Overview

The purpose of a 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 one or more children.

This Parental Absence policy applies to all public service employees, including those covered by the Victorian Public Service Enterprise Agreement (VPS Agreement), the Nurses (Department of Education and Training) Agreement (Nurses Agreement) and Executive Officers.

This policy provides details on employee entitlements consistent with the relevant industrial agreements and guidelines for the management of forms of leave associated with a parental absence including:

- pre-natal and pre-adoption leave
- primary caregiver leave
- secondary caregiver leave
- permanent care leave
- grandparent leave

Definitions

In this guide:

- **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 six 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.

- **Eligible Casual Employee** means a casual employee employed by the employer on a regular and systematic basis, for a continuing period or sequence of periods of employment during a period of at least 12 months and who has, but for accessing parental leave, a reasonable expectation of continuing employment by the employer on a regular and systematic basis.

- **Permanent Care Order** means an order made under the Children, Youth and Families Act 2005 (Vic) or its successor.

- **Primary Caregiver** means the person who is the primary carer of a newborn or newly adopted Child. The primary carer is the person who meets the Child's physical needs more than anyone else. Only one person can be a Child's primary carer on a particular day. In most cases the Primary Caregiver will be the birth mother of a newborn or the initial primary carer of a newly adopted Child.

- **Qualifying Service**, with regard to an employee covered by the Nurses Agreement, means any duty as an employee (other than any period of employment on a casual basis) including leave with or without pay approved by the employer and other service approved by the employer to count as qualifying service. An employee is required to have 32 weeks or more Qualifying Service within the 52 weeks immediately preceding the expected date of birth, adoption or the date specified under the permanent care order to be eligible for paid parental leave.

- **Secondary Caregiver** means a person who has parental responsibility for the Child but is not the Primary Caregiver.

- **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, other than a casual employee, is entitled to parental absence where the employee becomes the primary or secondary caregiver following, or in conjunction with:

- the birth of a child of the employee or the employee’s spouse
- an approved application for the adoption of a child
- the granting of a Permanent Care Order of a child
- the birth of a grandchild of the employee to which the employee will be the primary carer.

An employee who becomes the primary caregiver of a child may be granted parental absence in other such circumstances approved by the delegate.
The parental absence entitlement is 52 weeks unpaid leave. Employees taking primary caregiver, secondary caregiver or permanent care leave may be eligible to access part of the 52 weeks parental absence as paid parental leave as set out below.

**VPS and Executive Officers (EO)**

<table>
<thead>
<tr>
<th>Leave Type</th>
<th>Paid leave</th>
<th>Unpaid leave</th>
<th>Total</th>
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<tbody>
<tr>
<td><strong>Primary Caregiver and Permanent Care Leave</strong></td>
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<tr>
<td>Parental absence commences after the conclusion of the probationary period</td>
<td>14 weeks</td>
<td>Up to 38 weeks</td>
<td>52 weeks</td>
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<tr>
<td>Parental absence commences during the probationary period</td>
<td>0</td>
<td>Up to 52 weeks</td>
<td>52 weeks</td>
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<tr>
<td><strong>Secondary Caregiver</strong></td>
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<tr>
<td>Parental absence commences after the conclusion of the probationary period</td>
<td>4 weeks</td>
<td>Up to 48 weeks</td>
<td>52 weeks</td>
</tr>
<tr>
<td>Parental absence commences during the probationary period</td>
<td>0</td>
<td>Up to 52 weeks</td>
<td>52 weeks</td>
</tr>
<tr>
<td><strong>Primary or Secondary Caregiver Leave for eligible casual employees</strong></td>
<td>0</td>
<td>Up to 52 weeks</td>
<td>52 weeks</td>
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<tr>
<td><strong>Pre-natal Leave</strong></td>
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<tr>
<td>Pregnant employee</td>
<td>38 hours</td>
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<tr>
<td>Spouse</td>
<td>7.6 hours</td>
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<tr>
<td><strong>Grandparent Leave</strong></td>
<td>0</td>
<td>Up to 52 weeks</td>
<td>52 weeks</td>
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To be eligible for paid primary or secondary caregiver leave, a VPS employee must have completed their probationary period prior to the commencement of the parental absence.

