

PARENTAL LEAVE

Your Entitlements & How to Apply

DISCLAIMER

This infosheet contains information of a general nature only and is not a substitute for professional legal advice. You should obtain legal advice from a lawyer about your particular situation before acting on any of the following information. This infosheet is designed for Victorian and national system employees in Tasmania and Queensland only. If you are not a Victorian employee or a Queensland or Tasmanian national system employee, you should obtain specialist legal advice about your case as soon as possible.

Introduction

This infosheet explains your entitlement to unpaid parental leave and how to make sure you are eligible to return to the same position you held before your unpaid parental leave began.

Who can use this infosheet?

This infosheet is designed for **Victorian** and national system employees in **Tasmania** and **Queensland** only.

If you are a **Victorian** employee, you can use this infosheet unless you were employed in a sector that provides essential services of core government functions, including state infrastructure services such as electricity and gas, and your employer is not covered by a nationally registered collective agreement.

If you are a **Tasmanian** employee, you can use this infosheet unless you were a State public sector employee not covered by a nationally registered collective agreement.

If you are a **Queensland** employee, you can use this infosheet unless you were a State public sector or local government employee not covered by a nationally registered collective agreement.

Glossary

Continuous Service: A period of time that an employee works for the employer. Any period of leave that the employer has not approved and any unpaid leave do not count towards an employee's service.

National Employment Standards (NES): A set of 10 minimum entitlements that all Victorian employers need to comply with.

Am I eligible for unpaid parental leave?

If you are a permanent full-time, part-time or casual employee you may be eligible to take up to 12 months unpaid parental leave under the National Employment Standards if:

- you, your spouse or de facto partner are giving birth to a child or adopting a child under 16 years of age; and
- you have responsibility for the care of your child; and
- you have or would have completed **12 months** of **'continuous service'** with your employer by the expected date of birth or date of placement of your child or, the starting date of the leave if the leave is taken after another person takes unpaid parental leave; and
- if you are a casual employee, you have been working for your employer on a regular and systematic basis for at least 12 months before the expected birth of your child and you have a reasonable expectation of continuing work with the employer on a regular and systematic basis, if not for the birth or adoption of your child.

How do I apply for unpaid parental leave?

It is very important to formally apply for unpaid parental leave under the National Employment Standards to make sure you become eligible for the **'return to work guarantee'**.

- You formally apply for unpaid parental leave by providing your employer with **written notice** letting them know the intended start and end dates of your leave. You must give this notice to your employer at least **10 weeks** before starting your unpaid parental leave or else as soon as you can. It is important to keep a copy of your written notice for your records. You must also give your employer relevant medical evidence if required, for example a medical certificate.
- At least **4 weeks** before the intended start date of your unpaid parental leave, you must confirm the intended start and end dates of your parental leave with your employer. You must also advise your employer of any changes. It is a good idea to also keep a copy of your confirmation for your records.
- If you cannot give the right amount of notice, for example if your baby is born prematurely, you can still take unpaid parental leave as long as you provide notice when you can.
- If you have taken less than 12 months unpaid parental leave, you may extend your leave by giving your employer written notice of the extension at least **4 weeks** before the end date of the original leave period. The notice must tell your employer the new end date for the leave.
- You can ask your employer to extend your unpaid parental leave for longer than your 12 months but it is up to your employer whether they allow this.

Returning to work

If you have formally applied for unpaid parental leave under the National Employment Standards, then you are eligible for the **'return to work guarantee'**. The return to work guarantee is where you have the right to return to the same job you held before your unpaid parental leave began. If that job is no longer there, you then have the right to an available position for which you are suited that you can do, which is nearest in status and pay to your old job.

You may ask to return to work part-time. Your employer does not have to give you part-time work, but if they do not, your employer should give you reasons why flexible working arrangements cannot be made. This refusal may also amount to unlawful discrimination under state and federal anti-discrimination law.

If your employer makes a decision that will affect your status, pay or location of work, they must take reasonable steps to inform you of this decision and give you an opportunity to discuss it with them.

If you are unsure about any information in this infosheet, it is important to obtain legal advice as soon as possible

Where to get help

ORGANISATION	PHONE	WEBSITE
Australian Human Rights Commission	Complaints Infoline: 1300 656 419 General enquiries: 1300 369 711	https://www.humanrights.gov.au
Fair Work Commission Helpline	1300 799 675	https://www.fwc.gov.au/
Fair Work Infoline (Office of the Fair Work Ombudsman)	13 13 94	http://www.fairwork.gov.au/
Job Watch Inc	Metro: (03)9662 1933 Rural: 1800 331 617	www.jobwatch.org.au
Victorian Civil and Administrative Tribunal	(03) 9628 9900	http://www.vcat.vic.gov.au
Victorian Equal Opportunity and Human Rights Commission	1300 292 153	http://www.humanrightscommission.vic.gov.au
Anti-discrimination Commission Queensland	1300 130 670	https://www.adcq.qld.gov.au/
Equal Opportunity Tasmania	1300 305 062	www.equalopportunity.tas.gov.au/
WorkSafe Victoria	Metro: (03) 9641 1444 Rural: 1800 136 089	http://www.vwa.vic.gov.au/home
WorkSafe Tasmania	1300 366 322	www.worksafe.tas.gov.au
WorkSafe Queensland	1300 362 128	www.worksafe.qld.gov.au

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Fair Work
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Victoria Legal Aid

JobWatch acknowledges the Aboriginal and Torres Strait Islander peoples of this nation. We acknowledge the traditional custodians of the lands on which we are located and where we conduct our business. We pay our respects to ancestors, and Elders, past, present and emerging.