



Australian Government

WorkChoices

Minimum entitlements

The Australian Fair Pay and Conditions Standard (the Standard) provides for a maximum of 52 weeks of unpaid parental leave, shared between both parents at the time of the birth of a child, or the adoption of a child under five years of age. Parental leave can be taken as maternity, paternity or adoption leave.

Parental leave entitlements in awards will be preserved. Where an employee's entitlement for parental leave under an award is more generous than the Standard, the more generous conditions will apply to those still covered by awards (both current and new employees).

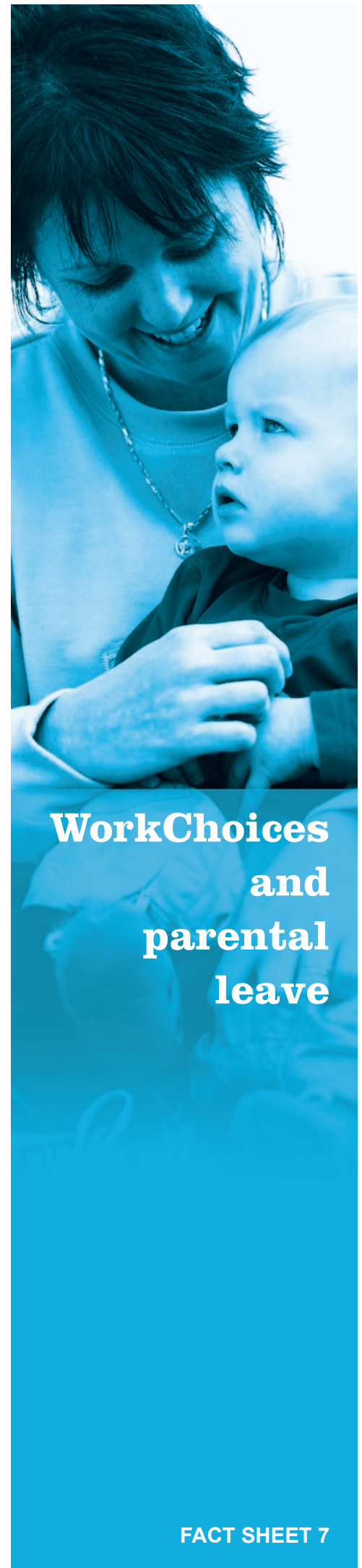
Workplace agreements made after the commencement of WorkChoices must, at all times, provide for parental leave entitlements that are equal to or more favourable than entitlements provided for under the Standard. (The Standard does not apply to state or federal agreements in operation on commencement of WorkChoices.)

The parental leave provisions in the Standard are a minimum entitlement. Employers and employees can negotiate more generous leave provisions in workplace agreements.

Eligibility for parental leave

Parental leave provisions apply to all full-time, part-time and eligible casual employees with at least 12 months continuous service with their current employer.

Casual employees are eligible for parental leave if they have been employed with the same employer on a regular and systematic basis for a period or sequence of periods of at least 12 months and they have a reasonable expectation of ongoing employment with the same employer.



**WorkChoices
and
parental
leave**

The parental leave provisions in the Standard cover eligible employees working for a constitutional corporation and eligible employees employed by a sole trader, trust, partnership and other unincorporated entities.

Maternity leave

Female employees may take up to 52 weeks of unpaid maternity leave during or after their pregnancy. An employee can arrange to take other forms of leave, such as annual leave or long service leave, for the birth of her child. However her entitlement to 52 weeks of unpaid maternity leave will be reduced by the amount of any other form of authorised leave taken by the employee, and any paternity leave taken by her spouse.

If an employee chooses to take maternity leave, she is required to take at least six weeks leave after the date of the birth of her child and to take all leave associated with her child's birth in a continuous, unbroken period of leave.

Special maternity leave can be taken by a female employee for a pregnancy related illness, or to recover from a miscarriage that occurs up to 28 weeks before the expected date of birth or in the event of a still birth. An employee is entitled to take special maternity leave for the period stated in a medical certificate provided to her employer.

Paternity leave

A male employee is entitled to take up to one week of unpaid leave within a week of the birth of his child and a longer period of continuous unpaid leave to be his child's primary care giver. The total amount of unpaid paternity leave that can be taken is 52 weeks, but this amount is reduced by any other leave taken by him or other parental leave taken by his spouse for the birth of the child.

Adoption leave

An employee seeking to adopt a child may take up to two days of unpaid pre-adoption leave to attend any interviews or examinations required to obtain approval for the adoption, unless the employee can take other authorised leave for such purposes.

Parents adopting a child under the age of five years are entitled to take up to 52 weeks of unpaid adoption leave (shared between both parents). This leave is only available when the adopted child has not previously lived continuously with either parent for at least six months and is not a child or step child of either parent. Parents may take up to three weeks unpaid leave simultaneously when an adopted child is placed with them. The entitlement to 52 weeks unpaid adoption leave is reduced by any other type of leave taken for the adoption of the child including paid adoption leave, annual leave or long service leave.

Transfer to a safe job

If a pregnant employee provides her employer with a medical certificate stating that she is fit to work but is unable to continue in her present position she is entitled to be transferred to a safe job. If transferring the employee to a safe job is not reasonably practicable for the employer, the employee is entitled to paid leave for the period during which she is unable to continue in her present position (as stated in the medical certificate).

An employee may need to be transferred to a safe job due to risks arising out of her pregnancy or risks connected with her position. A pregnant employee is only eligible to be transferred to a safe job if she is entitled to, and has formally applied for, maternity leave. This entitlement is in addition to any other leave entitlement and does not reduce the period of maternity leave to which an employee is entitled.

Returning to work

When returning to work from parental leave an employee is entitled to return to the position they held before taking leave or to a new position if they have been promoted or have agreed to accept a new position. If the employee's former position no longer exists and the employee is qualified and able to work for their employer in another position, then the employee is entitled to work in another position for their employer. When there is more than one appropriate position, the employee is entitled to the position nearest in status and remuneration to their former position.

An employee planning to return to work from maternity leave (or from a period of paternity or adoption leave that was longer than four weeks) is required to give their employer at least four weeks written notice of the date the employee proposes to return to work.

Employee rights and responsibilities

To be eligible for maternity leave, an employee must work for one employer for at least 12 months continuous service prior to the expected date of their child's birth. To be eligible for paternity or adoption leave, the employee must have 12 months continuous service at the time leave is to commence.

The employee must also advise their employer of their intention to take parental leave. The procedures for doing this vary slightly for the different forms of leave.

In the case of maternity leave, an employee must:

- provide their employer with a medical certificate from a medical practitioner no later than 10 weeks before the expected date of birth (where possible);
- apply formally for parental leave by providing a written application, stating the dates for leave, four weeks before the first day of the intended leave;

- provide their employer with a signed statutory declaration detailing their leave periods and their partner's leave arrangements, as well as stating that they will be the child's primary caregiver and that they will not do work that is inconsistent with their conditions of employment while on parental leave.

These requirements do not apply to an employee when circumstances are beyond their control (for example, in the event of premature birth).

WorkChoices is a new system of workplace relations legislation that covers up to 85 per cent of Australian employees. This series of fact sheets is available to assist workers and employers to understand their rights and obligations under the legislation.

For more information call the **WorkChoices Infoline** on **1300 363 264** or visit the **WorkChoices** website **www.workchoices.gov.au**



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