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Maternity leave: what you need to know

Australia is set to introduce a paid maternity leave scheme with the release last month of the Productivity Commission's draft report. Inside this month we explore the likely shape of the scheme in Australia and its implications for employers.

What would paid maternity leave look like?

Primarily taxpayer funded, the paid maternity leave scheme would provide 18 weeks of paid postnatal leave set at the adult minimum wage (currently \$543.78) regardless of pre tax incomes. Employers would fund and make superannuation payments to the employee while on paid leave.

The leave can be shared by eligible parents with an additional 2 weeks of paternity leave reserved for the father on a "use it or lose it basis". The scheme would apply to employees with "a reasonable attachment to the employer", the self-employed, contractors and casual employees.

The leave payments would be subject to income tax. Those on paid leave would be ineligible for the new maternity allowance (the old baby bonus) and will have no access to family tax benefit B while on the scheme.

Parents giving birth to twins or more would get one leave entitlement, but receive the maternity allowance for the additional children.

Who qualifies?

The eligibility rules for paid parental leave are reasonably tight. Paid leave will only be available to those who work an average of at least ten hours a week (with one or more employers) with continuous employment for the 12 months prior to the date of expected birth. Obviously, the scheme is only available to the parent who is the primary carer.

The scheme covers all employees who meet the employment test, including the self-employed (including contractors) and casual workers.

To get superannuation entitlements, employees must also be eligible for unpaid parental leave under the National Employment Standards and be entitled to these benefits before taking paid parental leave.

Implications for employers

Similar to the UK system, employers would act as paymasters for the Government, paying the leave as part of their normal payroll function. An employer would initially pay employees the statutory paid parental leave entitlements in the way they would other forms of payment. The Government would then reimburse employers in the subsequent withholding period, by reducing withholding payments to the ATO by the amount of paid parental leave paid out (and would provide credits if necessary). All others eligible for the scheme would be paid directly by the Government through the ATO or other non-welfare agency.

To manage any potential cash flow implications for small business, the Commission is recommending that businesses that do not remit withholding payments at least monthly be excluded from the scheme. The employee would directly interact with the ATO instead.

The self employed and some contractors are also likely to interact directly with the ATO.

Employers would also fund and pay superannuation to the employee while the employee is on paid maternity leave. The superannuation payments are capped at 9 per cent (regardless of any additional leave payment that the employer may offer as an incentive). The superannuation contribution is limited to the lower of the employee's actual salary or the adult minimum wage, not the employee's pre-leave salary.

By its nature the scheme will have a number of likely flow-through effects. The first is an increase in the length of leave taken. The Commission estimates that the scheme will increase leave taken by 5 to 9 weeks. Some of the costs of lost productivity are likely to be recouped by employers in the form of greater attachment by the employee. International experience shows that return to work rates (as opposed to employees leaving the work force) are higher where there is a paid maternity leave scheme.

In addition, experience in the UK shows that once a paid maternity leave scheme is in place, it became more common for employers to 'top up' the paid leave entitlement as an incentive for senior or specialist employees, increasing the costs of maternity leave. Smaller businesses may be obliged to offer similar 'top up' incentives to remain competitive. However, this potential disparity between the incentives funded by large and small employers will always exist.

The shape of parental leave in Australia

In 2007, around 2,128,300 female employees (53 per cent) and 2,157,700 male employees (50 per cent) had some form of paid parental leave available to them.

Around 72 per cent of mothers in paid work take leave around childbirth (others leave the workforce).

On average, the leave used by mothers in paid work is 37 weeks in duration. Of those in paid work prior to the birth of the child, 15 per cent return to paid work within three months of childbirth, 29 per cent within six months, 58 per cent within 12 months, and 70 per cent within 18 months. Self-employed mothers take the shortest amount of leave on average (23 weeks) and are much more likely to return to work early.

Around 75 per cent of fathers in paid work take leave around childbirth. Fathers take an average of two weeks leave, the vast majority using paid leave (usually annual leave).

The total leave for mothers increased with the size of the business employing them, ranging from 29 weeks for businesses with fewer than five employees to 42 weeks for businesses with over 500 employees.

Family trust changes abandoned

The Federal Government has reluctantly abandoned its proposed changes to restrict who can be included in a family trust. Stymied by the Senate, the measures sought to restrict the definition of who is family and remove the ability to make a one-off variation to the test individual. The changes would have reversed the Howard Government changes made last year.

Under the current rules, family of the test individual includes:

- The individual's spouse;
- A parent, grandparent, brother or sister of the individual or their spouse;
- A nephew, niece, or child of the individual or individual's spouse;
- Any lineal descendant of the individual or spouse's child, nephew or niece (eg great grand children);
- The spouse of any person listed above;
- Former spouses of either the test individual or a member of their family group before a marriage breakdown;
- Former widows/widowers of either the test individual or a member of their family group, and who has a new spouse that is not a member of the test individual's family; and
- Former step-children of either the test individual or a member of their family group, before a breakdown in the marriage of the test individual or the member of the test individual's family group.

Adopted children, step-children or an ex-nuptial child are considered lineal descendants.

Quote of the month

**I not only use all the brains that I have,
but all that I can borrow**

Woodrow Wilson

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