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Enquiries: Agency Labour Relations Advisor
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CIRCULAR TO DEPARTMENTS AND AUTHORITIES NO. 12 OF 2012

PAID PARENTAL LEAVE AND OTHER LEGISLATION AMENDMENT (DAD AND PARTNER PAY AND OTHER MEASURES) ACT 2012

The *Paid Parental Leave and Other Legislation Amendment (Dad and Partner Pay and Other Measures) Act 2012* (the Act) made amendments to parental leave provisions in the *Paid Parental Leave Act 2010* (PPL Act) and the National Employment Standards (NES), primarily introducing Dad and Partner Pay and refining the keeping in touch provisions. The Act also included other minor amendments.

This Circular clarifies the effect of the amendments in regard to the WA Public Sector and replaces CIRCULAR TO DEPARTMENTS AND AUTHORITIES NO. 2 OF 2011 IMPLEMENTATION OF THE COMMONWEALTH PAID PARENTAL LEAVE ACT 2010: ACCESS TO KEEPING IN TOUCH PROVISIONS.

Agencies are also advised that CIRCULAR TO DEPARTMENTS AND AUTHORITIES NO. 13 OF 2010 IMPLEMENTATION OF THE COMMONWEALTH PAID PARENTAL LEAVE ACT 2010 should be read cognisant of the *Paid Parental Leave and Other Legislation Amendment (Dad and Partner Pay and Other Measures) Act 2012*.

Dad and Partner Pay

Amendments to the PPL Act introduce a new parental leave Commonwealth Government payment for eligible fathers and partners. Eligible working dads or partners can access up to two weeks of Commonwealth government-funded pay at the rate of the National Minimum Wage when on unpaid leave from work or not working.

Dad and Partner Pay is a Commonwealth welfare payment and is funded and administered by the Commonwealth Government. Applications for Dad and Partner Pay are made to Centrelink within the Department of Human Services.

Dad and Partner Pay will be payable from 1 January 2013. Dad and Partner Pay is payable only during a period of unpaid leave, payable within 12 months of the date of birth or placement to a Dad or Partner 'providing care'.

Implications for WA Public Sector

Employers have no role in providing payments to employees as Dad and Partner Pay is paid directly by the Commonwealth Government.

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Dad and Partner Pay is a welfare payment and its introduction does not create a new leave type. WA public sector employees may access a range of existing leave provisions under their awards/agreements which facilitate leave without pay.

Keeping in Touch

The purpose of the Commonwealth keeping in touch provisions is to allow employees to remain connected with their workplace without losing their entitlement to parental leave pay under the Commonwealth Government Paid Parental Leave scheme. For this purpose employees on parental leave are considered as keeping in touch if they participate, with the employers' agreement, in a permissible paid work activity for the purpose of assisting their transition back into the workplace.

The amendments ensure that returning to work for the purposes of keeping in touch does not affect an employee's entitlement to 12 months unpaid parental leave under the National Employment Standards. The amendments provide that keeping in touch days cannot be arranged by the employer within the first six weeks after the date of birth or placement of the child; and the employee cannot request a keeping in touch day within the 14 day period commencing on the date of birth or placement of the child.

Implications for WA Public Sector

Employers and employees are not obliged to agree to return to work during a period of parental leave. WA public sector parental leave provisions that include Special Temporary Employment (STE) facilitate return to work for WA public sector employees during a period of parental leave. STE provides that upon agreement, an employee may be employed on a special temporary or casual basis during a period of unpaid parental leave or leave without pay taken in conjunction with unpaid parental leave. There is no cap to the number of STE days and employment is not restricted to 'keeping in touch' purposes.

Where an employee is considering return to work during a period of parental leave the employer and employee must be mindful of the Commonwealth keeping in touch provisions and the potential impact return to work may have on his/her Commonwealth parental leave payments. Employees are advised to consult Fair Work Australia for information regarding Commonwealth parental leave payments. Employers and employees can find more information on keeping in touch days by accessing the following link: <http://www.fairwork.gov.au/leave/parental-leave/pages/keeping-in-touch-during-leave.aspx>

Commencement of parental leave

The amendments permit the period of unpaid parental leave to start earlier than six weeks before the expected date of birth if the employer and employee agree.

Implications for WA Public Sector

WA Public Sector employees may now access unpaid leave earlier than six weeks before the expected date of birth of the child, if the employer and employee agree.

Return to work other than the child being born alive or dies after birth

The amendments provide where the pregnancy ends other than by the child being born alive or dies after birth the employee may provide four weeks' notice to return to work; and employers can give at least six weeks written notice requesting the employee to return to work on a specific day. These early return provisions apply to unpaid parental leave and do not disturb the paid parental leave component. In the event of still birth or death after birth, the entitlement to paid parental leave remains intact.

Implications for WA Public Sector

WA public sector parental leave provisions already allow employees to elect to reduce the period of leave at any time provided four weeks' notice is provided.

WA public sector parental leave provisions do not explicitly allow the employer to direct the employee to return to work during the unpaid period where the pregnancy ends other than by the child being born alive or dies after birth. This circular enables the employer to provide at least six weeks written notice requesting the employee to return to work on a specific day. Before utilising this provision agencies should contact their Labour Relations Advisor.

Replacement employee

The amendments provide that before an employer engages an employee to replace the employee on unpaid parental leave the employer is to specifically notify the replacement employee of the substantive employee's right to end leave early if the pregnancy ends other than by birth of a living child.

Implications for WA Public Sector

WA public sector employers must ensure that replacement employees are specifically informed of these early return provisions and to ensure that fixed term contracts are appropriately worded.

Please contact your Labour Relations Adviser if you require further information.



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