

Reprint
as at 1 July 2020



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

Jerry Mateparae, Governor-General

Order in Council

At Wellington this 21st day of March 2016

Present:

His Excellency the Governor-General in Council

These regulations are made under section 73 of the Parental Leave and Employment Protection Act 1987 and section 237 of the Employment Relations Act 2000—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister for Workplace Relations and Safety (made after consultation with the persons or organisations that the Minister considered appropriate).

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Note

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

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

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Regulations

1 Title

These regulations are the Parental Leave and Employment Protection Regulations 2016.

2 Commencement

- (1) Regulation 5 and Schedule 1 come into force on the day after the date on which the making of these regulations is notified in the *Gazette*.
- (2) The rest of these regulations come into force on 1 April 2016.

3 Application

These regulations apply to a person who applies for parental leave or 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 the child on or after 1 April 2016.

4 Interpretation

- (1) In these regulations, unless the context otherwise requires,—

6-month employment test has the meaning given to it in section 2BA(1)(a) of the Act

12-month employment test has the meaning given to it in section 2BA(1)(b) of the Act

Act means the Parental Leave and Employment Protection Act 1987

parental leave payment threshold test has the meaning given to it in section 2BA(4) of the Act

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

- (2) Any other term or expression defined in the Act and used, but not defined, in these regulations has the same meaning as it has in the Act.

5 Transitional, savings, and related provisions

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

*Evidence and forms relating to parental leave entitlements***6 Evidence to be provided where primary carer is not biological mother or her spouse or partner**

- (1) This regulation applies to an employee who applies for parental leave in respect of a child to whom the employee, or the employee's spouse or partner, did not give birth.
- (2) The employee must provide, with his or her notice under section 33 of the Act, the following evidence that the employee, or his or her spouse or partner, is or will be the primary carer in respect of the child:
 - (a) if a court order has the effect of placing the child in the day-to-day care or custody of the employee, or his or her spouse or partner, a certified copy of that order; or
 - (b) if a court order places the child in the custody of the chief executive of the Ministry of Social Development, or an organisation or body approved under section 396 of the Oranga Tamariki Act 1989, a copy of a letter from the chief executive of that Ministry or that organisation or body confirming the date that the employee, or his or her spouse or partner, became or will become the primary carer in respect of the child; or
 - (c) if neither paragraph (a) nor (b) applies, a statutory declaration in form 1 of Schedule 2.

Regulation 6 heading: replaced, on 17 March 2017, by regulation 4(1) of the Parental Leave and Employment Protection Amendment Regulations 2017 (LI 2017/13).

Regulation 6(1): amended, on 17 March 2017, by regulation 4(2) of the Parental Leave and Employment Protection Amendment Regulations 2017 (LI 2017/13).

Regulation 6(2): amended, on 17 March 2017, by regulation 4(3) of the Parental Leave and Employment Protection Amendment Regulations 2017 (LI 2017/13).

Regulation 6(2)(a): amended, on 17 March 2017, by regulation 4(4) of the Parental Leave and Employment Protection Amendment Regulations 2017 (LI 2017/13).

Regulation 6(2)(b): amended, on 14 July 2017, by section 149 of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31).

Regulation 6(2)(b): amended, on 17 March 2017, by regulation 4(5) of the Parental Leave and Employment Protection Amendment Regulations 2017 (LI 2017/13).

7 Employer's notice about parental leave entitlement

A notice under section 36 of the Act must be in form 2 of Schedule 2.

*Applications for parental leave payment***8 Manner in which application for parental leave payment must be made**

- (1) An application for a parental leave payment must be made by—
 - (a) providing the information and documentation required by these regulations, in writing, on the form provided by the Commissioner of Inland Revenue for the purpose; and

- (b) sending the form to the address specified on the form.
- (2) The application must be signed by—
 - Applications by employees*
 - (a) the applicant and his or her employer, if the application—
 - (i) is made by a person who qualifies for a parental leave payment by meeting the parental leave payment threshold test based on work for a single employer; and
 - (ii) relies on income from that employer only for the purpose of establishing the amount of parental leave payment; or
 - (b) the applicant and a person authorised to take statutory declarations under the Oaths and Declarations Act 1957, if the application—
 - (i) is made by a person who qualifies for a parental leave payment by meeting the parental leave payment threshold test based on work for more than 1 employer; or
 - (ii) relies on income from more than 1 employer for the purpose of establishing the amount of parental leave payment; or
 - Applications by self-employed persons*
 - (c) the applicant and his or her chartered accountant or tax advisor, if the application is made by a self-employed person who has a chartered accountant or tax advisor; or
 - (d) the applicant and a person authorised to take statutory declarations under the Oaths and Declarations Act 1957, if the application is made by a self-employed person who does not have a chartered accountant or a tax advisor.

