

Parental Absence Teaching Service Guide

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INTRODUCTION

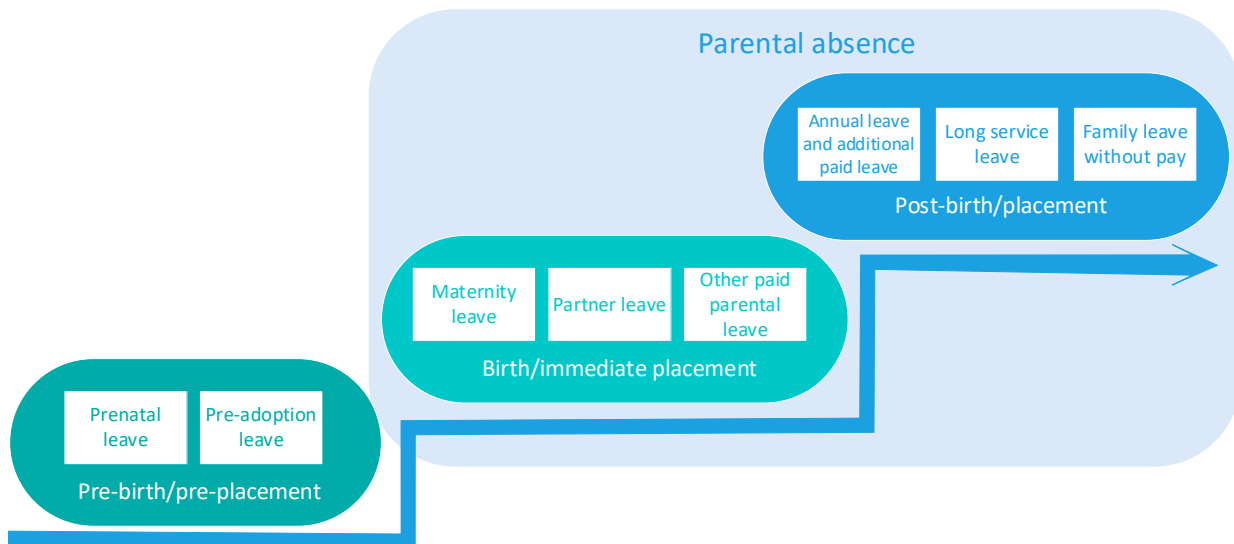
The purpose of parental absence is to enable an employee to be absent from duty for a total of 7 years following or in conjunction with the birth, adoption or otherwise becoming the legal parent of one or more children.

This policy applies to all employees in the teaching service, covered by the Victorian Government Schools Agreement 2017 (the Agreement) and provides details on employee entitlements consistent with the Agreement and the National Employment Standards from the Fair Work Act 2009.

Parental absence comprises 1 or more of the following forms of leave as illustrated below:

- maternity leave
- partner leave
- other paid parental leave
- long service leave
- annual leave and additional paid leave (education support class employees)
- family leave without pay (that portion of a parental absence not covered by paid leave)

An employee may also be entitled to leave preceding the birth or adoption of a child.



DEFINITIONS

For the purposes of this Guide:

Child

Child means a child (or children in respect of a multiple birth) of the employee (or of the employee's spouse) in the case of birth related leave. In the case of adoption-related leave, a child is a child under the age of 16 years who is placed with the employee for the purposes of adoption and who has not, or will not have, lived continuously with the employee for a period of 6 months or more as at the day of placement and who is not (otherwise than because of the adoption) a child of the employee or the employee's spouse.

Qualifying service

Qualifying service means:

- duty (other than periods of casual employment, or duty during the 6 prior to the expected date of birth)
- approved leave with pay
- approved leave without pay that is determined to count as qualifying service
- other service that is determined to count as qualifying service

Spouse

Spouse includes a de facto spouse, former spouse or former de facto spouse. The employee's de facto spouse means a person who lives with the employee as a husband, wife or same sex partner on a bona fide domestic basis, whether or not legally married to the employee.

