

30 November 2023

[REDACTED]
Government Women's Network Steering Committee
[REDACTED]

Tēnā koe [REDACTED]

Thank you for your request to the Department of Conservation, received on 8 November 2023, in which you asked for:

- (1) A summary of support, information and entitlements you provide to your employees who take parental leave and return to work at your agency; and*
- (2) Copies of policies and procedures at your agency that relate to information and support provided to employees who take parental leave and return to work.*

We have considered your request under the Official Information Act 1982.

Your questions and our responses are listed below:

1. A summary of support, information and entitlements you provide to your employees who take parental leave and return to work at your agency.

The Department's collective employment agreement and individual agreements contain entitlements to parental leave and return to work. Please refer to Appendix 1 which shows the content of the employment agreements relevant to parental leave.

2. Copies of policies and procedures at your agency that relate to information and support provided to employees who take parental leave and return to work.

Policies and procedures that concern parental leave accompany our response as Appendix 2. This material is available to our staff via the Department's intranet. Please note that this material requires an update.

You are entitled to seek an investigation and review of my decision by writing to an Ombudsman as provided by section 28(3) of the Official Information Act.

Please note that this letter (with your personal details removed) and attached documents may be published on the Department's website.



Nāku noa, nā



Karyn Thompson
Chief People Officer
Department of Conservation
Te Papa Atawhai

APPENDIX 1

Extract from the Parental Leave clauses from the Public Service Association / Department of Conservation Collective Agreement:

PART 5: PARENTAL LEAVE

Principles

- To support parents in raising a family
- To encourage skilled employees back to Te Papa Atawhai
- To retain skilled employees

5.1 Parental Leave

The provisions of the Parental Leave and Employment Protection Act 1987 (the Act) will apply.

An employee must give at least three months' notice of their intention to take parental leave.

For further information please refer to <https://www.employment.govt.nz/leave-and-holidays/parental-leave>.

5.2 Eligibility

If you qualify based on 12 months employment you may be entitled to:

- Primary carer leave of up to 26 weeks
- Partner's leave of up to two weeks
- Extended leave of up to 52 weeks, which may be shared by both parents
- Special Leave of up to 10 days.

If you qualify based on six months employment you may be entitled to:

- Primary carer leave of up to 26 weeks
- Partner's leave of up to one week
- Pro rated extended leave
- Special leave of up to 10 days.

If you have been back at work for six months before the expected arrival of your next child and you still meet the parental leave criteria, then you are eligible for parental leave. You are not eligible for parental leave if you have been back at work for less than six months.

Where, by reason of pregnancy, a female employee is unable to perform her work safely and puts herself, or others at risk, or is incapable of performing her work adequately, her manager will take all reasonable steps to provide alternative duties that are able to be performed. If that is not feasible, the manager may, subject to section 9 (2) of the Parental Leave and Employment Protection Act 1987, direct her to commence her maternity leave on such date as the manager decides.

5.3 Primary Carer Leave

Primary carer leave is available to:

- Female employees who are having a baby
- Her spouse or partner if he or she has all, or part of the birth mother's parental leave payments transferred to them, and
- Employees who are going to have the primary responsibility for the care, development and upbringing of a child under six years on a permanent basis; this may be through adoption or whangai (but it doesn't include foster care or other temporary care basis). If the employee has a spouse or partner they need to choose who will be the primary carer.

Partner means the spouse or partner of the mother or nominated primary carer, male or female, same gender or different gender.

5.4 Partner's Leave

Partner's leave is available if you are the spouse or partner who meets the six months or 12 months time criteria:

- Up to two weeks unpaid leave in one continuous period, if you qualify based on 12 months employment, or
- Up to one week of unpaid leave in one continuous period, if you qualify based on six months employment.

5.5 Extended Leave

The amount of extended leave available to an employee depends on whether each parent meets either the six months or 12 months' time criteria. Extended leave may be shared by two parents who both meet the criteria, and they can take it at the same time or one after the other.

If the employee is on a fixed term agreement extended leave will not extend beyond the expiry date of that agreement.

5.6 Negotiated Carer Leave

If an employee will be the primary carer of the child and would meet the work time and hours criteria to receive a parental leave payment, but they can't take primary carer leave (because they don't meet the criteria for parental leave), they can ask for negotiated carer leave. Negotiated carer leave lets employees who don't qualify for primary carer leave take leave to care for their child and receive a parental leave payment.

5.7 Special Leave

While an employee is pregnant she is entitled to take up to 10 days unpaid special leave, for pregnancy-related reasons such as ante-natal classes, scan or midwife appointments.