**Nurses**

<table>
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<td>Up to 38 weeks</td>
<td>52 weeks</td>
</tr>
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<td>Less than 32 weeks qualifying service</td>
<td>0</td>
<td>Up to 52 weeks</td>
<td>52 weeks</td>
</tr>
<tr>
<td><strong>Secondary Caregiver</strong></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>More than 32 weeks qualifying service</td>
<td>2 weeks</td>
<td>Up to 50 weeks</td>
<td>52 weeks</td>
</tr>
<tr>
<td>Less than 32 weeks qualifying service</td>
<td>0</td>
<td>Up to 52 weeks</td>
<td>52 weeks</td>
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</table>

To be entitled to paid primary or secondary caregiver leave or permanent care leave, a Nurse is required to have 32 weeks or more qualifying service within the 52 weeks immediately prior to the expected date of birth, adoption or date specified in the Permanent Care Order.

Leave without pay does not count as service, but does not break the employee’s continuity of employment.

Parental absence is available to one parent at a time and must be taken in a single unbroken period, except in the case of concurrent leave. Where both members of an employee couple are covered by the same agreement they may take up to eight weeks concurrent leave in connection with the birth or adoption of their child. Concurrent leave may commence one week prior to the expected date or birth of the child or the time of placement in the case of adoption. Concurrent leave can be taken in separate periods, but each block of concurrent leave must be at least two weeks, unless otherwise agreed.

An employee will not have an entitlement to further paid parental leave unless they have resumed duty from parental absence prior to the commencement of the next period of leave.

The entitlement to parental absence ends on the end date of the current fixed term contract, whether or not the full leave entitlement has been completed.

An eligible casual employee is entitled to parental absence if the employee becomes the primary or secondary caregiver following, or in conjunction with the birth of a child of the employee or the employee’s spouse or an approved application for the adoption of a child.

For a casual employee to be eligible for unpaid parental leave (other than unpaid pre-adoption leave) the employee is required to have both:

- been employed by the Department on a regular and systematic basis for a continuing period or sequence of periods of employment during a period of at least twelve months; and
- a reasonable expectation of continuing employment on a regular and systematic basis but for accessing parental leave.

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 leave.

Where the pregnancy of an employee terminates other than by the birth of a living child, and the employee has not yet commenced the parental absence, the employee may take leave for such periods as a registered medical practitioner certifies as necessary as follows:

- where the pregnancy terminates during the first 20 weeks, during the certified period/s the employee is entitled to access any paid and/or unpaid personal leave entitlements in accordance with the requirements of the personal leave policy (further information about personal leave is available on HR Web)
- where the pregnancy terminates after the completion of 20 weeks, during the certified period/s the employee is entitled to paid special maternity leave not exceeding 14 weeks and thereafter, to unpaid special maternity leave.

Unpaid special maternity leave will be for a period of up to six months, or longer as certified by a registered medical practitioner.

**PRIMARY CAREGIVER LEAVE**

Only one parent (who is not a casual employee) can receive primary caregiver leave entitlements in respect to the birth or the adoption of their child. An employee cannot receive primary caregiver leave entitlements if their spouse will be the primary caregiver at the time of the birth or adoption of their child or if their spouse will receive primary caregiver entitlements, or similar, from their employer.

A period of parental absence taken as the primary caregiver must be taken as a single continuous period.
SECONDARY CAREGIVER LEAVE

Only one parent (who is not a casual employee) can receive secondary caregiver leave entitlements in respect to the birth or adoption of their child.

GRANDPARENT LEAVE

Grandparent leave is available in respect to the birth or adoption of a grandchild of an employee, where the employee is or will be the primary caregiver of their grandchild.