PARENTAL ABSENCE

An employee is entitled to be absent from duty for a total of 7 years' parental absence following or in conjunction with the birth, adoption or otherwise becoming the legal parent of a child. Excluding partner leave and other paid parental leave, only 1 parental absence may be approved for a particular child (or children in respect of a multiple birth) which must be a continuous absence.

Apart from any paid leave taken in conjunction with the birth, adoption or otherwise becoming the legal parent of a child, parental absence is without pay.

Parental absence may extend up to the 7th birthday of the child for whom the leave was granted with the following exceptions:

- the absence may be extended beyond the 7th birthday to allow for resumption of duty at the start of a school term, and
- parental absence in respect of an adopted child can be extended beyond the 7th birthday of the adopted child up to a maximum of 7 years or the 16th birthday of the adopted child, whichever occurs first

If a total of 7 years of parental absence has been taken, a further period of parental absence may be approved in the event of any subsequent birth, adoption or otherwise becoming the legal parent of a child.

Where 2 employees are eligible to access parental absence in respect of the same child, the provisions of the National Employment Standards permit both employees to be absent concurrently for a maximum of 8 weeks. During this 8 week period each employee is entitled to take any form of paid leave (including partner, other paid parental leave or long service leave) or unpaid leave.

Excluding the 8 weeks of concurrent leave, where 2 employees are eligible to access parental absence in respect of the same child, both employees may not be absent at the same time and the absences must be contiguous.

In circumstances where an employee becomes pregnant or is an approved applicant for the adoption of a child while the employee's partner is on parental absence, one of the employees must resume duty within 6 weeks of the date of birth or placement of the child.

Where the pregnancy of an employee terminates or results in the birth of a stillborn child after more than 12 weeks, the employee is entitled to a parental absence of 6 months following the termination, inclusive of any period of maternity leave to which the employee is entitled, or a longer period with medical certification.

For a fixed term employee any form of parental absence cannot continue beyond the date employment would otherwise have ceased.

Commencement of parental absence

An employee can commence a period of parental absence at any time on or after:

- the date the employee submits satisfactory medical evidence that the employee is pregnant,
- the date of birth or adoption or otherwise becoming the legal parent of a child (including the adoption of a child who is a relative of the employee),
- the date an employee becomes the guardian of a child, or
- the date an employee is granted parental responsibility for a child under a care order made pursuant to the Children, Youth and Families Act 2005 (Vic)

An application for parental absence must be lodged in writing in advance and accompanied by satisfactory supporting documentation relating to the birth, adoption or otherwise becoming the legal parent of a child. Information is available below about the specific supporting documentation which must accompany an application for a particular form of leave.

An employee who is pregnant is required to absent themselves from duty:

- for the period commencing 6 weeks prior to the expected date of the child's birth until 6 weeks after the actual date of birth, or
- from the actual date of birth of the child until 6 weeks after the date of birth of the child in the event that the actual date of birth occurs earlier than the expected date of birth, or

- from the 1st day following the period the employee is permitted to attend for duty during the required absence period as outlined below

An employee is permitted to attend for duty during any part of the required absence period provided that:

- the employee will be fit for duty for the relevant period (proof of which is to be by medical certificate supplied by the employee), and
- the attendance sought by the employee is at a time employees ordinarily attend for duty

Where an employee is pregnant and, in the opinion of a registered medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue in their present position the employee will, if there is an appropriate safe job available, be temporarily transferred to that job on the conditions attaching to that job for such period as is certified necessary by a registered medical practitioner. An employee temporarily transferred to a safe job will be paid not less than their substantive salary immediately prior to the temporary transfer.

If temporary transfer to an appropriate safe job is not practicable the employee may elect, or may be required, to be absent on paid leave for such period as is certified necessary by a registered medical practitioner.

LEAVE ENTITLEMENTS

An employee may be entitled to 1 or more forms of leave as part of a parental absence. A summary of leave available can be found at Appendix 1.

