental leave payment or the transfer of a parental leave payment.

Notably, a self-employed person must provide either—

- a statement and declaration by his or her chartered accountant relating to his or her eligibility for a parental leave payment; or
- a declaration under the Oaths and Declarations Act 1957 by the self-employed person relating to his or her eligibility for a parental leave payment.

The form of the statement and declaration by the chartered accountant and the alternative declaration by the self-employed person are set out in new form 5 and form 6.

Other regulations in the principal regulations are also amended so that self-employed persons are treated consistently with employees. For example, self-employed persons who return to work early are required to notify the Inland Revenue Department in the same way that employees are required to do so.

Issued under the authority of the Acts and Regulations Publication Act 1989.
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