PERMANENT CARE LEAVE

Permanent care leave is available where an employee (who is not a casual employee) has been granted a Permanent Care Order in relation to the custody or guardianship of a child under the Children, Youth and Families Act 2005 (Vic) and the employee will be the primary caregiver for that child.

Leave prior to the birth or adoption of a child

A pregnant employee may take any paid and/or unpaid personal/carer’s leave in accordance with the Department’s personal leave policy (further information on personal leave is available on HR Web) where they are suffering from an illness whether related or not to the pregnancy.

Where a pregnant employee continues to work within a six-week period immediately prior to the expected date of birth of their child, the employee is required to provide a medical certificate stating that they are fit to work their normal duties. The manager may require the employee to start the parental absence if the employee does not provide the requested certificate within seven days after the request or the employee provides the manager a medical certificate stating they are unfit to work.

A pregnant employee may be transferred to a safe job, with no other change to the employee’s terms and conditions of employment, where both:

- 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 current role; and
- the manager has deemed it to be to practicable to transfer the employee to a safe job.

An employee temporarily transferred to a safe job will be paid not less than their substantive salary immediately prior to the temporary transfer. The employee will remain in a safe job until she is declared fit to return to her normal duties or she commences parental absence.

Where a temporary transfer to an appropriate safe job is not reasonably practicable the employee may elect, or may be required, to take no safe job paid leave. The no safe job paid leave will commence immediately, and will be for a period as is certified necessary by a registered medical practitioner until the employee has been declared fit to return to duty or the employee commences parental absence.

The entitlement to paid no safe job leave is in addition to any other leave entitlement the employee has.

PRE-NATAL LEAVE

A pregnant employee (who is not a casual employee) or an employee whose spouse is pregnant may access paid leave to attend routine medical appointments associated with that pregnancy.

An application for pre-natal leave must be supported by documentary evidence to the satisfaction of the manager. Satisfactory evidence may include a medical certificate from a registered medical practitioner or a certificate confirming the employee’s attendance at a relevant medical appointment.

The workplace should be flexible enough to allow the employee the ability to leave work and return on the same day. Where possible, the scheduling of appointments should be at times that minimise disruption to the workplace.

PRE-ADOPTION LEAVE

An employee may access unpaid pre-adoption leave to attend any compulsory interviews or examinations required for the adoption of a child. The employee and manager should agree on the length of the unpaid leave, which should be no more than two days in total. This leave may be taken as a single continuous period or separate periods, which are agreed between the employee and the manager.

The employee is required to provide satisfactory evidence supporting the leave.
Notification requirements

At least ten weeks before commencing the parental absence, an employee is to provide the manager:

- written notice of their intention to take parental absence, including the expected date of birth or placement of the child and the proposed start and end dates of the leave; and
- a statutory declaration indicating whether the employee will be the child’s primary or secondary caregiver; the particulars of any parental leave proposed to be taken by the employee’s spouse; and that for the period of parental absence, the employee will not engage in any conduct inconsistent with their contract of employment.

At least four weeks before the intended commencement of parental absence, the employee is to confirm in writing to the manager the intended start and end dates of the parental leave and any changes to the notice provided previously, unless it is not practicable to do so. A parental leave application form is available on HR Web to assist in this process.

A request for parental leave must be accompanied by supporting documentation to the satisfaction of the manager. In the case of birth-related leave, satisfactory supporting documentation may include a medical certificate stating the date of birth or expected date of birth of the child, a proof of birth declaration or a birth certificate.

In the case of leave in relation to an adoption or permanent care order, satisfactory supporting documentation may include documentation from a relevant Government authority (such as the Department of Health and Human Services or a Court of Law), confirming the date of adoption or placement of the child or the expected date of adoption or placement of the child, and that the child will be under 16 years of age as at the day of placement or adoption.

Where it is not practical to comply with the above notification requirements, the employee should provide the notice and evidence as soon as reasonably practicable.