Maternity leave

An employee is entitled to maternity leave (which may be with or without pay) for a continuous period of 14 weeks commencing from the date the employee commenced the required absence period.

An employee is eligible for paid maternity leave if the employee has had 26 or more weeks qualifying service within the 52 weeks immediately preceding the commencement of the required absence period. Attendance during any part of the required absence period will not count towards qualifying service. Where the pregnancy of an employee terminates more than 20 weeks before the expected date of birth, other than by the birth of a living child, the employee is not entitled to paid maternity leave. However the employee may be entitled to an unpaid parental absence of 6 months as set out above and may be eligible for personal leave subject to satisfying the personal leave requirements.

Where an employee is permitted to attend for duty during part of the required absence period before the birth of the child any paid maternity leave commences from the first day of absence from duty relating to the impending birth. The period of paid maternity leave can commence no earlier than the beginning of the required absence period.

An application for maternity leave must include a medical certificate that states that the employee is pregnant and the expected date of birth.

An employee may elect to take paid maternity leave on full or half pay or a combination of both. An employee who elects to take some or all of their paid maternity leave on half pay must notify the delegate of this intention in writing prior to commencing leave unless otherwise agreed between the employee and the delegate.

While on maternity leave with pay, an employee will be paid at:

- the time fraction that the employee was working immediately before commencing maternity leave, or
- the time fraction that the employee was working immediately prior to commencing long service leave, if the employee ceases long service leave on half pay immediately before commencing maternity leave

Partner leave

An employee who submits satisfactory evidence that they have accepted responsibility for the care of a child (or children in respect of a multiple birth) will be granted partner leave with pay, at the rate the employee would have received but for the absence on partner leave, for up to 38 hours (5 days in respect of a full time employee) in aggregate to care for the child (or children in respect of a multiple birth) an, or the mother of the child.

Satisfactory evidence includes:

- a medical certificate stating the expected birth date, or
- a medical certificate stating the actual birth date, or
- a certified photocopy of the extract of birth entry

Leave must be taken within the period commencing 1 week before the expected date of birth or the date from which the employee accepts responsibility for the child, and 6 weeks after the actual date of birth or the date from which the employee accepts responsibility for the child. Where the employee is unable to take partner leave during this specified period, they may make an application to the delegate for leave at another time. Where the delegate has a reasonable belief that the employee was unable to take partner leave during the specified period, the delegate may approve the application for leave.

An employee who is eligible for maternity or other paid parental leave is not eligible for partner leave in respect of the same child (or children in respect of a multiple birth).

Other paid parental leave

An employee who:

- is an approved applicant for the adoption of a child, or

- becomes the legal parent of a child (or children, as the case may be) under a surrogacy arrangement, or
- has the daily care and control of a child following the adoption by the employee of a child who is a relative of the employee, or the employee becoming the legal guardian of a child, or
- becomes the primary care giver of a child (or children, as the case may be) in such other circumstances approved by the delegate

is entitled to paid leave for 8 weeks commencing on the date the employee becomes the legal parent of, or on the date of placement of the child.

An employee is eligible for other paid parental leave if the employee has had 26 or more weeks qualifying service within the 52 weeks immediately preceding the date the employee commences the parental leave.

When 2 employees apply for leave in respect of the placement of the same child, each employee is entitled to leave with pay for 4 weeks commencing on the date of placement of the child or the date the employees become the legal parents of the child (or children in respect of a multiple birth).

Where no legal adoption ensues or no action is taken to register the baby's birth if required under state or territory law, the employee has no further entitlement to leave.

An employee who is granted parental responsibility for a child under a care order made pursuant to the Children, Youth and Families Act 2005 (Vic) by the Children's Court or the Family Court, and who is the primary caregiver of the child, is entitled to 2 weeks paid leave at a time agreed with the principal. For the avoidance of doubt, an employee is only entitled to this period of leave once in relation to a particular child.

