

Our ref: OIA 19 - 25

18 April 2019

██████████
Email: ██████████

Dear ██████████

OFFICIAL INFORMATION ACT REQUEST – PARENTAL LEAVE POLICIES AND PROCEDURES

I refer to your email dated 11 April 2019 to the Education Review Office requesting under the Official Information Act 1982, the following:

- *Parental leave policies, procedure and arrangements for your organisation*
- *This should include: Parental leave payments and ‘top-ups’, leave for partners’ or secondary carers, pay review while on leave, any payments on leave accrued while on parental leave (is this the full rate?), flexible work arrangements, Kiwisaver contributions, and any contributions towards childcare.*

I attach a copy of ERO’s “Primary Carer/Parental Leave Policy”, and also refer you to clause 7.9, under “Parental Leave” in ERO’s [Collective Employment Agreement](#).

Yours sincerely

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Acting Deputy Chief Executive Corporate Services
Education Review Office | Te Tari Arotake Mātauranga
National Office
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Primary Carer/Parental Leave Policy - June 2017

Purpose: This policy is to set out the provisions for Primary Carer/Parental leave in the Education Review Office (ERO). This includes:

- who is entitled to access this leave
- paid parental leave
- extra provisions
- job protection
- flexible options
- return to work
- re-entry after childcare absence

In this document **child/children** means either a child born, adopted or assumed primary responsibility recently for under the age of six.

What is primary carer/parental leave?

This is an unpaid leave of absence from work for an employee to assume the care of a child either born to, adopted by the employee or where the employee becomes the primary carer of a child under the age of six.

Who is entitled to primary carer/parental leave?

Employees are eligible for primary carer/parent leave in accordance with the [Parental Leave and Employment Protection Act 1987](#).

Employees who 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 the child 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 assumption of responsibility for the care of the child (in any other case).

Parental leave is available for each respective child born, adopted or responsibility assumed. However in the case of a multiple children (at one time) this counts as one child.

Please note that paid parental leave is not available if your partner is already accessing this provision. However the extended leave provision may be used in this circumstance. (refer below under Extended Leave)

Employees must give at least one months' notice, in writing, of their intention to take primary carer/parental leave. (In some extreme circumstances this may not be possible and ERO will work with that employee for the best outcome).

Paid parental leave

Under the Parental Leave and Employment Protection Act 1987 paid parental leave maybe available for up to a maximum of 18 weeks and is paid by IRD. It is the employee's responsibility to organise

any paid parental leave. Any payment from IRD should start after all payment from the ERO has ceased. [Paid Parental Leave Application Form](#).

Extra Provisions

Special Leave

A pregnant employee prior to commencing primary carer/parental leave may take up to 10 days unpaid special leave for reasons connected to their pregnancy.

Partner Leave

The partner of the primary carer may take a continuous period of 14 days unpaid leave. This is to be taken from the estimated due date in case of an expectant partner or the date that someone becomes the primary carer. In any circumstance it can also be any date agreed upon the employer and the employee. As with any other leave this requires written managerial approval.

Extended Leave

An employee may access extended leave if they met the standard [work test](#) set out in the Parental Leave and Employment Protection Act 1987. This is either 26 weeks or 52 weeks. Extended leave may be taken by one or both of the partners either consecutively or concurrently as long as the leave in total of both partners does not exceed the total of 26/52 weeks in whole.

Parental Leave Payment from ERO

ERO employees eligible for parental leave may be entitled to a parental leave payment provided they are entitled to take up to twelve months primary carer/parental leave. (This payment is in addition to any parental leave payments made under the Parental Leave and Employment Protection Act 1987). This payment is for an employee who is taking primary career/parental leave to assume the primary care of a child under the age of six.