5.8 Paid Parental Leave

If your child is expected to be born, is born, or you assume primary care of a child under six years of age, you may be entitled to 26 weeks of parental leave payments.

For more information please visit the IRD site <https://www.ird.govt.nz/yoursituation-ind/parents/parents-paid-parental-leave.html>

5.9 Payment of Annual Leave on Return from Parental Leave

Employees continue to accrue annual leave during a period of parental leave. Te Papa Atawhai will pay all annual leave taken following the return from parental leave on the basis of the employee's ordinary pay. Where the provisions of the Parental Leave and Employment Protection Act 1987 give a higher rate of payment, the Act will apply.

5.10 Keeping in Touch Days

If you are on parental leave but you choose (and your employer agrees) to perform work from time to time, for example, to attend a team day or change announcement, it won't be counted as having stopped your parental leave by being back at work as long as:

- You only do a total of 64 hours or less of paid work for your employer during your parental leave payment period, and
- This work is not within the 28 days after your child was born.

5.11 Ending Extended Leave

If you have (and/or your spouse or partner has) worked for 12 months, extended leave must end by the:

- Date the child turns one if the child is born to you or your spouse or partner, or
- 12 months anniversary of you or your spouse or partner becoming the primary carer in respect of the child.

If you have only worked for six months (and whose spouse or partner has not worked for 12 months), extended leave must end by the:

- Date the child turns six months (or the pro rated value based on length of service) if the child is born to you or your spouse or partner, or
- Six months (or the pro rated value based on length of service) from the date you or your spouse or partner became the primary carer of the child.

You must give your manager 21 days' notice in writing of the date on which you intend to return to work.

5.12 Job Protection

When returning from parental leave an employee is entitled to resume work in the same or in a similar position to the one occupied before going on leave. This means a position of equivalent salary and band, in the same location or within reasonable commuting distance, and involving responsibilities broadly comparable to those the employee held before.

If an employee's position is subject to a Management of Change Process while on parental leave, Te Papa Atawhai must treat the employee in the same way as any other employee under the Management of Change provisions, (Part 9 of this CA) including prior notification.

5.13 Ex Gratia Payment

Employees will be eligible for an ex gratia lump sum taxable payment equivalent to six weeks (or up to a maximum of 30 working days), based on the employee's annual rate of pay and hours of work prior to going on parental leave, if they have:

- been on primary carer or extended leave for at least six weeks; and
- completed six months service since their return; and
- were the primary carer of their child in terms of the Act;

If the employee took less than 30 working days leave, the employee will receive this payment based on the employee's annual rate of pay and hours of work prior to going on parental leave on a pro rata basis according to the number of working days absent.

If an employee and their partner both work for a public sector employer, only one will be eligible for the payment. If the employee's partner works for a private sector employer eligibility is unaffected.

5.14 Re Engagement after Childcare

An employee who resigns to care for preschool children will have preference for re-employment if they reapply for a position within four years from the date of resignation and no more than five years from the date of taking parental leave (without pay).

APPENDIX 2

The following are pages from the Department's intranet relating to Parental Leave Without Pay:

Introduction:

An employee is entitled to parental leave without pay of up to 26 weeks where they have been employed for less than 12 months, and up to 52 weeks thereafter, in respect of every child born to the employee or the employee's partner, and in respect of every child up to and including five years of age adopted by the employee or the employee's partner, provided that they assume or intend to assume care of the child, i.e. be the prime care giver.

The entitlement to parental leave without pay does not increase in the case of multiple birth or adoption.

Parental leave without pay is the combination of all or any of maternity leave, paternity leave and extended leave under the Parental Leave and Employment Protection Act 1987 which should be read in conjunction with this section.

Page 1 - Entitlement and Eligibility

The Parental Leave and Employment Protection Act 1987 provides for an entitlement of up to 26 weeks paid parental leave for eligible employees.

Your eligibility and entitlement to receive paid parental leave from Inland Revenue will be automatically determined through an online application process via MyIR.

Refer to the Inland Revenue website for more details to the application process. [Link to Inland Revenue website](#).

[Employment New Zealand website \(MBIE\)](#) also provides useful information.