An application for other paid parental leave should include satisfactory evidence that confirms the date of placement of the child or children in the employee's care. This may include:

- a statement or record from an adoption agency
- a statement or record from a relevant government authority confirming that the child is in the employee's care
- Court Orders

An employee may be asked to submit additional documentation or evidence upon request from the employer to assess their application for other paid parental leave.

An employee may elect to take other paid parental leave on full or half pay or a combination of both. An employee who elects to take some or all of their paid parental leave on half pay must notify the delegate of this intention in writing prior to commencing leave unless otherwise agreed between the employee and the delegate.

Long service leave

An employee may access some or all of their long service leave entitlements during a period of unpaid parental absence. Any period of long service leave granted during a parental absence will extend the maximum period of parental absence available, but not beyond the 7th birthday of the child for whom the absence has been granted or the 16th birthday in the case of an adopted child.

Where the employee seeks to resume duty at the end of the long service leave, the employee must apply to the principal to resume duty from unpaid parental absence on the proposed commencement date of the long service leave, giving the school the required period of notice of resumption from unpaid parental absence.

Where the employee does not intend to resume duty at the end of the long service leave, the long service leave application should state this and the leave may commence at any time. An employee who does not intend to resume duty after the period of long service leave, is not entitled to pay during the school vacation period following the long service leave.

Where approval is given for resumption of duty from unpaid parental absence and the long service leave is granted, the employee, other than an education support class employee, is entitled to receive pay for the school vacation period immediately following the period of long service leave.

Annual leave and additional paid leave

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An education support class employee may, in lieu of the whole or part of their unpaid parental absence, use some or all of any annual leave or additional paid leave to which the employee is entitled.

Paid parental leave and workers' compensation leave

An employee who is eligible for paid maternity, other paid parental leave or partner leave and is in receipt of workers' compensation payments, is entitled to leave with pay less the amount paid by way of weekly compensation under the Workplace Injury Rehabilitation and Compensation Act 2013 and has no further entitlement to leave during the maternity, other paid parental leave or partner leave period.

Family leave without pay

Employees have access to up to 7 years' family leave without pay, less any other period of leave for parental purposes (other than long service leave). Family leave without pay does not count as service for any purpose but does not break the continuity of an employee's service.

LEAVE PRECEDING PARENTAL ABSENCE

Prior to the commencement of a period of parental absence, an employee may be entitled to other leave.

Prenatal leave

A principal or teacher class employee who is pregnant may access paid leave to a maximum of 38 hours, deducted from their personal leave credits, to attend routine medical appointments associated with that pregnancy. Access to prenatal leave requires the provision of the following:

- a medical certificate certifying the employee is pregnant, and
- a medical certificate for each appointment

An education support class employee who is pregnant may access paid leave to a maximum of 35 hours to attend routine medical appointments associated with that pregnancy provided that the employee:

- provides a medical certificate certifying the employee is pregnant,
- provides a medical certificate for each appointment, and
- schedules appointments at times that minimise disruption to the school and, or the requirement to engage replacement staff for the period of the absence

An education support class employee whose spouse is pregnant may access paid leave to a maximum of 7.6 hours for the period of the pregnancy to enable attendance at routine medical appointments associated with that pregnancy, provided that the employee:

- provides a medical certificate certifying their spouse is pregnant,
- provides a medical certificate for each appointment, and
- schedules appointments at times that minimise disruption to the school and, or the requirement to engage replacement staff for the period of the absence

Pre-adoption leave

The provisions of the National Employment Standards specify that an employee is entitled to up to 2 days of unpaid pre-adoption leave to attend any interviews or examinations required for the adoption of a child. This leave may be taken as:

- a single continuous period of up to 2 days, or
- any separate periods which are agreed between the employee and the principal

Applications for leave must include satisfactory evidence regarding the necessity to attend any interviews and, or examinations.

