



EMPLOYMENT UPDATE FEDERAL BUDGET 2015 CHANGES TO THE PAID PARENTAL LEAVE SCHEME

The Federal Government has announced as part of the Federal Budget radical changes to the interplay between the current government-funded parental leave scheme and any similar paid schemes operated by employers.

Under the current Federal Government scheme, eligible working parents can receive government-funded pay when they take time off from work to care for a newborn or recently adopted child.

Despite years of promises, in February this year the Federal Government abandoned its long awaited plans to increase the level of payments under the scheme.

It is now proposed that from 1 July 2016, parents will no longer be allowed to access the government-funded paid parental leave scheme if their employer provides a more generous scheme.

This article summarises entitlements under the current scheme, the proposed changes to that scheme which did not come to pass, and some considerations for employers currently operating their own more generous schemes.

Unfortunately as discussed below, an unintended consequence of the proposed changes may be to encourage some employers to consider terminating their existing schemes which go beyond the government-funded scheme or to continue to operate those schemes but to lower the level of payments available to employees under those schemes.

THE CURRENT NATIONAL PAID PARENTAL LEAVE SCHEME

Employees have had an entitlement to take unpaid leave in conjunction with becoming a parent for a number of years, however it is only recently that there has been a push for parents to be universally entitled to paid parental leave.

Until the introduction of a national paid parental leave scheme in Australia on 1 January 2011, it was relatively uncommon for employers, other than those employers

considered particularly "*family friendly*" or in selected industries, to offer paid parental leave. Presently, only approximately 50 percent of mothers have access to any form of employer provided paid parental leave.

Under the current government-funded scheme there are two types of payments – Parental Leave Pay and Dad and Partner Pay.

Parental Leave Pay

Parental Leave Pay provides eligible working parents with up to 18 weeks' pay calculated at the national minimum wage rate (currently, \$16.87 per hour or \$640.90 per 38 hour week (before tax)).

Parental leave pay is usually provided by employers to long-term employees as part of their normal pay cycle, with the Federal Government providing the necessary funds to the employer first. Parents who do not receive parental leave pay from their employer, or who do not have an employer, receive the payments directly from Centrelink.

In order to be eligible, an employee must be on paid or unpaid leave or not working from the time they become their child's primary carer until the end of their paid parental leave period. An employer must provide parental leave pay to an eligible employee who:

- has a newborn or recently adopted child;
- has worked for the employer for at least 12 months before the expected date of birth or adoption;
- will remain an employee until at least the end of their paid parental leave period;
- is Australian-based; and
- is expected to receive at least 8 weeks' parental leave pay.

In addition, an employer can choose (with the relevant employee's consent) to provide that payment to other otherwise eligible employees, including those who you have not employed for at least 12 months or who will receive less than 8 weeks' parental leave pay.

An employee will not automatically lose their entitlement to parental leave pay if they participate in paid work for the purpose of "keeping in touch". An employee can access up to 10 keeping in touch days from the time they become their child's primary carer until the end of their paid parental leave period without losing this entitlement, but if they participate in any other paid work before the end of that period their parental leave pay will stop. Keeping in touch days are designed to assist the employee's transition back into the workplace, refresh their skills, become familiar with new or updated processes and/or be involved in forward planning discussions or meetings that may affect their role.

Dad and Partner Pay

Dad and Partner Pay provides eligible working dads or partners with up to two weeks' pay at the rate of the national minimum wage for children born or recently adopted.

Dads or partners have to be on unpaid leave or not working to receive the payment. Employers do not play a role in providing that payment (which is paid directly by the Federal Government), with the role of employers being simply to provide unpaid leave so that their eligible employees can access that payment.

PROPOSED CHANGES THAT NEVER WERE ...

Since the introduction of the government-funded scheme, the Coalition Opposition (as it then was) and now Federal Government has proposed a number of changes to potential payment levels under the scheme - it has been a roller-coaster of a ride:

- in May 2013, the "*Coalition's Policy to Improve the Fair Work Laws*" was released and proposed establishing a new scheme giving mothers 26 weeks' paid parental leave at the equivalent of their full replacement wage or the national minimum wage (whichever is greater) up to a maximum of \$75,000, plus superannuation contributions;
- in May 2014, the Federal Government announced that for the 1 July 2015 start of its new scheme, the salary cap at which the payments would fully replace wages would be reduced to \$100,000, meaning that the maximum parental leave payment would drop from \$75,000 to \$50,000. It was also proposed that those earning more than \$100,000 would still be

eligible for the scheme, but would receive payments capped at \$50,000; and

- in late 2014, the Federal Government signalled that it was re-examining its proposed changes to the scheme in light of the Productivity Commission's report into Childcare and Early Childhood Learning. The report determined that the proposed changes to the scheme were unlikely to bring about significant increases in workforce participation beyond those occurring under the existing scheme, and as a result, the Federal Government stated that it would shift its focus to childcare arrangements.

In February 2015, the Federal Government finally abandoned its proposed changes to increase paid parental leave payments.

WHAT HAS NOW BEEN ANNOUNCED AS PART OF THE FEDERAL BUDGET?

It has now been announced that from 1 July 2016, parents will no longer be allowed to access the government-funded paid parental leave scheme if their employer provides a more generous scheme.

Where a parent is offered the opportunity to receive higher paid parental leave payments under their employer's scheme, then the Federal Government considers that that parent is "*doubling dipping*" by also receiving 18 weeks' pay at the minimum wage rate (\$11,540 before tax) under the Federal Government scheme. As a result, parents who have access to an employer scheme that is more generous will no longer be eligible for additional government-funded parental leave pay.

If an employer scheme offers a lower level of payments, then the parent will receive "*top up*" payments so that they receive the same as under the government-funded scheme.

Not surprisingly, these proposed changes have come in for loud criticism including:

- that the government-funded scheme was only ever intended to be a basic scheme that would be added to, and complemented by, employer-funded schemes; and
- where an employer withdraws their own existing scheme (or does not look to introduce a new scheme as a result of these changes), then as the current government-funded scheme does not provide for superannuation contributions to be paid in conjunction with those payments (unlike many employer-funded schemes or as was previously proposed), those parents will not increase their superannuation balances during

any period of leave. This may have the effect of further widening what is already seen as a gap between the retirement savings for those working and those taking time off work on parenting duties.

WHAT SHOULD EMPLOYERS START TO CONSIDER?

Legislation to implement this change is proposed to be introduced into Federal Parliament in August 2015, but it remains to be seen whether the Federal Government can garner the necessary support in the Senate for these changes to be introduced into law.

Prior to these changes becoming law, employers may nonetheless wish to consider the following:

- many employers who have previously offered generous paid parental leave payments above those paid by the Federal Government may need to decide whether they should terminate their own paid parental leave schemes.

Not only would this potentially allow their employees to continue to access the Federal Government's paid parental leave scheme, but the savings achieved by withdrawing employer-funded payments may provide an opportunity for employers to offer other attractive benefits or incentives to their employees; and

- where an employer wishes to maintain their own paid parental leave scheme, they may wish to consider changing the level of payments to employees under that own scheme.

Payment levels may need to be reviewed if the level of payments (and the cost to the employer) under the employer-funded scheme were set on the basis that those payments would act as "*top ups*" only to the government-funded parental leave pay employees would receive.

Depending on how payments are calculated and described in the employer-funded scheme, maintenance of those schemes may result in an employer being now required to pay each of its eligible employees up to an additional \$11,540 before tax.

Of course, whether an employer can lawfully vary, withdraw or replace their existing paid parental leave scheme will always need to be carefully considered and expert assistance should be sought.

MORE INFORMATION

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