9 Information and documentation that biological mother must provide

- (1) This regulation specifies the information and documentation that must be provided by a biological mother who applies for a parental leave payment.

Information that must be provided

- (2) A biological mother who applies for a parental leave payment must—
 - (a) specify the following personal details on her application:
 - (i) her name, IRD number, and postal address; and
 - (ii) her tax code; and
 - (iii) the birth date of the child or the expected date of delivery of the child; and
 - (iv) the start date of her parental leave payment period; and
 - (v) the end date of her parental leave payment period, if she intends to take less than 26 weeks of the parental leave payment; and

- (vi) the particulars of a bank account into which the payment may be made; and
- (b) provide—
 - (i) a statement that the information given under paragraph (a) is correct; and
 - (ii) an acknowledgement that she elects to receive a parental leave payment instead of the parental tax credit and that she understands that she and her spouse or partner lose their entitlement to the parental tax credit by receiving a parental leave payment.

Document that must be provided

- (3) A biological mother who applies for a parental leave payment must provide a certificate or a copy of a certificate from a medical practitioner or a midwife that states—
 - (a) that she is pregnant and the expected date of delivery; or
 - (b) that she has given birth.

Additional information that must be provided

- (4) The biological mother must also provide the information specified in—
 - (a) regulation 11, if she is applying as an employee; or
 - (b) regulation 12, if she is applying as a self-employed person.

Regulation 9(2)(a)(v): amended, on 1 July 2020, by section 26 of the Parental Leave and Employment Protection Amendment Act 2017 (2017 No 45).

10 Information and documentation that primary carer other than biological mother must provide

- (1) This regulation specifies the information and documentation that must be provided by a primary carer, other than the biological mother, who applies for a parental leave payment.

Information that must be provided

- (2) A primary carer, other than the biological mother, must—
 - (a) specify the following personal details on his or her application:
 - (i) his or her name, IRD number, and postal address; and
 - (ii) his or her tax code; and
 - (iii) the start date of the person's parental leave payment period (being the date on which the person first became the primary carer in respect of the child); and
 - (iv) the end date of the person's parental leave payment period, if the person intends to take less than 26 weeks of the parental leave payment; and

- (v) the particulars of a bank account into which the payment may be made; and
- (b) provide—
 - (i) a statement that the information given under paragraph (a) is correct; and
 - (ii) an acknowledgement that the person elects to receive a parental leave payment instead of the parental tax credit and understands that he or she and his or her spouse or partner lose their entitlement to the parental tax credit by receiving a parental leave payment.

Document that must be provided

- (3) An applicant, other than the biological mother, must also provide with the application for a parental leave payment evidence that he or she is the primary carer in respect of the child, as follows:
 - (a) if a court order has the effect of placing the child in the day-to-day care or custody of the applicant, a certified copy of that order; or
 - (b) if a court order places the child in the custody of the chief executive of the Ministry of Social Development, or an organisation or body approved under section 396 of the Oranga Tamariki Act 1989, a copy of a letter from the chief executive of that Ministry or that organisation or body confirming the date that the applicant became or will become the primary carer in respect of the child; or
 - (c) if neither paragraph (a) nor (b) applies, a statutory declaration in form 1 of Schedule 2.

Additional information that must be provided

- (4) A primary carer, other than the biological mother, must also provide the information specified in—
 - (a) regulation 11, if he or she is applying as an employee; or
 - (b) regulation 12, if he or she is applying as a self-employed person.

Regulation 10(2)(a)(iv): amended, on 1 July 2020, by section 26 of the Parental Leave and Employment Protection Amendment Act 2017 (2017 No 45).

Regulation 10(3)(b): amended, on 14 July 2017, by section 149 of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31).