RESUMPTION OF DUTY

An employee may return to duty after a parental absence:

- 6 weeks following the birth or placement of a child or the expiration of maternity leave if written notice of intention to return is given to this effect prior to the commencement of the absence, or
- on the 1st day of any term if written notice of intention to return is given by 1 October in the year preceding the intended date of return, or
- at such other times as may be approved in any particular case provided that applications on compassionate or hardship grounds will not be unreasonably refused

An ongoing employee, other than an education support class employee, whose period of paid maternity leave or other paid parental leave expires during a school vacation period is entitled to receive their normal pay for the remainder of that vacation period provided the employee has provided notice as outlined above and returns to duty immediately after the vacation.

A fixed term employee, other than an education support class employee, whose period of employment concludes on or before the end of a school vacation period and after the period of paid maternity leave or other paid parental leave expires is entitled to receive pay for the remainder of the period of fixed term employment should that employee have no further offer of employment. Where there is a further offer of employment, which has been accepted, the employee has the option of resuming duty and receiving salary for the remainder of the school vacation period or to proceed onto unpaid family leave.

Flexible working arrangements following resumption

In accordance with the Agreement, an employee with a child under school age may request to return to duty following parental absence on a part-time basis to assist the employee in reconciling work and parental responsibilities. A written response to such a request is required no later than 21 days following the date of the request, including the reasons where a request is refused.

Any such request will be considered having regard to the employee's circumstances and the operational needs of the school. Provided the request is genuinely based on the employee's parental responsibilities, the request may only be refused on reasonable grounds, for example:

- the new working arrangements requested by the employee would be too costly
- there is no capacity to change the working arrangements of other employees to accommodate the new working arrangements requested by the employee
- it would be impractical to change the working arrangements of other employees, or recruit new employees, to accommodate the new working arrangements requested by the employee
- the new working arrangements requested by the employee would be likely to impact negatively on or result in a significant loss in service delivery

Where an employee returns to duty on a part-time basis, the employee will revert (unless otherwise agreed between the employee and the principal) to the time fraction the employee was working immediately prior to the commencement of the employee's 1st period of parental absence when the youngest of the employee's children reaches school age. The Education and Training Reform Act 2006 defines school age as 6.

Temporary resumption

Where a principal cannot fill a fixed term vacancy of more than 6 weeks with a suitable qualified person, a temporary resumption to duty for an employee currently on unpaid parental absence can be considered. A temporary resumption should only be considered where all other avenues of employment have been exhausted, that is, employees with priority status or a person who could be offered fixed term employment are not available.

Where an employee on parental absence is the preferred applicant arising from an advertised position and a merit selection process, that employee may only resume on a temporary basis where that employee is the only suitable qualified applicant. The employee may, however, elect to resume on a permanent basis to take up the position. When an employee temporarily resumes:

- salary will be at the employee's substantive salary or remuneration level,

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- service will be recognised for all purposes (for example, long service leave or personal leave),
- the employee will resume parental absence at the end of the temporary resumption period,
- at their substantive time fraction, the resumption will not be included in the parental absence period,
- at a lower time fraction than the employee's substantive time fraction, the employee's substantive time fraction does not alter. In this case the employee will resume duty at the lower time fraction with the remainder being parental absence (for example, a full time employee agrees to temporarily resume for 3 days a week. In this example 0.6 would be duty and 0.4 would be parental absence)

A teacher who temporarily resumes duty is entitled to be paid during school vacations that occur during the resumption period under the same terms and conditions that apply to other teachers. Where the temporary resumption is for less than 1 term, the teacher is entitled to be paid $1\frac{2}{3}$ days annual leave for each month of service during the temporary resumption period.

The temporary resumption of an employee into a fixed term vacancy will require consultation to be undertaken between the 2 principals and the employee involved so that the implications of the temporary resumption are clear to all.

- The employee who has been asked to resume temporarily must provide details of the temporary resumption to their base school principal and seek the base school principal's written approval prior to the temporary resumption.
- The principal planning to offer temporary resumption to an employee must consult with the employee's base school principal to ensure that the approval has been sought.
- The base school principal may give written permission for the employee to resume temporarily from parental absence. Unless the temporary resumption is going to adversely affect the base school's workforce plan, it is expected that the base school principal would normally approve the temporary resumption.

