

Staff on *Parental Leave* present numerous problems for payroll and add (we think) a whole lot of unnecessary complexity, however if you have staff going on parental leave you need to know all about it and how to deal with it correctly in your payroll system.

What is Parental Leave?

Parental Leave encompasses five types of leave: Maternity leave, Partner's/Paternity leave, Special leave, Preference leave and Extended leave (*and followed by a further 12 months "shadow" period*). There are strict criteria for requesting and responding to Parental Leave requirements (must be in writing). All forms are available from the MBIE (*aka Department of Labour*) website.

As an employer you are **required to keep the employee's position available** (there are exceptions), so it is not usual for an employee to be terminated prior to starting Parental Leave.

NOTE: The Maternity portion of Parental Leave is paid for by the Government - not by the Employer (unless you have an agreement to do so, in which case it's payable and has no effect on entitlement to Parental Leave payment from IRD).

Special leave is additional unpaid leave of up to 10 days during pregnancy.

Partner's/Paternity Leave is unpaid leave of up to 2 weeks.

Extended leave is unpaid leave for the remainder of (up to) a total of 52 weeks (*except where Preference leave applies*).

Preference leave is provided as an additional unpaid period of continuous service of up to 26 weeks after Parental leave has ended in cases where the employee's original job could not be kept open. If the employee's job could not be held open (*get a lawyer*) then allow a further 26 weeks unpaid Preference leave after the Parental leave period has expired in case of re-employment.

Generally, the employee can be absent for up to 12 months.

Some pitfalls to be aware of

- All annual leave accrued [typically 2 year's worth] during both the Parental Leave period and the following 12 month "shadow" period is payable using special Average Weekly Earnings rules calculated at the time the annual leave is used (often at a rate considerably less than normal annual leave rates). This rule uses a fixed divisor of 52 weeks, so an employee who has been paid \$15000 in the last 12 months would have each week of leave paid out at \$288.46 per week. Similarly, if they only received \$1000 in the last 12 months then each week would be worth only \$19.23!
- If an employee requests that a week of accrued leave be "cashed-up" then as far as MBIE are concerned this does NOT affect continuity of their Parental Leave.
- On the other hand, if the employee is paid any annual leave (or any other type of leave or earnings) during any section of Parental Leave, then the current Parental Leave section ENDS at that point.
- **recommendation:** any employee commencing Parental Leave should request payment of their unused annual leave (*it does not affect their entitlement to the Maternity Leave payment*). Do NOT pay out up to their termination value or estimated leave accrued value. This avoids any potential negative valuation effects from extended periods of absence, partial return to work or resignation etc., and ensures the employee receives the full value of legally accrued leave.

Setting up Parental Leave

When the employee's Parental Leave is confirmed, set up their Parental Leave page (*Edit Employee..More..LWOP/Parental*) - this can be done before they begin their leave:

More details for

Contract LWOP/Parental Miscellaneous OK

Leave Without Pay or Parental Leave

Leave type Parental Leave

Leave start date 18/05/2013

Leave end date 18/05/2014

Parental Leave flag will be reset automatically 12 months AFTER leave end date

Select the leave type (Parental Leave), enter the Parental Leave Start and End dates (these are REQUIRED, both legally and to ensure the PL period and it's shadow period are recognised).

The Parental Leave status will change automatically at the end of the Shadow period (this is important - do not change the status unless advised to do so by the helpdesk).

Whilst the employee is on Parental Leave, any Annual Leave and Sick Leave entitlements will continue to accrue on their respective anniversary dates. The annual leave accruals are flagged internally so SmoothPay knows that it accrued during PL or the shadow period.

The balance of any annual leave accruals subject to PL AWE rules is shown in the leave balances screen.