11 Information relating to employees that must be provided

- (1) This regulation specifies the additional information that must be provided in applications by the following persons:
 - (a) a person (whether the biological mother or a primary carer other than the biological mother) who applies for a parental leave payment based on work as an employee:

- (b) a spouse or partner who applies under section 71E of the Act to receive a transfer of all or part of a person's entitlement to a parental leave payment, if that spouse or partner qualifies for a parental leave payment based on work as an employee:
 - (c) a spouse or partner who applies to succeed to a person's entitlement to a parental leave payment under section 72B of the Act, if that spouse or partner qualifies for a parental leave payment based on work as an employee.
- (2) The employee must provide a statement that he or she will notify the Commissioner of Inland Revenue if he or she works for more than the number of keeping-in-touch hours permitted under section 71CE of the Act during the period for which the employee receives a parental leave payment.
- (3) The employee must also provide the following, which must be verified in accordance with subclause (4):
 - (a) a statement that the employee meets the parental leave payment threshold test; and
 - (b) details of the employee's ordinary weekly pay or average weekly income from work (whichever is the greater).
- (4) If the employee—
 - (a) qualifies for a parental leave payment by meeting the parental leave payment threshold test based on work for a single employer, and relies on income from that employer only for the purpose of establishing the amount of the parental leave payment, the following information must be provided by that employer:
 - (i) the employer's name, IRD number, and postal address; and
 - (ii) a statement by the employer as to whether the statement and details provided in accordance with subclause (3) are correct:
 - (b) qualifies for a parental leave payment by meeting the parental leave payment threshold test based on work for more than 1 employer, or relies on income from more than 1 employer for the purpose of establishing the amount of the parental leave payment, the employee must provide a declaration in accordance with the Oaths and Declarations Act 1957 in form 3 of Schedule 2.

12 Information that applicants who are self-employed persons must provide

- (1) This regulation specifies the additional information that must be provided by the following persons:
 - (a) a person (whether the biological mother or a primary carer other than the biological mother) who applies for a parental leave payment based on work as a self-employed person:

- (b) a spouse or partner who applies under section 71E of the Act to receive a transfer of all or part of a person's entitlement to a parental leave payment, if that spouse or partner qualifies for a parental leave payment based on work as a self-employed person;
 - (c) a spouse or partner who applies to succeed to another person's entitlement to a parental leave payment under section 72B of the Act, if that spouse or partner qualifies for a parental leave payment based on work as a self-employed person.
- (2) The self-employed person must provide—
- (a) a statement that he or she—
 - (i) meets the parental leave payment threshold test; and
 - (ii) will notify the Commissioner of Inland Revenue if he or she returns to work (otherwise than as permitted under section 71CD of the Act); and
 - (b) details of the self-employed person's average weekly income from work over a 6-month or 12-month period (calculated in accordance with section 71CBA of the Act); and
 - (c) either—
 - (i) a statement and declaration by a chartered accountant or a tax advisor in respect of the self-employed person in form 4 of Schedule 2; or
 - (ii) if the self-employed person does not have a chartered accountant or a tax advisor, a declaration made by the self-employed person in accordance with the Oaths and Declarations Act 1957, in form 3 of Schedule 2.

Applications for transfer of or succession to paid parental leave entitlements

13 Manner in which application for transfer of parental leave payment must be made

- (1) This regulation applies if a person (the **transferee**) applies to receive a transfer of all or part of his or her spouse or partner's entitlement to a parental leave payment under section 71E of the Act.
- (2) The application must be made by—
 - (a) providing the information and documentation required by these regulations, in writing, on the form provided by the Commissioner of Inland Revenue for the purpose; and
 - (b) sending the form to the address specified on the form.
- (3) The application must be signed by the transferee and his or her spouse or partner.
- (4) The application must also be signed—

- (a) by the employer of the transferee, if the transferee—
 - (i) qualifies for a parental leave payment by meeting the parental leave payment threshold test based on work for a single employer; and
 - (ii) relies on income from that employer only for the purpose of establishing the amount of parental leave payment; or
- (b) by the transferee's chartered accountant or tax advisor, if the transferee is self-employed and has a chartered accountant or tax advisor; or
- (c) by a person authorised to take statutory declarations under the Oaths and Declarations Act 1957, if the transferee—
 - (i) qualifies for a parental leave payment by meeting the parental leave payment threshold test based on work for more than 1 employer; or
 - (ii) relies on income from more than 1 employer for the purpose of establishing the amount of parental leave payment; or
 - (iii) is self-employed and does not have a chartered accountant or a tax advisor.

