

Maternity, Adoption and Parental Leave

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Functional Sub group Personnel/Workforce - Leave

Summary To revise the parental leave policy to take account of enhanced paid maternity, adoption and parental leave provisions and the entitlements provided under the Family Provisions Case 2005. This Policy Directive will comprise a chapter of the Leave Matters Manual.

Replaces Doc. No. Parental Leave for Employees in the NSW Health System [PD2005_133]
Adoption Leave - Increase in Paid Entitlement for Staff in Public Hospitals/Areas/Ambulance Service [PD2005_419]

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Applies to Area Health Services/Chief Executive Governed Statutory Health Corporation, Board Governed Statutory Health Corporations, Affiliated Health Organisations - Non Declared, Public Health System Support Division, Public Health Units, Public Hospitals

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Compliance with this policy directive is mandatory.

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1. INTRODUCTION

Awards governing conditions of employment for employees of the NSW Health Service contain comprehensive maternity, adoption and parental leave entitlements for full time and permanent part time employees. This policy directive should always be read in conjunction with the relevant Award provisions as the Awards contain additional detail on the application of the provisions.

Temporary employees that have been employed for periods of 40 continuous weeks or more immediately prior to the expected date of birth or date of taking custody of the child are entitled to the provisions of this policy directive.

All eligible employees should be informed of their entitlements by having access to this policy directive and the relevant Award.

Casual employees and part time employees that receive an adjusted hourly rate (known as “old part time employees”) are not covered by the provisions of this policy directive. These staff are entitled to the Parental Leave provisions provided under the *Industrial Relations Act 1996*.

In addition to the provisions under the *Industrial Relations Act 1996*, old part time employees covered by the Health Services Union are eligible for parental leave entitlements as set out in the information bulletin ***IB2005_062 – Health Services Union – Award Changes – Memorandum of Understanding – Old Part Time Employees*** http://www.health.nsw.gov.au/policies/ib/2005/IB2005_062.html

This policy directive does not apply to public service staff employed in the Department of Health, the Health Executive Service or the Senior Executive Service.

2. MATERNITY LEAVE ENTITLEMENTS

2.1 Paid Leave

Full time and permanent part time employees who have completed 40 weeks continuous service are entitled to 14 weeks paid maternity leave.

Maternity leave can commence up to 14 weeks before the anticipated date of birth of the child.

Paid maternity leave can be taken at full pay over 14 weeks or half pay over 28 weeks.

Untaken paid maternity leave cannot be accrued for future periods of maternity leave.

2.2 Unpaid Leave

Full time and permanent part time employees who are entitled to paid leave are also entitled to a further period of unpaid maternity leave of up to 12 months from the date of birth of the child.

Full time and permanent part time employees who are not entitled to paid maternity leave (ie they have not completed 40 weeks continuous service) are entitled to unpaid maternity leave of up to 12 months.

3. ADOPTION LEAVE ENTITLEMENTS

Full time and permanent part time employees who are adopting a child and are to be the primary care giver of the child are entitled to adoption leave as follows:

- where the child is under 12 months of age – not more than 12 months from the date of taking custody of the child; or
- where the child is over 12 months of age – not more than 12 months from the date of taking custody with the period of leave to be agreed between the employee and employer.

The primary care giver is the parent who assumes primary responsibility for the care of the child.

3.1 Payment for Adoption Leave

Full time and permanent part time employees who have completed 40 weeks continuous service are entitled to payment for a period of 14 weeks of the adoption leave.

Paid adoption leave can be taken at full pay over 14 weeks or half pay over 28 weeks.

Untaken paid adoption leave cannot be accrued for future periods of adoption leave.

Except as provided for above, adoption leave is granted without pay.

4. PARENTAL LEAVE ENTITLEMENTS

Full time and permanent part time employees whose spouse or partner (including same sex partner) is pregnant or is adopting a child may be entitled to parental leave.

A full time or permanent part time employee who has completed at least 40 weeks continuous service prior to the expected date of birth or the date of taking custody of the child is entitled to parental leave of up to 52 weeks.

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The 52 weeks parental leave may be taken as follows:

- one week of short parental leave is available at the date of birth of the child or at the date of taking custody of an adopted child.
- a further period of extended parental leave is available to employees who are to be the primary care giver of the child.

Eligible employees are entitled to one week of paid parental leave which may be taken at any time during the 52 week parental leave period and may be taken at full pay over one week or at half pay over two weeks. All other parental leave is unpaid.

Untaken paid parental leave cannot be accrued for future periods of parental leave.

Extended parental leave cannot be taken at the same time as the employee's spouse or partner is on maternity or adoption leave unless approved under the Right to Request provisions (see [Section 9](#)).