Payment for leave accrued in the Parental Leave and subsequent "shadow period"

If the employee becomes "entitled to an annual holiday on pay" (*this means they have accrued 4 weeks annual leave*) during their Parental Leave period and the following 12 months "shadow" period (*up to 2 years total - that's 8 weeks of annual leave*) then that leave is to be paid at the average weekly earnings for the 12 months prior to the period in which the leave is taken (using a fixed divisor of 52 weeks).

This potentially de-values what a week of leave is worth (*as all the empty weeks contribute to a lower average*). The Parental Leave and Employment Protection Act overrides the requirements of the Holidays Act.

The Act does not impose a limit on how soon the leave must be consumed, so potentially it could drag on for years of "different valuation rules" for some of the employee's accrued annual leave.

Here's a typical example of SmoothPay's Annual Leave Assistant where the employee still has a balance of annual leave accrued during PL or it's shadow period:



Holiday Pay Rate Assistant - (works a 5 day week)

Pay out weeks (or days, hours) Pay \$value

Accrued balance available: 5.3 weeks \$9601.89

Select applicable pay rate	\$Per Week
<input type="radio"/> 1. Ordinary WEEKLY pay rate	1677.48
<input type="radio"/> 2. Average ordinary WEEKLY rate (last 4 weeks)	0.00
<input type="radio"/> 3. Agreed special rate of WEEKLY pay	0.00
<input type="radio"/> 4. Average ordinary WEEKLY rate (last 52 weeks)	1677.48
<input checked="" type="radio"/> 5. Parental AWE (last 52 weeks)	1128.95 per week

The recommended option is already marked when you enter this screen

Payment for annual leave accrued on Parental Leave is payable at "Parental AWE" rate (or higher), balance is 3 weeks (opted out of 4-week average) Show calcs

Note that the item #5 is pre-selected, and values 1 week at \$1128.95

The screen also shows how much annual leave is remaining from accruals during PL/Shadow period.

Feel free to pay the employee more, however the employee is only entitled to (in this case) the lower rate of pay for annual leave.

Leave taken is automatically recorded as having been paid from the PL accrued leave pool (this can be edited in the employee's leave records, however this should only be done with guidance from the helpdesk).

Here are some examples to illustrate how the Parental Leave average weekly earnings rules work:

Parental Leave Act average weekly earnings examples

Let's say Mary earns \$1000/wk, has been paid out all her annual leave before going on Maternity Leave for 14 weeks, followed by 38 weeks extended leave (52 weeks so far), followed by a "shadow" period of 12 months (2 years in total) - we can guarantee she'll have two anniversaries in that 2 year period - and let's say her anniversary occurs after 6 months into her Parental/Extended leave and again 12 months later (and that the employer requires staff to take all accrued leave - for simplicity):

- 1.8.2012 Mary starts her Parental Leave (*remember she was earning \$1,000/wk and has 26 weeks service since her last anniversary*)
- 1.4.2013 normal anniversary date, accrues 4 weeks annual leave - she is still on Extended Leave...we'll pay this to you when you get back to work in 6 months - paying it early would immediately end the Extended Leave (though it's OK to cash up 1 week)!
- 1.10.2013 welcome back! Pay out 4 weeks annual leave using PL AWE calculation: $\$26,000 / 52 = \$500/\text{wk}$ average (*half what she normally earns*)...see you in 4 weeks
- 1.4.2014 accrues another 4 weeks annual leave and it's to be taken now, based on AWE of: $\$24,000$ (remember, 4 weeks were paid at $\$500/\text{wk}$ on return to work) = $\$24,000 / 52 = \$461.54/\text{wk}$ average (*under half what she normally earns*)...see you in 4 weeks

SmoothPay: Parental Leave

- Any leave taken from now on will be paid at Holidays Act rules as all leave accrued during the PL period and it's "shadow" has been consumed.

