Human Resources

Parental Absence - Nurses
# PARENTAL ABSENCE - NURSES

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OVERVIEW

This guide applies to School and Maternal and Child Health Line Nurse employees.

The purpose of parental absence is to enable an employee to be absent from duty following or in conjunction with the birth, adoption or otherwise becoming the legal parent of a child.

Parental absence comprises one or more of the following forms of leave:

- maternity leave
- paternity/partner leave
- other paid parental leave (e.g. adoption leave, permanent care leave)
- long service leave, annual leave and purchased (self-funded) leave
- leave without pay (that portion of a parental absence not covered by paid leave).

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

In this policy:

- “child” means a child (or children in respect of a multiple birth or as the case may be) of the employee (or of the employee’s spouse or de facto spouse) under school age except for the adoption of a child under the age of 16 years who is placed with the employee for the purposes of adoption, other than a child or step-child of the employee or of the spouse of the employee or a child who has previously lived continuously with the employee for a period of six months or more.

- “continuous service” means continuous employment, including any period of paid leave, with the Department (other than casual employment) or other public sector body in accordance with Section 4 of the Public Administration Act 2004 (Vic).

PARENTAL ABSENCE

An employee is entitled to up to 52 weeks parental absence following or in conjunction with the birth, adoption or otherwise becoming the legal parent of a child.

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.

An employee may request an extension of his or her parental absence for a period not exceeding twelve months to assist him/her in reconciling work and parental responsibilities. The request may only be refused on the grounds that it is not genuinely based on the employee’s parental responsibilities.

An employee may apply for a further extension(s) of his or her parental absence provided the total amount of leave, inclusive of maternity, paternity/partner leave or other paid parental leave does not exceed seven years. The employee must make an application for leave each year.

Excluding paternity/partner leave and other paid parental leave, periods of parental absence must be contiguous.
Where two 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 eight weeks. During this eight week period each employee is entitled to take any form of paid leave (including partner, other paid parental leave, annual or long service leave) or leave without pay.

Excluding paternity/partner leave, other paid parental leave and any period of concurrent leave, where two employees are eligible to access parental absence in respect of the same child, both employees may not be absent at the same time.

Where the pregnancy terminates after twenty weeks and results in the birth of a stillborn child, the employee is entitled to paid maternity leave (see below) and additional leave without pay to a maximum six months period of absence following the termination, or a longer period with medical certification.

Where the pregnancy of an employee terminates more than twenty weeks before the expected date of birth, other than by the birth of a living child, the employee has no entitlement to any form of leave under parental absence, however the employee may apply for leave without pay or personal leave in accordance with Department policy.

An employee who is on parental absence is to be advised of any significant workplace change that will affect him or her.

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:

- within fourteen weeks immediately prior to the expected date of birth, unless an earlier date is approved;
- on or after the date of birth, adoption or otherwise becoming the legal parent of a child; or
- after the date an employee is granted a permanent care order in relation to the custody or guardianship of a child under the *Children, Youth and Families Act 2005* (Vic).

An application for leave 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 may be required to provide a medical certificate stating that she is fit to work on her normal duties. For information regarding attendance during the six week period prior to the expected date of birth refer to maternity leave below.

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 her 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 her 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 absent herself on no safe job paid leave for such period as is certified necessary by a registered medical practitioner.

**PAID LEAVE ENTITLEMENTS**

An employee who has completed twelve months’ paid continuous service prior to the commencement of parental absence is entitled to one or more forms of paid leave as part of a parental absence. Leave without pay does not count as service, but does not break the employee’s continuity of employment.

An employee will not have an entitlement to further paid maternity, paternity/partner or other paid parental leave unless he/she has resumed duty from parental absence prior to the commencement of the leave.

An employee must have twelve months’ continuous paid service between periods of paid maternity, paternity/partner or other paid parental leave where he/she did not previously satisfy this requirement and thus had no entitlement to paid leave.

An employee may take the paid leave provisions below at half pay for a period equal to twice the period to which the employee would otherwise be entitled.

**Maternity leave**

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

Where an employee continues to work within a six week period immediately prior to the expected date of birth of the child or is on paid leave under the no safe job provisions, the employee will be required to provide a medical certificate stating that she is fit to work her normal duties.

The delegate may require the employee to start maternity leave if the employee:

- does not provide the requested certificate within seven days after the request; or
- within seven days after the request for the certificate, gives the delegate a medical certificate stating that she is unfit to work.

The period of maternity leave will commence no later than the actual date of birth of the child.

An employee who meets the qualifying service requirement is eligible for fourteen weeks’ paid maternity leave in relation to the birth of their child.

While on paid maternity leave, an employee will be paid at the time fraction that she was working immediately before commencing maternity leave. Where approval is given for an employee to reduce the time fraction she works to better cope during pregnancy she will be paid during the paid maternity leave at the time fraction she was working prior to that arrangement.
Paternity/Partner Leave

An employee who meets the qualifying service requirement has an entitlement to paternity/partner leave with pay for up to 38 hours in aggregate (five days in respect of a full-time employee) for a School or Maternal and Child Health Nurse employee.

An employee will be granted paternity/partner leave, at the rate the employee would have received but for the absence on partner leave, to care for the child and/or the mother of the child.

Paid paternity/partner leave may be commenced one week prior to the expected date of birth or the date from which the employee accepts responsibility for the child, and up to six weeks after the actual date of birth or the date from which the employee accepts responsibility for the child unless otherwise approved by the delegate. Where the employee is unable to take partner leave during this specified period, he or she 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 must submit satisfactory evidence that he or she has accepted responsibility for the care of a 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.