Details of the parental leave payment are as follows:

- a) the payment does not apply if the employee's partner receives a similar payment from another Public Service employer. Employees have an obligation to disclose such a payment by their partners' employer to ERO.
- b) an employee who is entitled to 52 weeks parental leave will be eligible for a payment equivalent to 30 days salary provided that:
 - the amount will be calculated based on the normal rate of salary applicable to the 30 day period prior to the commencement of primary carer/parental leave.
 - the payment will be pro-rated where the employee takes primary carer/parental leave of less than six weeks.
 - if both partners are employed in the Public Service and are eligible for the payment, then they are entitled to only one payment, and they may choose which partner is to receive it.
 - the employee completes a declaration that this money will be repaid should they not complete six months service following their return from parental leave.

The employee may elect to receive this payment in one of the following ways:

- a. a lump sum payment on the completion of six months service from the date of their return to work. This payment will be pro-rated if the employee takes less than 6 weeks parental leave.
- b. continue to be paid normal salary during the unpaid portion of parental leave, to the equivalent of the lump sum payment leave. (e.g. pay for 30 days)
- c. if they return to work on a part-time basis, they may elect to take this sum equal to 30 days salary as a top up allowance to supplement the part time wage. (e.g. one week's work could be made up of work 20 hours, top up allowance 20 hours making a total of 40 hours salary per week)

Once an employee has made their decision this selection cannot be changed.

Job Protection

An employee will be entitled to resume work in the same or similar position to the one that they held prior to commencing primary carer/parental leave. A similar position means:

- at the equivalent salary and category; and
- in the same location or other location in reasonable commuting distance; and
- involving responsibilities broadly comparable to those exercised in their previous position.

When an employee goes on primary carer/parental leave ERO must as first preference hold the employees position open and fill it temporarily.

If ERO is unable to keep the employees position open because a temporary replacement is not reasonably practicable due to the key position occupied within ERO then at the time the employee indicates their intention to return to duty, ERO shall provide a written offer of one of the following (in order of priority)

1. The same position if it is vacant at the time or a similar position to the one they occupied before commencing primary carer/parental leave; or
2. If this is not possible the Chief Executive may approve one of the following options:
 - a. an extension of primary carer/parental leave up to 12 months until the employees previous position or a similar position becomes available; or
 - b. an offer to the employee of a similar position in another location if one is available with transfer assistance applying; if the offer is refused the employee continues on extended leave as provided for up to 12 months; or
 - c. the appointment of the employee to a different position in the same location (a position of lower grading or one involving different duties, i.e. not a similar position as described above): if the appointment is not acceptable to the employee the employee continues on extended primary carer/parental leave for up to 12 months: or
 - d. where extended primary carer/parental leave expires and no position is available for the employee, the employee continues on leave without pay and ERO may terminate employment with three months' notice providing that an employee whose services are terminated under this provision shall be entitled to be paid the parental leave payment

from ERO equivalent to 30 working days leave that they could have earned if they had the opportunity to return to work after parental leave, provided this payment has not previously been made. This means that the payment was taken earlier, this payment will not need to be paid back.

Staffing Surplus

When a staffing surplus is declared involving a position that is usually occupied by an employee who is on primary carer/parental leave, then the same Surplus Staffing Provisions that would apply to other staff members will apply.

Any employee on primary carer/parental leave must be notified if their position is to be notified if their position is to be disestablished as a result of a staffing surplus.

Employees returning from parental leave who seek to work reduced hours should be advised of their rights under the restructuring provision before commencing those hours of work.

Flexible Arrangements for Primary Carer/Parental Leave

Pre-term Arrival

In some cases of birth or adoption of a baby, the baby may arrive early thus being called pre-term. The primary carer may have already commenced primary carer/parental leave may decide to return to work during the time the baby is in the hospital until the due date of the baby.

Please check out the [IRD website](#) for more information on what you are entitled to be paid during the pre-term period.

Keep in Touch Days

There is now the provision to have “keep in touch” days which allow the employee work up to 40 hours whilst they are on the 18 weeks of paid parental leave from IRD. These hours could be used to keep up with skills development or training or completing work handover and can help ease the primary carer back into work. The child must be at least four weeks old to access these days.

These “keep in touch” days are not compulsory and must only be used by mutual agreement between the employer and the employee. They also need to agree on the terms of work and the type of work to be undertaken.