Commencing parental absence

A period of parental absence is required to commence no later than the date of birth or date of placement of the child.

A pregnant employee may commence primary caregiver leave at any time within 14 weeks prior to the expected date of birth of the child. In other cases, primary caregiver leave commences on the date of adoption or the date of placement of the child specified in the Permanent Care Order, unless otherwise agreed.

Secondary caregiver leave commences on the day of birth or placement of the child, unless otherwise agreed.

The manager and employee may agree to alternative arrangements regarding the commencement of parental absence.

Payment of parental leave

Unless otherwise agreed, any entitlement to paid parental leave will be paid from the date of commencement of the parental absence. An employee may elect to take any paid parental leave entitlement at half pay for a period equal to twice the period to which the employee would otherwise be entitled.

VPS EMPLOYEES

Under the VPS Agreement the calculation of pay for paid parental leave purposes will be based on the average number of ordinary hours worked by the employee over the three years prior to the period of leave.

The calculation excludes periods of unpaid parental leave and periods where an employee has worked at a reduced time fraction to better cope during their pregnancy or following their return to work after a period of parental absence. Consideration will also be given where an employee has been authorised to take unpaid leave due to unforeseen circumstances beyond the control of the employee.

Where an employee has reduced their time fraction to better cope during pregnancy, the employee’s subsequent paid parental leave entitlement will not be reduced.

NURSES

Under the Nurses Agreement the calculation of pay for parental leave purposes will be based on either the employees’ time fraction immediately prior to commencing parental leave or where an employee is required to reduce their time fraction as a consequence of their pregnancy, their time fraction immediately prior to the temporary time-fraction reduction.
Where an employee ceases long service leave on half pay immediately before commencing a parental absence, their parental leave will be at the time fraction immediately prior to commencing long service leave.

Consultation and communication during parental leave
Where an employee is on parental absence, and a definite decision has been made to introduce major change likely to have a significant effect on employees, the manager will take reasonable steps to make information available to the employee regarding any significant effect the change will have on the status or responsibility level of the position they held before commencing the parental absence. The manager will also provide an opportunity for the employee to discuss any significant effect the change will have on the employee’s substantive position.

An employee should take reasonable steps to inform the manager about any significant matter that will affect their decision regarding the duration of their parental absence, whether they intend to return to work and whether they intend to request to return to work on a part time basis.

An employee should notify the manager of any change to their address or other contact details while on parental absence.

Extending parental absence
EXTENDING PARENTAL ABSENCE UP TO A TOTAL PERIOD OF 52 WEEKS
An employee, who is on an initial period of primary or secondary caregiver leave of less than 52 weeks may extend the period of their parental absence on one occasion up to the full entitlement of 52 weeks.

An employee seeking to extend their parental absence should make a request, in writing, at least four weeks prior to the end date of their initial parental absence period and should specify the new end date of the parental absence.

EXTENDING PARENTAL ABSENCE TO A TOTAL PERIOD UP TO 24 MONTHS
The total period of parental absence, including any extensions cannot extend beyond 24 months.

In the case of an employee couple the total period of parental absence for both parents combined, including any extensions, cannot extend beyond 24 months.

An employee who is on primary or secondary caregiver leave may request an extension of parental absence for a further period of up to 12 months immediately following the end of their current parental absence period.

An employee seeking to extend their parental absence should make a request, in writing, at least four weeks before the end of the current parental absence period, and should specify any parental leave that the employee’s spouse will have taken.

Where an employee requests an extension of their parental absence based on their parental responsibilities, the request may only be refused on reasonable business grounds and cannot be refused unless the employee has had a reasonable opportunity to discuss their request with the manager. If a manager refuses a request, a written response must be provided to the employee detailing the reasons for the refusal.

EXTENDED FAMILY LEAVE
An employee who is the primary caregiver, and who has exhausted all parental leave entitlements, may apply for Extended Family Leave as a continuous extension to their parental absence.