14 Manner in which application to succeed to parental leave payment must be made

- (1) This regulation applies if a spouse or partner applies to succeed to a person's entitlement to a parental leave payment under section 72B of the Act.
- (2) The application must be made by—
 - (a) providing the information and documentation required by these regulations, in writing, on the form provided by the Commissioner of Inland Revenue for the purpose; and
 - (b) sending the form to the address specified on the form.
- (3) The application must be signed by the spouse or partner who wishes to succeed to the payment.
- (4) The application must also be signed—
 - (a) by the employer of the spouse or partner who wishes to succeed to the payment if that spouse or partner—
 - (i) qualifies for a parental leave payment by meeting the parental leave payment threshold test based on work for a single employer; and
 - (ii) relies on income from that employer only for the purpose of establishing the amount of parental leave payment; or
 - (b) if the spouse or partner who wishes to succeed to the payment is self-employed, by the self-employed person's chartered accountant or tax advisor; or

- (c) by a person authorised to take statutory declarations under the Oaths and Declarations Act 1957, if the spouse or partner who wishes to succeed to the payment—
 - (i) qualifies for a parental leave payment by meeting the parental leave payment threshold test based on work for more than 1 employer; or
 - (ii) relies on income from more than 1 employer for the purpose of establishing the amount of parental leave payment; or
 - (iii) is self-employed and does not have a chartered accountant or a tax advisor.
- (5) A spouse or partner who wishes to succeed to a person's entitlement to a parental leave payment under section 72B of the Act must—
 - (a) specify all information that is required by these regulations in relation to the person from whom the payments are to be transferred; and
 - (b) if required to do so by the department, attach to the application—
 - (i) a copy of the death certificate in respect of the person from whom the payments are to be transferred; or
 - (ii) evidence of the authority under which the spouse or partner has become the person who has permanent primary responsibility for the care, development, and upbringing of the child, to the exclusion of the person from whom the payments will be transferred.

15 Information that must be provided in transfer or succession application

- (1) This regulation specifies the information and documents that must be provided by a spouse or partner (the **transferee**) who applies to—
 - (a) receive a transfer of all or part of a person's entitlement to a parental leave payment under section 71E of the Act; or
 - (b) succeed to a person's entitlement to a parental leave payment under section 72B of the Act.

Information that must be provided

- (2) If no application has been made by the biological mother for a parental leave payment, a transferee who applies to succeed under section 72B of the Act must provide the information set out in regulation 9 or 10 (whichever is applicable).
- (3) The transferee must specify, on the application,—
 - (a) the name and IRD number of the person from whom the entitlement is to be transferred; and
 - (b) the name, IRD number, and postal address of the transferee; and
 - (c) the transferee's tax code; and
 - (d) the start date of the transferee's parental leave payment period; and

- (e) the end date of the transferee's parental leave payment period, if the combined total parental leave payment period will be less than 26 weeks; and
 - (f) the particulars of a bank account into which the payment may be made.
- (4) The following persons must make a statement that the information given in subclause (3) is correct:
- (a) in the case of a transfer under section 71E of the Act, both the transferee and the spouse or partner from whom the entitlements are to be transferred; and
 - (b) in the case of a succession under section 72B of the Act, the transferee.
- (5) If the transferee is an employee, the information specified in regulation 11 must also be provided.
- (6) If the transferee is a self-employed person, the information specified in regulation 12 must also be provided.

Regulation 15(3)(e): amended, on 1 July 2020, by section 26 of the Parental Leave and Employment Protection Amendment Act 2017 (2017 No 45).

Application for preterm baby payment

16 Applications for preterm baby payment

- (1) This regulation specifies the manner in which an application for a preterm baby payment must be made and the information and documentation that must be provided by a person who applies for a preterm baby payment.