Applying for paid parental leave:

1. Notify your manager of your intention to take parental leave three months prior to the expected due date.
2. Employee to complete the online form through MyIR as per the instructions outlined on the Inland Revenue site to determine eligibility and entitlement.
3. Employee to complete the parental leave application form and provide to your manager.
4. Manager to complete approval to take parental leave letter.
5. Manager to complete the necessary procedure sheet.
6. The following documents are submitted through assyst:
 - o Procedure sheet ([DOC-461507](#))
 - o Application form for parental leave ([DOC-461382](#))
 - o Certificate from doctor or midwife
 - o Letter advising approval for parental leave ([DOC-461384](#))

An employee is entitled to parental leave without pay of up to 26 weeks where they have been employed for less than 12 months, and up to 52 weeks thereafter, in respect of every child born to the employee or the employee's partner, and in respect of every child up to and including five years of age adopted by the employee or the employee's partner, provided that they assume or intend to assume care of the child, i.e. be the prime care giver.

The entitlement to parental leave without pay does not increase in the case of multiple birth or adoption.

Parental leave without pay is the combination of all or any of maternity leave, paternity leave and extended leave under the Parental Leave and Employment Protection Act 1987 which should be read in conjunction with this section.

The parental leave without pay provisions prescribe the entitlements for female and male employees. In general, they are intended to ensure that employees who must be absent from work on parental leave without pay are able to return to work in their previous position.

The **maximum** period of parental leave without pay in respect of a child born or adopted is:

- **In the case of a child born:** 52 weeks ending, in the case of a child born, on the date the child attains the age of 12 months or earlier;
- **In the case of a child adopted by an employee:** 52 weeks ending with the date that is the first anniversary of the date on which the employee first assumed care of the child with a view to adoption.

The period of parental leave without pay may be taken by either partner exclusively or it may be shared between them either concurrently or consecutively. Whatever arrangement is agreed the total period of leave for which the parents are eligible may not be exceeded. This principle applies whether one or both partners are employed in the Department or elsewhere.

Under the Parental Leave and Employment Protection Act 1987, an employee is not entitled to parental leave without pay in respect of a child where less than 6 months have elapsed after the date of the most recent period of parental leave without pay taken in respect of another child.

The Parental Leave and Employment Protection Act 1987 provides that the employer must keep the employee's position open until the end of the employee's parental leave without pay unless the position is a 'key' position or because of the occurrence of a redundancy situation. In determining whether or not a position is a 'key' position, regard must be given, among other things, to the size of the work area and the training period or skills required in the job.

Recent case law confirms that there are extremely rare cases only where a position can be defined as a 'key' position in the organisation and parental leave without pay can be refused.

Any proposal to refuse parental leave without pay should be formalised only after formal consultation with and agreement by the Deputy Director-General, People.

Page 2 - Notice Periods

Leave for birth of a child

Employees intending to take parental leave without pay are required to give at least three months notice in writing to the Department.

Notice, which should be by way of Parental Leave Application Form, is to be accompanied by a certificate signed by a registered medical practitioner (or for the partner employee a copy of the certificate) certifying the expected date of delivery. In the case of a partner employee the notice must also be accompanied by a written assurance from the partner that they are her partner and they intend to assume care of the child to be born to her. Applications are to state:

- the date on which the applicant wishes to commence parental leave without pay;
- the period for which leave is required; and
- indicate any period of leave a spouse/partner is intending to take/is taking/or has taken, in respect of the child of the application.

Leave for adoption of a child

In the case of the adoption of a child, the requirement for three months notice and the medical certificate shall not be required and instead:

- the intention to legally adopt a child shall be notified to the Department immediately following advice from Child, Youth and Family to the adoptive applicants that they are considered suitable adoptive parents; and
- subsequent evidence of an approved adoption placement shall be provided to the satisfaction of the Department.

Failure to give adequate or proper notice

Where an employee lodges an incomplete application, the Department must inform the employee within 7 days and indicate what further information is required.

Where an employee fails to give the three months minimum notice of an intention to take parental leave without pay, that employee shall not be entitled to commence parental leave without pay until such notice is given and the required notice period has elapsed.

There are circumstances where the Manager may exercise discretion in respect of the notice period required, e.g. where an employee is advised by her medical practitioner to commence leave or where a medical emergency relating to the pregnancy arises.

Obligation to notify employee

The Department is required to acknowledge receipt of a parental leave without pay application within 21 days. The Department must state the period of leave that an employee has been granted and if necessary state the reasons why an entitlement differs from the period of leave that was requested.

Page 3: Timing of Parental Leave

A female employee may start leave on the day of confinement or adoption, up to six weeks before the expected date of delivery or adoption, or more than six weeks before if a medical practitioner so advises. In addition, she may take up to 10 days special leave without pay before parental leave without pay for reasons not connected with the pregnancy. This 10 days special leave, and leave prior to six weeks before the birth or adoption or on the advice of a medical practitioner, is in addition to the 26/52 weeks entitlements.