An employee who is eligible for maternity or other paid parental leave is not eligible for paternity/partner leave in respect of the same child.

Other Paid Parental Leave

An employee who meets the qualifying service requirement and who is the primary caregiver of a child is entitled to fourteen weeks’ other paid parental leave if the employee:

- is an approved applicant for the adoption of a child; 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 caregiver of a child in such other circumstances approved by the Secretary.

An employee is the approved applicant for the adoption of a child and who is the secondary caregiver of that child, will be granted 38 hours in aggregate (5 days in respect of a full-time employee) other paid parental leave.

In the case of other paid parental leave, where no placement or legal arrangement ensues, the employee is required to notify the delegate as soon as practicable and will resume duty at an agreed date.
An application for other paid parental leave must include a statement from:

- the adoption agency or other appropriate body stating the expected date of placement; or
- the appropriate government authority confirming that the employee is to have custody of the child pending application for an adoption or permanent care order; or
- the Children’s Court or Family Court as to the granting of custody or guardianship; or
- other documentary evidence to the satisfaction of the delegate.

**Long service leave, annual leave and purchased (self-funded) leave**

An employee may access some or all of their long service leave, annual leave or purchased (self-funded) leave entitlements during a period of unpaid parental absence, subject to the total amount of leave not exceeding 52 weeks or a longer period where further leave has been granted.

Where the employee seeks to resume duty at the end of such leave, the employee must apply to the delegate to resume duty from unpaid parental absence on the proposed commencement date of the paid leave.

Where the employee does not intend to resume duty at the end of the paid leave, the leave application should state this and the leave may commence at any time.

**Paid parental leave and workers’ compensation leave**

An employee who is eligible for paid maternity, other paid parental leave or paternity/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 paternity/partner leave period.

**Public holidays**

Where a public holiday occurs during a period of paid parental absence, the public holiday is not to be regarded as part of the paid parental absence and the employee will be granted a day off in lieu, to be taken by the employee immediately following the period of paid parental absence.

**Resumption of Duty**

A female employee may request to return to work following the birth of her child before the end of the period of approved leave. The delegate must approve resumption no later than four weeks from the recommencement date requested by the employee.

Subject to the provision below, an employee will be entitled to the position which they held immediately before proceeding on the parental absence. In the case of an employee transferred to a safe job, the employee will be entitled to return to the position they held immediately before such transfer.
Where such position no longer exists but there are other positions available for which the employee is qualified and is capable of performing, the employee will be entitled to a position as nearly comparable in status and pay to that of their former position.

**Flexible working arrangements following resumption**

In accordance with the Nurses (DEECD) Agreement 2012, an employee may request to return to duty following parental absence on a part-time basis until the child reaches school age to assist the employee in reconciling work and parental responsibilities. Such a request must be made in writing to the delegate at least seven weeks before the employee is due to return to work from parental absence. 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 workplace. 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 delegate) to the time fraction she/he was working immediately prior to the commencement of the parental absence when the child reaches school age. The *Education and Training Reform Act 2006* defines school age as six.

**Leave Preceding Parental Absence**

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

**Pre-natal Leave**

An employee who is pregnant may access paid leave to a maximum of 35 hours to attend routine medical appointments associated with that pregnancy. Access to pre-natal leave requires the following:

- provision of a medical certificate from a registered medical practitioner stating the employee is pregnant;
- provision of a medical certificate from a registered medical practitioner for each appointment; and
- scheduling appointments at times that minimise disruption to the workplace.
An employee whose partner is pregnant may access paid leave to a maximum of 7.6 hours for the period of the pregnancy to enable his/her attendance at routine medical appointments associated with that pregnancy, provided that:

- he/she provides a medical certificate from a registered medical practitioner stating his/her spouse is pregnant;
- he/she provides a medical certificate from a registered medical practitioner for each appointment; and
- appointments are scheduled at times that minimise disruption to the workplace.

**Pre-adoption leave**

An employee may access up to two 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 two days; or
- any separate periods which are agreed between the employee and the delegate.

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

**Grandparent Leave**

An employee is entitled to a period of up to 52 weeks’ continuous unpaid grandparent leave in respect of the birth or adoption of a grandchild of the employee, provided they are or will be the primary caregiver of their grandchild.

**Casual Employees**

An eligible casual employee may access an unpaid parental absence of up to 52 weeks.

For the purpose of this policy:

- ‘an eligible casual employee’ means a casual employee employed by the Department on a regular and systematic basis for several periods of employment or on a regular and systematic basis for a continuing period of employment during a period of at least 12 months and, but for the pregnancy or the decision to adopt, the employee has a reasonable expectation of continuing employment.

The Department cannot fail to re-engage a casual employee because:

- the employee or employee's spouse is pregnant; or
- the employee is or has been immediately absent on a parental absence.

The rights of the Department in relation to engagement and re-engagement of casual employee are not affected, other than in accordance with the provisions set out above.
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.

For information regarding the scheme, including eligibility requirements for payments, see the information available on the Commonwealth Government’s Human Services website at Parental Leave Pay.

KEEPING-IN-TOUCH DAYS

Under the provisions of the National Employment Standards in the Fair Work Act 2009, where an employee and delegate agree, the employee may perform work for up to 10 days whilst absent on unpaid parental absence in order to keep in touch with his or her 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 at: 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.

FURTHER ADVICE AND ASSISTANCE

For advice or assistance on parental absence matters contact Corporate HR Services.