Manner in which application must be made

- (2) If an application for a parental leave payment in respect of the child has not already been made, an application for a preterm baby payment must be—
- (a) made in writing on the same form that is provided by the Commissioner of Inland Revenue for the purpose of applying for a parental leave payment; and
 - (b) sent to the address specified for that purpose on the form.
- (3) If an application for a parental leave payment in respect of the child has already been made, the applicant must notify the Commissioner of Inland Revenue (in writing, in person, or by telephone) that—
- (a) the baby has been born before the end of the 36th week of gestation; and
 - (b) the applicant wishes to receive a preterm baby payment.

Information and documentation that must be provided

- (4) An applicant for a preterm baby payment must—
- (a) provide all information and documentation that is required under regulations 10 to 13 for that person to apply for a parental leave payment; and
 - (b) provide—

- (i) a copy of the baby's birth certificate, or a medical certificate confirming the date of birth of the baby; and
- (ii) a medical certificate from the lead maternity carer confirming the baby's original expected due date; and
- (c) if the applicant is an employee, provide a statement that the applicant will notify the Commissioner of Inland Revenue if he or she works more than the number of keeping-in-touch hours permitted under section 71DB(1) of the Act during the period in relation to which a preterm baby payment is made.

Miscellaneous provisions

17 Notices about early return to work, etc

- (1) This regulation applies to any person (including the biological mother and any primary carer other than the biological mother) who—
 - (a) receives a parental leave payment; and
 - (b) returns to work as an employee or a self-employed person during the period in relation to which the parental leave payment is made.
- (2) The notice that the person is required to give under section 71U of the Act—
 - (a) must be made in writing or by telephone to the Commissioner of Inland Revenue; and
 - (b) must specify the person's IRD number and the date on which he or she returned or will return to work.

18 Procedures relating to determinations and demand notices

- (1) A demand notice by a Labour Inspector under section 70B of the Act must be in form 5 of Schedule 2.
- (2) The Employment Relations Authority Regulations 2000 apply to an objection to a determination or a demand notice under section 70C of the Act, as a document commencing proceedings before the Authority, except that—
 - (a) the objection need not include a statement of the problem or matter to which the application relates (as required by regulation 6(1)(a) of those regulations); and
 - (b) the objection must be accompanied by a copy of the determination or demand notice to which the objection relates; and
 - (c) the employer or employee who lodges the objection must, as soon as practicable after lodging the objection, serve a copy of the objection on the Labour Inspector who made the determination or served the demand notice.

*Revocation***19 Revocation**

The Parental Leave and Employment Protection Regulations 2002 (SR 2002/98) are revoked.

**Schedule 1
Transitional, savings, and related provisions**

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**Part 1
Provisions relating to regulations as made****1 Provision of information and use of forms before 1 April 2016**

- (1) This clause applies if a person applies for parental leave or for a parental leave payment in respect of a child and—
 - (a) the child is expected to be born to the person, or to his or her spouse or partner, on or after 1 April 2016; or
 - (b) the person, or his or her spouse or partner, will become the primary carer in respect of the child on or after 1 April 2016.
- (2) If this clause applies,—
 - (a) the Commissioner of Inland Revenue may, before 1 April 2016, seek any information that these regulations require to be provided in support of an application for a parental leave payment as if these regulations were already in force; and
 - (b) the forms set out in Schedule 2 may be used before 1 April 2016 as if these regulations were already in force.

Schedule 2

Forms

Form 1

Declaration as to assumption of responsibility for care of child by primary carer

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This form must accompany an application for parental leave, or for a parental leave payment, by a primary carer who is not the biological mother or her spouse or partner, if that person does not have—

- (a) a court order that has the effect of placing the child in his or her day-to-day care or custody; or
- (b) a letter from the chief executive of the Ministry of Social Development, or an organisation approved under section 396 of the Oranga Tamariki Act 1989, confirming the date on which the person became or will become the primary carer in respect of the child.

Declaration

I, [*name*] of [*address, occupation*], solemnly and sincerely declare that I have/will have* permanent primary responsibility for the care, development, and upbringing of the following child:

Child's full name: [*name*]

Child's date of birth: [*date*]

The child came/will come into my care on [*date*].

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

Declared at [*place, date*]

(Justice of the Peace/other person authorised to take a statutory declaration*)

*Select one.

Schedule 2 form 1: amended, on 14 July 2017, by section 149 of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31).