5. RATE OF PAY

All eligible employees shall be paid maternity, adoption or parental leave at their ordinary rate of pay.

Payments may be made:

- on a normal fortnightly basis; or
- in advance in a lump sum; or
- at the rate of half pay over 28 weeks for maternity and adoption leave or 2 weeks for parental leave.

Full time employees are paid full time hours during the leave. Permanent part time employees are paid at their contracted part time hours.

The employer has an obligation to ensure that employees are working the correct hours and that employment records accurately reflect the hours worked for the purposes of salary and leave accrual. If a permanent part time employee regularly and consistently works either in excess of or less than their contract hours which essentially become the employee's true hours of work, then appropriate action should be taken to adjust those number of specified hours on a permanent basis.

It is acknowledged that in some cases, permanent part time employees may work hours in excess of their contracted hours on a regular basis but due to the nature of the work, these hours cannot be offered on a permanent basis. In these circumstances, the payment for maternity, adoption or parental leave should be made at the average hours worked over the preceding 40 weeks.

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Employees must be informed of their correct hours of work and understand the impact that a variation to their hours has on salary payments and leave accruals.

Detail on the effect of part time leave without pay on payment for leave is set out below.

5.1 Effect of Part Time Leave Without Pay

These provisions do not apply to part time maternity, adoption or parental leave without pay taken in accordance with [Section 9](#) of this policy.

Where an employee is on part time leave without pay when they commence maternity, adoption or parental leave the rate of payment is determined as follows:

- If they commenced the part time leave without pay 40 weeks or less before starting the maternity, adoption or parental leave they are paid at their substantive rate.
- If they commenced the part time leave without pay more than 40 weeks before starting the maternity, adoption or parental leave:
 - where their part time hours have remained constant over the leave without pay period, they are paid at the part time rate;
 - where their part time hours have varied over the leave without pay period, they are paid at a rate based on the average hours worked over the preceding 40 weeks.

In the case of varying hours, the weekly payments to apply to the paid leave is calculated by the following formula:

$$\frac{\text{Total hrs worked over 40 weeks prior to leave}}{\text{Normal weekly hrs over 40 weeks}} \times \text{Normal weekly rate of pay} = \text{Weekly payment during paid leave period}$$

Example: An employee, who normally works a 35 hour week and is paid \$800 per week, was approved to work 4 days per week (1 day per week leave without pay) for 20 weeks. The employee was then approved to work 3 days per week (2 days per week leave without pay) for 30 weeks and this arrangement was in place when the employee commenced maternity leave.

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In the 40 weeks prior to commencing maternity leave the employee worked:

10 weeks @ 4 days per week = 10 wks x 4 days x 7 hrs = 280 hours

30 weeks @ 3 days per week = 30 wks x 3 days x 7 hrs = 630 hours

Total hours worked over 40 weeks = 910 hours

Calculation of weekly rate for paid maternity leave:

$$\frac{910 \text{ hrs}}{1,400 \text{ hrs (40 wks x 35 hrs)}} \times \$800 = \$520 \text{ per week}$$

5.2 Further Maternity, Adoption or Parental Leave While on Maternity, Adoption or Parental Leave

The Awards contain provisions on the rate of payment to apply when an employee commences a subsequent period of maternity leave while on maternity leave or on a return to work on a part time basis following maternity leave.

The same principles should be applied in situations where an employee is on adoption or parental leave and applies to commence a subsequent period of such leave during the currency of the initial period of leave.

6. OTHER LEAVE

Employees may supplement periods of unpaid or half pay maternity, adoption or parental leave with the use of annual leave or long service leave.

Annual leave at half pay is only granted in conjunction with half pay maternity, adoption or parental leave.

7. APPLICATIONS FOR LEAVE

An employee who intends to take maternity, adoption or parental leave should notify the employer of their intentions as early as possible so that arrangements associated with their absence can be made. The notification requirements in the Awards are as follows:

Maternity leave – written notice of at least 8 weeks.

Adoption leave – no specific notice period due to the fact that an employee may receive little notice of the date of taking custody of a child, the employer should be notified of the intention to take adoption leave as early as practicable.

Parental leave – written notice of at least 4 weeks and in the case of parental leave associated with the adoption of a child, notification should be as early as practicable.

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The applications for leave should provide the following information:

- detail of all other types and periods of leave to be taken consecutively with the maternity, adoption or parental leave;
- the basis on which the payments will be made;
- anticipated date of return to duty;
- anticipated date of return to duty on a part time basis (if applicable);
- an appropriate certificate stating the expected date of birth (medical certificate) or the date of taking custody of the child (official form or notification);
- in the case of extended parental leave, the employee must provide a statutory declaration stating the period of any maternity or adoption leave sought or taken by their spouse/partner and that they are seeking extended parental leave to be the primary care giver of the child.