Another example, with more extreme repercussions. Let's say Mary's last anniversary was 1 month prior to going on Parental Leave:

- 1.8.2012 Mary starts her Parental Leave (*remember she was earning \$1,000/wk and has 1 week of service since her last anniversary*)
- 1.7.2013 normal anniversary date, accrues 4 weeks annual leave - she is still on Extended Leave...we'll pay this to you when you get back to work in 1 month...
- 1.8.2013 welcome back! Pay out 4 weeks annual leave using AWE calculation: $\$0 / 52 = \$0/\text{wk}$ average...see you in 4 weeks...
- 1.4.2014 accrues another 4 weeks annual leave and it's to be taken now, based on AWE of: $\$24,000$ (remember, 4 weeks were paid at $\$500/\text{wk}$ on return to work) = $\$24,000 / 52 = \$461.54/\text{wk}$ average (under *half what she normally earns*)...see you in 4 weeks
- Any leave taken from now on will be paid at Holidays Act rules as all leave accrued during the PL period and it's "shadow" has been consumed.

Note that any leave that was accrued during PL or shadow that is paid out after the shadow period expires is still paid using AWE rates, however the AWE calculation reverts to that used by the Holidays Act (the 52 week divisor may be reduced by any whole weeks of LWOP). Leave taken up to the shadow expiry date uses a divisor of 52 weeks.

Termination with Parental Leave accrued balance

If an employee leaves and still has unused annual leave that accumulated whilst on Parental Leave, then you need to perform the following actions (*SmoothPay will NOT perform a differential calculation for you in the Final Pay Assistant - it's designed to calculate according to regular Termination Pay rules*).

1. Prepare and Process a pay for the unused leave that accrued whilst on Parental Leave (*refer to the section above for how to pay this type of leave - this is generally valued less than average weekly earnings and current contract values*).
2. Prepare and Process a Final Pay as usual.

In some cases (*where termination is more than 12 months since return to work*) you can simply prepare a final pay as usual, as the value of the unused leave will be the same as normal termination pay calculations.

Employee resigns before returning to work

If an employee resigns before returning to work then s46 of the Act provides for one of the following:

1. If there is an agreement in place to deal with this situation (e.g. in their contract) then follow the terms of that agreement, otherwise
2. Employment is deemed to have ended at the date the employee started Parental Leave. *This can become rather complex to deal with as the employee may have accrued annual leave during their Parental Leave period, and they may have even been paid for some intermittent work and/or annual leave (presumably at PL rates). You need to determine what the correct leave balance was at the effective termination date (if any), calculate the termination value of any leave in credit as well as 8% of earnings since their previous anniversary, less any leave paid since (as the entitlement would not have occurred had the employee terminated earlier). The Act is unclear regarding any earnings for intermittent work since Parental Leave started - we advise you include such earnings in the 8% calculation. A calculation form is available from the website.*

Related Topics and Resources

Our helpdesk

Pay clerking is not a simple job! It requires knowledge of an enormous amount of legislation and generally accepted principles developed over decades. It's easy to be misled by "common knowledge" (e.g. accruing leave in hours or days is incorrect etc. yet it's still prevalent) and end up with your leave processing and records in a real shambles.

SmoothPay provides a complete range of guides and tutorials for all aspects of the software available on our website - and our **HelpDesk** provides expert advice on using **SmoothPay** whenever you need it.

Forms, Publications and Websites

The best source of information related to Parental Leave is the Ministry of Business, Innovation and Employment (MBIE, also known as the Department of Labour) - for a full range of information and forms see:

<http://www.dol.govt.nz/paidparental/>

Some (not all) Employers Associations are worth their weight in gold, especially when it comes to employment procedures. For definitive advice, you must refer to the Department of Labour, though sometimes an Employers Advocate can provide practical and cost saving advice.

The *Holidays Act* (and amendments) and *Parental Leave and Employment Protection Act* determine how leave should be accrued, valued and consumed. All NZ legislation is available online.

CCH Ltd produce two superb reference guides, *New Zealand Employment Law Guide* and *Guide to Holidays and Leave*. These can be ordered by calling CCH on 0800 500 224, or visit their website www.cch.co.nz

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