

DIVERSITY 5:

January 2011



Paid Parental Leave (PPL)

From 1 January 2011, eligible parents will receive 18 weeks paid parental leave. The Government estimates 2/3 of mothers and fathers will benefit from having funds to support the important first months of their baby's life.

This is a huge achievement for unions, working families and the community- after more than 30 years of campaigning; it also brings Australian workers in line with most of the developed world in offering financial security for parents.

If members have a current paid parental leave entitlement under their Enterprise Agreement, the Government's entitlement will be in addition to this entitlement.

The government funded entitlement will be paid to the primary carer of a baby born/adopted after 1 January 2011, at the Federal Minimum Wage (currently \$569.90 a week). The payment will be made for 18 weeks and is taxable income.¹

Parents can interchange their primary carer status and share the PPL entitlement, so long as they are eligible. The PPL can be passed on to an alternate carer (such as a grandparent) in exceptional circumstances.

The government funded PPL period is recognised as service but, workers will not accrue leave entitlements while receiving the 18 week payment.

Who is eligible?

There is a '**work test**' for receiving the payment. All employees (including casuals) and contractors will be eligible for PPL if they have:

- been engaged in work continuously² for at least 10 out of the 13 months prior to the birth or adoption of the child AND
- worked at least 330 hours in the 10 month period (roughly 9 hours per week)

The PPL is either administered by the employer or the Family Assistance Office (FAO).

It is administered by and paid via the employer if the worker has been employed for at least 12 months before the expected date or actual date of birth/adoption. If not eligible to be administered by and paid via the employer, the worker is paid by the FAO.³

Families who are eligible can choose between PPL OR the Baby Bonus (which unlike PPL, is not taxed). There is a useful calculator on the FAO website.

An employee is responsible for lodging an application for PPL

- employees are encouraged to apply for an eligibility determination as soon as possible prior to the expected date of birth; union organisers should encourage members to do this.
- if an employee has **resigned** prior to the expected date of birth, they are still eligible for PPL if they meet the 'work test'. However, the previous employer is not expected to make the payments – these will be made by the FAO.
- Once an application and effective claim have been made for PPL, and the child's birth has been verified, the payments can be made on the first pay cycle following the birth or the nominated start date. PPL cannot be paid until the birth or adoption of the child.

Information required

If an employer is paying one or more instalments of PPL, they must provide the person receiving the payments with certain information, including:

- the employer's name
- the employer's ABN
- the person's name
- the period to which the PPL payment applies
- the date on which the PPL payment was paid

¹ All eligible employees will receive this rate, regardless of whether they earn more or less - this includes part-timers.

² 'Continuous service' can be with multiple employers and includes 'permissible breaks';- as defined by the legislation, these are breaks in service of up to 8 weeks.

³ More information at www.familyassist.gov.au

DIVERSITY 5:

What if there's a dispute?

Union organisers will need to be familiar with the new entitlement and direct members to the union office for additional assistance. Formal disputes will be dealt with by:

- the Family Assistance Office (for disputes concerning eligibility and general administration of the scheme)
- the Fair Work Ombudsman (for disputes between employer and employee, relating to payment obligations etc). In the event of such a dispute, the FAO will pay an employee their PPL while a dispute is being determined.

If there is a breach of an entitlement in an enterprise agreement, the dispute resolution process in that agreement will apply.

The FSU can assist members in any dispute involving the employers, the FAO and/or the FWO.

What about superannuation?

Employers are not obliged to pay their superannuation contributions while a parent is on PPL. However, FSU is advocating for superannuation payments for employees on parental leave, via enterprise agreements. FSU has recently achieved payment of superannuation for all (paid and unpaid) parental leave at Westpac and at NAB - the latter of which is included in the NAB Enterprise Agreement 2011. ANZ have agreed to pay superannuation on the Government's 18 week paid parental leave at the minimum wage, but not on any unpaid period of parental leave.

"Keeping in Touch"

The PPL legislation includes new 'keeping in touch' provisions. Where **mutually agreed**, the employee can attend the workplace for a maximum of 10 days during the period of paid leave, for professional development.

The FSU will need to monitor use of this provision carefully, to ensure it is not exploited by employers.

How does PPL sit with other parental leave entitlements?

The Government's 18 weeks PPL entitlement is in addition to any other Paid Parental Leave negotiated via an enterprise agreement; (in FSU agreements, the standard is 12-14 weeks).

The range of provisions around the parental leave National Employment Standard (NES) in the *Fair Work Act* are minimum legal entitlements which must be followed. These include:

- the right to return to part-time work from parental leave
- the right to request to extend a period of parental leave⁴
- capacity for the primary carer to take leave up to 6 weeks prior to the expected date of the birth.

In some cases, the PPL legislation conflicts with the NES – the ACTU and Unions have raised these concerns and will continue to advocate for changes. The PPL legislation will also be reviewed in 2013.

⁴ See Diversity 3: Changes to Parental Leave