Form 2
Notice about entitlement to parental leave

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Section 36, Parental Leave and Employment Protection Act 1987

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

To [name and postal address of employee]

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

2 *For this paragraph select the statement that applies.*

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

or

You are not entitled to take parental leave because, at the expected date of delivery of the child/at the date on which you will assume responsibility for the care of the child*, you will not have been employed for at least an average of 10 hours a week over the immediately preceding 6 months or 12 months.

*Select one.

or

You are not entitled to take parental leave because [state reasons why employee is not entitled to take parental leave].

3 *Select this paragraph if the employee is entitled to take parental leave.*

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

*Select one.

4 *If the employment cannot be kept open, select the statement that applies; otherwise, omit this paragraph.*

Your employment cannot be kept open because of the occurrence of a redundancy situation.

or

Your employment cannot be kept open because your period of leave exceeds 4 weeks and a temporary replacement is not reasonably practicable due to your position being a key position.

5 *Omit this paragraph if it does not apply.*

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

6 *Omit this paragraph if it does not apply.*

You may, by making a parental leave complaint under section 56 of the Parental Leave and Employment Protection Act 1987, dispute my statement that you are not entitled to take parental leave or that your position cannot be kept open. If you wish to make a complaint, do not delay, because the time for making such a complaint is limited. Your union representative, your solicitor, or the Ministry of Business, Innovation, and Employment will advise you.

Date:

Signature of employer:

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

- 1 Employees are eligible for—
- (a) up to 52 weeks' parental leave from their employment with an employer if, on the relevant date, they will have worked for the same employer for at least 12 months for at least an average of 10 hours a week; or
 - (b) up to 26 weeks' parental leave from their employment with an employer if, on the relevant date, they will have worked for the same employer for the immediately preceding 6 months for at least an average of 10 hours a week.

The relevant date is the expected date of delivery of the child or the date on which the employee first becomes the primary carer in respect of the child.

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

Entitlements for employees with 12 months' service

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

- (a) a biological mother may start her primary carer leave early if directed to do so by her lead maternity carer or by her employer;
- (b) the biological mother's spouse or partner may take up to 2 weeks of partner's leave.

Primary carer leave must be taken in 1 continuous period not exceeding 26 weeks.

Entitlements for employees with 6 months' service

- 4 Primary carer leave, partner's leave, and extended leave are available to employees who have worked for the same employer for at least an average of 10 hours a week over the immediately preceding 6 months. Primary carer leave and extended leave amount to 26 weeks, which may be shared by the spouses or partners in the child's first year. The period of 26 weeks may be exceeded as follows:

- (a) a biological mother may start her primary carer leave early if directed to do so by her lead maternity carer or by her employer;
- (b) the biological mother's spouse or partner may take up to 1 week of partner's leave.

Primary carer leave must be taken in 1 continuous period not exceeding 26 weeks.

Commencement of primary carer leave

- 5 Primary carer leave for all employees (whether they qualify on the basis of 6 or 12 months' service) may begin—
- (a) up to 6 weeks before the expected date of delivery (in the case of a child born to the employee) if the biological mother gives to her employer not less than 21 days' notice in writing of that date; or
 - (b) if paragraph (a) does not apply, no earlier than the date on which the employee first becomes the primary carer in respect of the child; or
 - (c) on any date before the date of confinement that is agreed between the primary carer and his or her employer; or
 - (d) on a date specified by the biological mother's lead maternity carer if—
 - (i) the biological mother is pregnant; and
 - (ii) the lead maternity carer certifies that, in his or her opinion, the biological mother should begin her maternity leave on that date; and
 - (iii) the biological mother gives the certificate to her employer; or
 - (e) on a date appointed by the biological mother's employer if—
 - (i) the biological mother is pregnant; and

- (ii) the biological mother is unable, by reason of her pregnancy, to perform her work safely, or is incapable of performing her work adequately; and
- (iii) there is no other suitable work available.

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

If, by reason of pregnancy, a woman is unable to perform her work safely, or is incapable of performing her work adequately, her employer may temporarily transfer her to another job.

Schedule 2 form 2 note 3: amended, on 1 July 2020, by section 26 of the Parental Leave and Employment Protection Amendment Act 2017 (2017 No 45).