As soon as practicable after the birth of the child, an employee shall notify the employer, in writing, of the child's date of birth. In respect to adoption leave, the employee should notify the employer in writing if the date of taking custody of the child is other than the date provided in the application for leave.

After commencing maternity, adoption or parental leave, employees may vary the period of leave once without the consent of the employer and then only with the consent of the employer. A minimum of 14 days notice must be given, although an employer may accept less notice if convenient.

8. ILLNESS ASSOCIATED WITH PREGNANCY

If, because of an illness associated with her pregnancy an employee is unable to continue to work then she can elect to use any available paid leave (sick, annual or long service leave) or to take sick leave without pay.

Where an employee is entitled to paid maternity leave, but because of illness, is on paid or unpaid sick leave, annual leave or long service leave prior to the birth, such leave ceases nine weeks prior to the expected date of birth. The employee then commences maternity leave with the normal provisions applying.

Employees who have elected to continue to work prior to the expected date of birth and who take the occasional day sick leave during that time, are entitled to utilise sick leave under the normal provisions. In these circumstances, there is no requirement to commence paid maternity leave nine weeks prior to the expected date of birth.

9. RIGHT TO REQUEST

The Awards contain provisions whereby employees may request:

- to extend the period of simultaneous maternity, adoption or parental leave use up to a maximum of 8 weeks;

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- to extend the period of unpaid maternity, adoption or parental leave for a further continuous period of up to 12 months;
- to return from a period of maternity, adoption or parental leave on a part time basis until the child reaches school age*.

The employer must consider such requests having regard to the employee's circumstances and, provided the request is genuinely based on the employee's parental responsibilities, may only refuse the request on reasonable grounds related to the effect on the workplace or the employer's business. Such grounds might include cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service.

* The Public Health System Nurses' and Midwives' (State) Award does not limit the time for which a request for part time work may be made.

10. RETURNING TO WORK ON A PART TIME BASIS

The right to request provisions (see [Section 9](#)) were inserted into NSW Health Awards from 19 December 2005 as part of the Family Provisions Case 2005. Prior to that time, NSW Health Awards already included provisions where staff could apply to return to work for less than full time hours following maternity and adoption leave. These applications were limited to a period of up to 12 months and in the case of the Nurses' and Midwives' Award, there was no specified limit. It was Department of Health policy that such requests should be approved.

The new provisions described in Section 9 regarding grounds for refusal of a request for part time work were not intended to supplant existing policy regarding favourable consideration of such applications. Policy Directive **PD2005_154 – Access to Reduced Hours for Staff Following Return from Maternity Leave** http://www.health.nsw.gov.au/policies/PD/2005/PD2005_154.html should be consulted for further information.

The following applies to applications for a return to work on a part time basis:

- Employees are required to apply for part time leave without pay to reduce their full time weekly hours of work. The balance of unworked hours will be recorded as unpaid maternity, adoption or parental leave.
- Employees who return from maternity, adoption or parental leave under this arrangement do so for a specific period and retain their substantive hours with the right to convert to those hours at the end of the approved period of part time work.
- Salary and other conditions of employment are applied on a pro rata basis during the period of part time work.

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- Employees retain their substantive status as full time employees and as such are not entitled to payment of any part time allowance.
- Employees should be made aware that it may not be possible for them to return to work on a part time basis to their substantive position.

11. SUPERANNUATION

The information provided in this Section is not exhaustive. The implications of maternity, adoption and parental leave on superannuation are complex and varied and depend on each employee's circumstances and the type and duration of leave taken.

Pillar Administration is the administrator of the State Authorities Superannuation Scheme, the State Superannuation Scheme and First State Super. Employees and employers are strongly encouraged to contact Pillar's Customer Service for further advice on the effect of maternity, adoption or parental leave in relation to their particular situation:

- First State Super on 1300 650 873
- State Authorities Superannuation Scheme on 1300 130 095
- State Superannuation Scheme on 1300 130 096

Some of the superannuation implications are set out below.

- For employees who are contributors to the State Superannuation Scheme (SSS), personal contributions continue to be payable during paid and unpaid maternity or adoption leave. The payment of personal contributions may be deferred, however, interest at the fund earning rate will be payable on any outstanding contributions.
- Employees who are contributors to SSS and who return to work on a part time basis by taking part time leave without pay can elect to continue to pay personal contributions at the full time rate or to be treated as a part time employee for the period of the leave without pay. The latter option will reduce the personal contributions that must be made during the leave and it will reduce the amount of the end benefit.
- For employees who are contributors to the State Authorities Superannuation Scheme (SASS), personal contributions continue to be payable during paid and unpaid maternity and adoption leave (unless the unpaid leave exceeds two years). Employees who return to work on a part time basis by taking part time maternity or adoption leave without pay may be required to pay personal contributions at the full time rate. Each year members of SASS have the option to elect to pay between 1% and 9% of salary in personal contributions. The election form is enclosed with the Annual Benefit Statement and must be submitted by 31 December each year. The elected rate applies from 1 April the following year. Pillar

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Administration may authorise a reduction in contributions where a member would have difficulty in maintaining contributions at their nominated rate.