In planning to fill a vacancy with the temporary resumption of an employee, the principal of the appointing school must ensure that the base school principal has been made aware of the resumption and been given an opportunity to endorse it. In the event that the base school principal does not agree to the temporary resumption, the principal of the appointing school may only proceed with the temporary resumption by accepting responsibility for the employee's placement at the expiration of the parental absence period (that is, the appointing school becomes the employee's new base school).

A sample letter is available on the Parental Absence — Teaching Service Resources tab.

Where the temporary resumption is at the employee's base school or where the resumption is at another school and the base school principal does not support the temporary resumption, the sample letter will need to be varied to reflect the arrangements.

KEEPING IN TOUCH DAYS

Under the provisions of the National Employment Standards, where the principal and an employee agree, the employee may perform work for up to 10 days whilst absent on unpaid parental absence in order to keep in touch with their employment. The purpose of performing the work is to facilitate a return to that employment after the end of the parental absence. Further information about keeping in touch days is available on the Fair Work Ombudsman's website, [keeping in touch days](#).

Work performed by an employee on a keeping in touch day will be regarded as a temporary resumption from parental absence (refer to previous chapter).

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COMMONWEALTH PARENTAL LEAVE PAY SCHEME

An employee who is a parent may be entitled to receive financial support under the Commonwealth Government's Parental Leave Pay scheme, which includes Dad and Partner Pay. This scheme involves financial payments made to the employee, not an additional form of leave which can be accessed by the employee.

An employee may be required to obtain information or evidence from their employer to support their application for Commonwealth Parental Leave Pay. Where an employee requests such information, it should be provided.

For information regarding the scheme, including eligibility requirements for payments, visit the information available on the Commonwealth Government's Human Services website at [Parental Leave Pay](#).

CASUAL EMPLOYMENT

The National Employment Standards provide that an eligible casual employee is entitled to 12 months of unpaid parental leave. An eligible casual employee is a casual employee who has worked for the employer on a regular and systematic basis for at least 12 months, and who has a reasonable expectation of continuing work with the employer but for the birth or adoption of a child.

APPENDIX 1

Leave summary

Parental absence entitlements contained in the Agreement and the National Employment Standards are as follows:

Maternity leave	Paid leave	Unpaid leave	Total leave
26 or more weeks qualifying service in the previous 52 weeks	14 weeks	Not applicable	14 weeks
Less than 26 weeks qualifying service in the previous 52 weeks	No entitlement	14 weeks	14 weeks

Other paid parental leave	Paid leave	Unpaid leave	Total leave
26 or more weeks qualifying service in the previous 52 weeks	8 weeks	Not applicable	8 weeks
Less than 26 weeks qualifying service in the previous 52 weeks	No entitlement	Not applicable	Not applicable
Employee granted care order with 26 or more weeks qualifying service in the previous 52 weeks	2 weeks	Not applicable	2 weeks
Employee granted care order with less than 26 weeks qualifying service in the previous 52 weeks	No entitlement	Not applicable	Not applicable

Partner leave	Paid leave	Unpaid leave	Total leave
Partner leave	5 days	Not applicable	5 days

Family leave without pay	Paid leave	Unpaid leave	Total leave
Family leave without pay	Not applicable	Up to 7 years *less any other period of paid leave taken for parental purposes (excluding long service leave)	Up to 7 years *less any other period of leave taken for parental purposes (excluding long service leave)

Pre-natal leave	Paid leave	Unpaid leave	Total leave
Principal or teacher class employee who is pregnant	38 hours (deducted from personal leave entitlement)	Not applicable	Not applicable
Education support class employee who is pregnant	35 hours	Not applicable	35 hours

Pre-natal leave	Paid leave	Unpaid leave	Total leave
Education support class employee whose spouse is pregnant	7.6 hours	Not applicable	7.6 hours

Pre-adoption leave	Paid leave	Unpaid leave	Total leave
Satisfactory evidence regarding the necessity to attend interviews or examinations	Not applicable	2 days	2 days