

The commencement of Paid Parental Leave for Australian employees

From 1 January 2011 the Paid Parental Leave Act 2010 (the Act) provides employees with access to a government-funded paid parental leave scheme (PPL). Employees (including eligible casuals) that become parents after 1 January 2011 may become eligible to 18 weeks PPL at the national minimum wage (currently \$569.90 per week).

The Act operates in conjunction with the Fair Work Act 2009 and any current right an employee has to paid or unpaid parental leave under their contract of employment, company policies and award or enterprise agreement terms (Existing Entitlements).

Trade unions have raised a number of PPL implementation issues with the Federal Government. Their resolution may result in some future change to the conditions applying to parental leave.

The PPL payments are in addition to an employee's Existing Entitlements and may not be 'offset' against the employee's Existing Entitlements. The PPL's administrative and compliance requirements are strict and will create challenges for employers under their existing human resource policies and procedures.

Eligibility for PPL payments

An employee must apply for PPL to the Family Assistance Office (FAO). The FAO will determine the eligibility of all persons who apply for PPL payments against the following criteria:

1. The person is an Australian resident or special category visa holder residing in Australia;
2. The person has an adjusted income of not more than \$150,000.00 prior to 1 July 2012;
3. The person is the primary carer of a newborn child or a newly-adopted child under 16 years of age;
4. The person has worked continuously for at least 10 of the 13 months prior to the birth or adoption. Work is 'continuous' if there has been no more than an 8 week break; and
5. The person undertook at least 330 hours of paid work during the 10 month period (that is, an average of around one day of paid work per week).

Employer obligations

If the FAO approves a person's application (an Eligible



Employee) the FAO will send the employer an 'employer determination' (Determination) where the Eligible Employee has:

1. More than 12 months service with the employer; and
2. Their PPL entitlement is 40 days or greater.

The employer on receipt of a Determination has 14 days to advise the FAO of its decision to either comply with the Determination and provide the required information (this includes bank account details and the employer's pay cycle) or seek a review of the FAO's decision.

An employer who elects to comply with the Determination is not required to make a PPL payment if the FAO has not transferred the required funds for the PPL payment. Otherwise an employer will be required to:

1. Make all PPL payments to an Eligible Employee in accordance with the FAO's notice (this notice will specify the amount and timing of the PPL payment to be made);
2. Advise the FAO of nominated events relevant to the PPL's payment or employer (including an Eligible Employee returning to work or if the employer has ceased in business); and
3. Provide the Eligible Employee a record of the PPL payments made.

Up to 1 July 2011 as part of the Act's implementation the employer may elect not to make the PPL payments in a Determination. If an employer makes this election the FAO will pay the Eligible Employee.

The Fair Work Ombudsman is responsible for enforcement of the Act.

The FAO may allow an Eligible Employee's PPL payments to be shared with another eligible family member (typically the father) who alternates as the primary care-giver.

An Eligible Employee loses their PPL eligibility if they return to work for a non exempt reason. Exempt reasons in the Act include where the return to work is part of a 'stay in touch program' or because work is resumed following the delivery of a still born child or where a newborn has passed away.

Taxation, entitlement accruals and record keeping

PPL payments made by the Employer are subject to:

1. The employer's usual PAYG withholding arrangements;
2. A requirement to keep records for 7 years of the funds received from FAO; and
3. State government exemptions for payroll tax and workers compensation premium liability.

In relation to employment entitlements, an employer is not required to:

1. Make superannuation contributions on PPL payments; or
2. Accrue annual and personal carer's leave for the period an Eligible Employee receives PPL payments.

Employers are advised to obtain accounting advice regarding their obligations for reporting or recording Eligible Employee PPL payments.

Human resource policy implications

Employers should be conscious of the new changes. Existing human resource policies may not cover or support the PPL's introduction and consideration should be given to updating any policies dealing with paid parental leave.

Duncan Cotterill can assist employers with practical advice on their PPL obligations or perform a review of their existing leave policies and administrative practices. Contact us on (02) 8267 3800.

YOUR EMPLOYMENT CONTACTS



Ken Brotherson
Partner

Tel: +61 2 8267 3800
Mobile: +61 409 313 756

k.brotherson@
DuncanCotterill.com



Aaron Dearden
Partner

Tel: +61 2 8267 3800
Mobile: +61 439 472 922

a.dearden@
DuncanCotterill.com

This newsletter provides general information and is not intended to be comprehensive or a substitute for legal advice. Legal advice should be sought before applying it to particular circumstances. Whilst care has been taken in the preparation of this newsletter, no liability is accepted for any errors.

© Duncan Cotterill Lawyers 2010

www.DuncanCotterill.com