- If an employee's Superannuation Guarantee Contributions are made to First State Super (FSS) or another complying accumulation superannuation scheme, employer contributions continue to be paid during periods of paid maternity, adoption or parental leave. Employer contributions are not required during periods of unpaid leave.

12. LEAVE ACCRUAL AND INCREMENTS

12.1 Full Pay and Half Pay Leave

Periods of full pay maternity, adoption and parental leave count in full (pro rata for permanent part time employees) for the purposes of leave accrual and incremental progression.

Periods of half pay maternity, adoption and parental leave count for leave accrual and incremental progression on a pro rata basis. Sick leave is to be adjusted on the anniversary of employment following the employee's resumption of duty after the leave.

Leave on half pay is paid leave at a reduced rate and is not a combination of full pay leave and no pay leave. As such, periods of half pay leave must not be combined with any subsequent period of unpaid leave when determining the effect, if any, such period of unpaid leave has on an employee's entitlements.

Public holidays that occur during periods of full pay or half pay maternity, adoption or parental leave are paid at the rate of the leave ie either full pay or half pay.

12.2 Full Time Unpaid Leave

Full time unpaid maternity, adoption and parental leave has the following effect on increments and leave accrual:

- if more than 28 calendar days does not count for the accrual of annual leave
- if more than 28 calendar days does not count for the accrual of sick leave
- on completion of ten years net service, unpaid leave of less than six months counts for the accrual of long service leave
- if more than six months does not count for the accrual of long service leave
- if more than 28 calendar days does not count as service for incremental progression (unless the incremental progression is age based).

12.3 Part Time Unpaid Leave

Employees who return to duty on a part time basis by taking part time leave without pay accrue leave entitlements on a pro rata basis.

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For periods of part time leave without pay of more than four weeks, annual leave and sick leave accrue on a pro rata basis and incremental progression will be based on the hours worked per week (unless the incremental progression is age based).

For employees who have less than ten years service, only the hours worked each week count as service toward eligibility for long service leave. The period of service is converted to the full time equivalent and credited accordingly.

Once an employee has worked ten years net service, any periods of part time leave without pay of six months or less are counted in full as service for long service leave entitlements.

Employees who have ten years net service or more and who take more than six months part time leave without pay, have only the hours they work each week counted as service for long service leave entitlements.

The time periods referred to above are in relation to the period of the part time leave without pay, not the full time equivalent. For example, four weeks part time leave without pay means four calendar weeks at less than full time hours.

13. RIGHT TO RETURN TO PREVIOUS POSITION

An employee returning from maternity, adoption or parental leave has the right to resume in their previous position.

If the former position no longer exists, the employee is entitled to be placed in a position nearest in status and salary to that of the former position and for which the employee is capable or qualified.

If the position held prior to commencing leave was that of an acting or higher duties nature, the circumstances surrounding return to that position would need to be addressed by the employer. The employee does not have an entitlement to that position in any permanent sense.

Where a female employee suffered a risk or illness associated with pregnancy and was transferred to a more suitable position or to alternate duties prior to the commencement of maternity leave, the employee should return to the substantive position she held prior to the transfer.

14. OTHER PROVISIONS

The relevant Award should be consulted in relation to the following matters:

- the circumstances when an employee will have to work again the 40 weeks service to be eligible for paid leave
- portability of service for entitlement to paid leave

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- staff provisions for replacement employees
- illness associated with pregnancy
- transfer to a more suitable position
- leave to apply in the case of miscarriage or stillbirth
- effect of premature birth on maternity leave
- further pregnancy while on maternity leave

The following documents are also relevant:

- ***PD2005_154 – Maternity Leave – Access to Reduced Hours for Staff Following Return*** http://www.health.nsw.gov.au/policies/PD/2005/PD2005_154.html
- ***IB2005_062 – Health Services Union – Award Changes – Memorandum of Understanding – Old Part-time Employees*** http://www.health.nsw.gov.au/policies/ib/2005/IB2005_062.html
- ***IB2006_004 – Award Variations for Family Provisions*** http://www.health.nsw.gov.au/policies/ib/2006/IB2006_004.html

15. ENQUIRIES

Any enquiries regarding this information bulletin should be directed to the human resource personnel in the relevant health service. Only human resource personnel in the health service are to contact the Department.

Robyn Kruk
Director-General