The total amount of parental absence, inclusive of any paid leave, cannot exceed seven years.

The employee must make an application for extended family leave each year.

An employee will not be entitled to paid parental leave whilst on extended family leave.

Parental absence and other entitlements
ANNUAL LEAVE AND LONG SERVICE LEAVE
An employee may, in lieu of or in conjunction with parental absence, access any annual leave, long service leave or purchased (self-funded) leave entitlements which they have accrued subject to the total amount of leave not exceeding 52 weeks or a longer period where an extension of parental absence has been granted.
PUBLIC HOLIDAYS
Where a public holiday occurs during a period of paid parental leave, the public holiday will not be regarded as part of the paid parental leave and the employee will be granted a day off in lieu, to be taken by the employee immediately following the period of paid parental leave.

CONTINUITY OF SERVICE
Periods of unpaid parental leave taken whilst accessing the Commonwealth Paid Parental Leave Scheme will not break an employee’s continuity of employment but will not count as service for leave accrual or other purposes.

WORKERS COMPENSATION
An employee who is eligible for paid parental leave and is in receipt of workers’ compensation payments, is entitled to parental leave with pay less the amount paid by way of weekly compensation under the Workplace Injury Rehabilitation and Compensation Act 2013.

Resumption of duty

KEEPING IN TOUCH DAYS
Under the provisions of the National Employment Standards in the Fair Work Act 2009, where a manager and an employee agree, the employee may perform work for up to 10 days while absent on 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 at: Keeping in Touch days.

The performance of work on a keeping in touch day does not break the continuity of the period of parental absence.

RETURNING TO WORK BEFORE THE END OF THE PERIOD OF APPROVED LEAVE
An employee may return to work at any time during a period of parental absence as agreed between the employee and the manager. The agreed resumption date should be within four weeks of the recommencement date desired by the employee.

In the case of adoption, where the placement of an eligible child with the employee does not proceed or continue, the employee should notify the manager immediately. The manager will nominate a time for the employee to resume duty within four weeks from receipt of notification from the employee.

RETURNING TO WORK AT THE CONCLUSION OF LEAVE
At least four weeks prior to the expiration of parental absence, an employee will notify the manager of their intention to return to work after a period of parental absence.

An employee will be entitled to the position that they held immediately before proceeding on 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 a transfer.

Where an employee’s position no longer exists but there are other positions available for which the employee is qualified and capable of performing, the employee will be entitled to a position as nearly comparable in status and pay to that of their former position in accordance with the managing surplus employee’s policy. Where no such position exists, an employee will be subject to the Department’s managing surplus employee’s policy.

An employee returning from extended family leave may be reallocated to other duties.

RETURNING TO WORK AT A REDUCED TIME FRACTION
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. The Education and Training Reform Act 2006 defines school age as six. The employee will revert (unless otherwise agreed between the employee and the manager) to the time fraction they were working, immediately prior to the commencement of the parental absence, when the child reaches school age.

An employee requesting to return to work at a reduced time fraction must do so in writing at least seven weeks prior to the date upon which they are due to return to work from parental absence, unless otherwise agreed.

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. Further information about flexible work arrangements is available on HRWeb.

REPLACEMENT EMPLOYEES

A replacement employee is an employee specifically engaged or temporarily acting on higher duties or transferred as a result of an employee taking a period of parental absence.

Where a person is engaged as a replacement employee they must be informed of the temporary nature of their employment and the rights of the employee on parental absence.

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 that 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 see the information available on the Commonwealth Government Human Services website.

Further Assistance

Further information, advice or assistance on any matters related to (insert topic) is available by:

- accessing the A-Z topic list on HRWeb
- using the related topics list; or
- contacting Corporate People Services

Useful resources

- VPS Agreement
- Nurses Agreement
- HRWeb
- Fair Work Ombudsman Keeping in Touch Days
- Commonwealth parental leave pay website
- Department of Human Services