Schedule 2 form 2 note 4: amended, on 1 July 2020, by section 26 of the Parental Leave and Employment Protection Amendment Act 2017 (2017 No 45).

Form 3

Declaration relating to parental leave payment threshold test

rr 11, 12

This form must accompany an application for a parental leave payment by, or an application to transfer a parental leave payment to, a person who—

- (a) is self-employed and does not have a chartered accountant or tax advisor; or
- (b) qualifies for a parental leave payment by meeting the parental leave payment threshold test based on work for more than 1 employer, or relies on income from more than 1 employer for the purpose of establishing the amount of the parental leave payment.

Declaration

I, [*name*] of [*address, occupation*], solemnly and sincerely declare that—

1 *For this paragraph select the statement that applies.*

- (a) I was/am* an employee.
*Select one.
- (b) I was/am* self-employed because—
*Select one.

Select the statement(s) that apply.

- (i) I provide goods or services for hire or reward under a contract for services:
- (ii) I carry on a business (including a profession, a trade, manufacturing, or an undertaking carried on for pecuniary profit), including in partnership with another person:
- (iii) I work for a trust in a business (as defined in paragraph (ii)) carried on by the trust.

2 I have worked/will have worked* as an employee/a self-employed person* for at least an average of 10 hours per week over any 26 of the 52 weeks immediately preceding—

*Select one.

Select the statement that applies

- the expected date of delivery of my child/children*.
- or*
- the first date on which I/my spouse or partner* became/will become* the primary carer in respect of the child/children*.

*Select one.

3 To the best of my knowledge, the income I have provided in my application is correct.

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

Declared at [*place, date*]

(Justice of the Peace/other person authorised to take a statutory declaration*)

*Select one.

Form 4

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

r 12

This form must accompany the following applications:

- (a) an application for a parental leave payment, if the person applying is self-employed and has a chartered accountant or a tax advisor:
- (b) an application for the transfer of a parental leave payment, if the person to whom all or part of the entitlement to a parental leave payment is to be transferred is self-employed.

Information to be provided in respect of self-employed person

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

- (a) is self-employed because he or she is working, other than as an employee, doing 1 or more of the following:
 - (i) providing goods or services for hire or reward under a contract for services:
 - (ii) carrying on a business (including a profession, a trade, manufacturing, or an 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) has worked at least an average of 10 hours per week over any 26 of the 52 weeks immediately preceding the expected date of delivery of his or her child (or children)/the date on which he or she will become the primary carer in respect of the child (or children)*; and
*Select one.
- (c) his or her average weekly income from work in the 6 months/12 months* immediately preceding the expected date of delivery of his or her child (or children)/the date on which he or she became/will become* the primary carer in respect of the child (or children)*, as set out in his or her application, is correct.
*Select one.

Declaration by chartered accountant/tax advisor*

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

*Select one.

Date:

Name:

Signature:

(chartered accountant/tax advisor*)

*Select one.

Note

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

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

Form 5
Demand notice

r 18

*Section 70B(1), Parental Leave and Employment Protection Act 1987***To** *[name and address of employer]*

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

*Select one.

2 *For this paragraph select the statement that applies.*

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

or

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

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

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

*Select one.

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

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

Demand

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

Objection

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

Date:

Name:

Signature:

(Labour Inspector)

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

Additional information for employer

1 Your right to lodge objection

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

2 Consequences of this demand notice

This demand notice has the consequences specified in paragraphs 3 to 5—

- (a) if no objection is lodged before the close of the period of 28 days specified in paragraph 1; or
- (b) if any objection lodged before the close of that period is withdrawn (whether before or after the close of that period).

3 Imposition of legal requirement

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

4 Evidence of leave entitlement

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

5 Enforcement by compliance order

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

Michael Webster,
Clerk of the Executive Council.

Reprints notes

1 *General*

This is a reprint of the Parental Leave and Employment Protection Regulations 2016 that incorporates all the amendments to those regulations as at the date of the last amendment to them.

2 *Legal status*

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

3 *Editorial and format changes*

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

4 *Amendments incorporated in this reprint*

Parental Leave and Employment Protection Amendment Act 2017 (2017 No 45): section 26

Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31): section 149

Parental Leave and Employment Protection Amendment Regulations 2017 (LI 2017/13)