



# Be prepared for paid parental leave

Date : August 21, 2010

From 1 January 2011, the Federal Government's funded paid parental leave scheme (PPL scheme) will commence and eligible employees will be entitled to 18 weeks paid parental leave (PPL) at the minimum wage in addition to unpaid parental leave and any employer-funded paid parental leave they are entitled to, under workplace law.

To assist with this transition we have put together some FAQs for employees and an action list for employers to prepare for the changes.

## FACTS & QUESTIONS

As 2011 approaches, it is likely managers and HR professionals will receive a high volume of inquiries from employees about employee rights under workplace law and the government PPL scheme.

Below is a quick reference guide of essential information that may assist in answering these inquiries:

### Who Is eligible for PPL?

Employers are not involved in determining whether an employee is eligible for PPL. Applications for PPL should be made to the Family Assistance Office (FAO) at [www.familyassist.gov.au](http://www.familyassist.gov.au) ([link is external](#)).

To be eligible, the employee must be the primary carer of a child born (or adopted) from 1 January 2011 and pass the following three tests:

#### 1. Work Test:

Primary carers must be engaged in paid work for 10 out of the 13 months prior to the birth or adoption and have worked (as an employee, contractor or self-employed) for at least 330 hours over that period.

#### 2. Income Test

Primary carers must earn less than \$150,000 p.a. at the date of the claim or birth/adoption (indexed annually from 1 July 2012).

#### 3. Residency Test



Primary carers must be living in Australia as an Australian citizen or permanent resident at the date of birth or adoption and remain in Australia for the PPL period.

### **How much PPL will employees receive?**

The PPL scheme entitles eligible primary carers to 18 weeks of PPL pay at the Federal Minimum Wage which is currently \$569.90 (as adjusted). Employees may visit

[http://www.centrelink.gov.au/internet/internet.nsf/individuals/DDI\\_working\\_parents\\_estimator.htm](http://www.centrelink.gov.au/internet/internet.nsf/individuals/DDI_working_parents_estimator.htm) (link is external) to estimate how much s/he may receive and to assess whether they are better off financially applying for the baby bonus.

### **Do employees who apply for the government PPL still receive Employer Paid Parental Leave payments?**

This depends. If an employee's entitlement to paid parental leave is derived from an employment contract, industrial award, enterprise agreement or other document creating an "entitlement" the employee, generally speaking, must be paid this paid parental leave in addition to the government PPL. The exact wording of the document creating the entitlement should be considered to determine the exact position.

However, if the entitlement is derived from a company policy the situation may be different. The employer may be required to adhere to the policy unless the policy can be lawfully amended to either offset the government PPL against the existing scheme or abolish the existing policy altogether. To determine the risks of these options we strongly recommend employers seek employment law advice from an employment lawyer in Sydney relation to existing entitlements, policies and amendments.

### **Who pays the instalments?**

Until 1 July 2011, the instalments are administered by the FAO and paid as part of an employee's usual pay cycle. From 1 July 2011, the employer will administer the payments for employees with over 12 months' service.

### **Are the payments taxed?**

Yes, the payments are taxed at the employee's marginal tax rate. However, no superannuation is paid on PPL (this will be reviewed in 2 years).

Visit [www.familvassist.gov.au](http://www.familvassist.gov.au) (link is external) and follow the links on Paid Parental Leave to apply.

### **ACTION LIST**

To assist employer preparations for the PPL scheme we have put together an action list setting out what employers need to do under workplace law and when:



## **1. Legal review of existing employer paid parental leave policies - ASAP**

Many companies have existing employer-paid PPL policies in place. With the introduction of the government PPL scheme, some employers may decide to continue the company scheme and others may decide to offset the government payments against their existing scheme.

Companies with existing employer-paid PPL policies are advised to seek employment law advice from employment lawyers in Sydney to assess whether they can lawfully amend their current policies prior to the introduction of the government PPL scheme.

If policies are not amended employers must honour PPL under existing policies and procedures in addition to the government PPL benefit.

Employees who have an employee right to PPL in an award, industrial agreement, workplace agreement or employment contract must, generally speaking, be paid their full entitlement in addition to the government PPL payment. Again the exact wording of the relevant clause needs to be considered.

## **2. Register details with the Family Assistance Office (FAO) - ASAP**

From 1 January 2011 to 1 July 2011, it is optional for the company to administer PPL payments to their employees. If the company decides to administer payments from 1 January 2011 they should pre-register details with the FAO and inform relevant employees they have done so.

## **3. Record keeping obligations - from 1 January 2011**

The new PPL scheme requires employers to keep relevant written financial records and include PPL pay on employees' annual and part-year payment summaries

## **4. Notify FAO of certain events - from 1 January 2011**

- of an employee's return to work
- if and when an employee is no longer employed
- of changes to bank details or pay cycle
- of incorrect PPL amounts paid by FAO
- if the employer is unable to provide PPL pay
- in advance of ceasing to trade or of a transmission of business

## **5. Monitor 'keeping in touch days' - from 1 January 2011**

Employees on PPL are entitled to 10 paid "keeping in touch days" (KITD) without affecting their payments. Employers should encourage employees to use this entitlement to facilitate a seamless return to work and advise employees if they are approaching the end of their KITD entitlements so as to affect their PPL.

## **6. Update payroll systems - before 1 July 2011**



From 1 July 2011, employers are required to administer PPL payments and provide employees with a written statement of each PPL instalment. To prepare for this new workplace law obligation, employers should update payroll systems.

## 7. Administer payments - from 1 July 2011

The FAO will administer PPL payments until 1 July 2011 (but employers may be asked by an employee to voluntarily administer the payments between 1 January 2011 and 1 July 2011). When administering payments, employers should keep the following in mind:

- Maximum amount that can be claimed under this new workplace law scheme is \$569.90 per week (as may be amended on 1 July each year)
- Instalments should be paid according to the employee's usual pay cycle
- Instalments to commence on a date nominated by the employee on or after the birth or adoption of the child from 1 January 2011
- Tax must be deducted from the installment amounts
- Instalments are not wages for the purposes of leave accruals and don't affect other employee rights and entitlements
- Superannuation is not payable on the instalments
- Employees must be provided with a PPL pay record - usually a pay slip
- Any unpaid PPL to be returned to FAO

## More Information

A workplace lawyer in Sydney or employment law expert can provide practical employment law advice to ensure your workplace practice, policies and procedures are consistent with current workplace law.

Please call the leading employment lawyers in Sydney, the **Matthews Folbigg Workplace Solutions** team on **9635-7966** to speak with one of our employment lawyers.