Parents of preterm babies are eligible for additional keeping in touch hours – up to an average of three hours per week for each week the baby was born prior to the 37 week gestation period. The child doesn't need to be four weeks old before using this provision.

Unpaid Leave Flexibility

In the past unpaid parental leave had to be taken in one continuous block. Now an employee has some flexibility around this. Eligible employee may choose to return to work for a period of time during the unpaid leave then take the remainder of their unpaid leave later on in the year providing this is mutually acceptable to the employer and the employee. The end date of the leave will be

either when the child is either 6 months old or it has been six months from assuming primary carer responsibility or when the child is 1 year old or it has been one year since assuming primary carer responsibilities depending on your eligibility.

Resignation

Employees may now resign if they wish and still receive paid parental leave payments from IRD if they do not intend to return from primary carer/parental leave.

Return to Work

The employee must notify their employer at least one month before of their intention to return to work.

Upon their return to work the employee is entitled to resume work in the same position (if it is vacant) or in a similar position to the one they occupied at the time they commenced parental leave. If this is not possible then the provisions under Job Protection will apply.

The employee may wish to access flexible working arrangements with the employer as stated above or use their primary carer/parental leave payment from ERO to supplement part time work. This will be mutually agreed with the employee and the employer.

Re-entry after Childcare

An employee who resigned from ERO to care for a pre-school child/children may apply to re-enter ERO under preferential provisions provided that:

- the absence does not exceed four years from the date of resignation; or
- five years from the date of cessation of duties to take up primary carer/parental leave

The applicant must:

- produce a birth certificate for the child under the age of six;
- sign a declaration to the effect that the absence has been due to the care of a child under the age of six and that paid employment has not been entered into for more than 15 hours per week during the absence.

An applicant seeking to return to ERO should give at least 3 months' notice and renew that notice at least one month before the date that they wish to return to work or one month before the expiry period as mentioned above whichever is the earlier.

If the applicant meets the conditions as mentioned above at the time of the application and at the time of the application:

- a) has the necessary skills to fill competently a vacancy which is available in ERO; and
- b) the position is substantially the same in character and at the same or lower salary as the position previously held, then the applicant under these provisions is to be appointed in preference to any other applicant for the position

Absence for childcare reasons will interrupt service but not break it. The absence will not count as service for the purposes of sick leave or annual leave or any other leave entitlement. This provision applies equally to all staff regardless of when the absence for childcare occurred.

There shall be no right of review against the appointment of an applicant under these provisions.

If an applicant under these provisions is not appointed to any position within three months after the expiry of the period as mentioned above, the benefits of these provisions will lapse.

What should I do if I am an Employee?

- Decide which terms of primary carer/parental leave is best in your situation
- Check out the following websites:
 - [IRD Parental Leave Payment](#)
 - [Smart Start](#)
- Advise your employer of your intention to access primary carer/parental leave in writing
- Decide which payment from ERO you would like to access
- Apply to IRD for your Paid Parental Leave
- Advise your employer of your decision to return to work at least a month before your intention to start and discuss return to work options

What should I do if I am a Manager?

- After the employee has made the request you must reply in writing to the employee in no less than one month
- Check with Human Resources to ascertain which provisions your employee may be able to access
- Keep up good communication with the employee so that they feel comfortable talking through their options with you including any future return to work options i.e. flexible working arrangements
- Try to ensure (if possible) the replacement for the employee is temporary so they can return to their job after primary carer/parental leave. Please discuss with Human Resources if you are unsure
- Whilst the employee is on primary carer/parental leave keep in touch with them so they don't feel isolated this many include;
 - Regular phone calls to keep the employee in touch with what is happening in the Office;
 - Ensure that copies of all in-house publications are sent to the employee;
 - Ensure that the employee is aware of any changes within the organisation and
 - Keep the employee informed of any upcoming social events or functions.
- Reply to the employee in writing upon their request to return to work, setting out the agreements mutually decided upon

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