In instances where the employee finds she is not able to carry out her duties because of the pregnancy and wishes to commence her parental leave without pay earlier than previously agreed, she and the Department may agree on an earlier commencement of leave date.

A partner employee may take a continuous 14 day period of leave without pay at any time during the six week span from 21 days before the expected date of delivery or adoption. This is in addition to the 26/52 week entitlement.

Page 4 Returning from Parental Leave

When the employee returns from parental leave without pay they are entitled to resume work in the same or in a similar position to the one occupied before they went on leave. This means a position of the equivalent salary and band, in the same location or within reasonable commuting distance, and involving responsibilities broadly comparable to those they had before.

When the employee goes on parental leave without pay, the Department must as first preference hold the position open and if the work must still be done, fill it temporarily.

Key positions

If the position is a 'key' position (as defined in the Parental Leave and Employment Act 1987) that cannot reasonably, practically be filled on a temporary basis, then the Department must offer the employee (in writing), one of the following on being advised of the employee's return (in order of priority):

- the same position if it is vacant at the time, or a similar position as the one previously occupied; or
- if this is not possible one of the following options:
- an extension of parental leave without pay up to 12 months until the employee's previous position or a similar position becomes available
- a similar position in another location with assistance to enable transfer. If the employee refuses this offer they will continue on extended parental leave without pay as in (a) above
- a different position in the same location (at lower banding or involving different duties); if the employee refuses the offer they will continue on extended parental leave without pay as in (a) above.

On the expiry of the extended parental leave without pay, if there is no position available, the employee will remain on leave without pay and the Department may terminate the employment with one month's notice, but the employee will be entitled to receive an ex gratia payment of 30 working days based on their percentage employment and pay rate prior to commencement of parental leave without pay.

Notice of Return

An employee on parental leave without pay is required to:

- notify the Department in writing at least one month prior to the expiry date of the parental leave without pay, of an intention to return to work or resign or take a further period of extended leave; and
- report for duty on a date not later than the expiry of the approved period of parental leave without pay.

It is important that employees are advised when they commence parental leave without pay that failure to notify the Department of an intention to return to work or resign renders the employee absent without authority and liable to forfeit office.

An employee on parental leave without pay may be permitted to return 'early' during a period of leave on 21 days notice if:

- the employee or the employee's spouse/partner suffers a miscarriage; or the child is stillborn or dies; or
- the employee or employee's spouse/partner has consented to the adoption of the child and some other person has the care of the child with a view to its adoption; or
- the employee ceases to have care of the child in respect of whom parental leave without pay was taken.

Note: Where a temporary employee is employed to replace an employee who is on parental leave without pay, the Department shall, before employing the temporary employee, inform them in writing that:

- the employee they are replacing is on parental leave without pay; and
- that the employee may return to work (in accordance with the above regulations) before the date on which the employee is required to return to work at the end of parental leave without pay.

In all other cases where an employee wishes to return to work 'early' the normal notice requirement will apply and the Department shall exercise discretion as to whether to allow the application.

In exercising this discretion, the Department should wherever possible allow an employee who wishes to return 'early' to take up their previous position or a similar position. If such a position is not available immediately after expiration of the required period of notice, a position should be made available as soon as possible thereafter.

Job Protection

An employee returning from a period of parental leave without pay may wish to work reduced hours for a period not exceeding twelve months or take up a part-time position within the Department.

The Department will take a sympathetic view of the employee's request. However, the following conditions will apply:

- an employee who is offered a similar position has seven days in which to notify the Department that they intend to either take up or decline the offer; and
- if the offer is declined then parental leave without pay ceases and the normal provisions for leave without pay apply.

Parental leave without pay shall be granted to employees as leave without pay; it will not be granted as sick leave on pay or sick leave without pay. Rules regarding leave without pay apply (e.g., in respect of interrupting, without breaking, the qualification period for long service leave or resigning leave) and, consequently, annual leave reduces accordingly.

However, to ensure that employees returning to work from parental leave without pay have some annual leave available to them, annual leave due will not be required to be taken before the employee proceeds on parental leave without pay. It may in fact be held over and taken when the employee returns to work.

General

Where an employee who is pregnant is unable to perform her normal duties to the level required, for the safety of herself or of others or is incapable of performing her work adequately, she may be temporarily transferred to other duties at no loss of salary.

Failure to Return from, or Resignation While on, Parental LWOP

Where an employee resigns while on PLWOP, or fails to return from PLWOP, their employment will have deemed to have been at an end as from the day on which the period of parental leave began.

Page 5: Parental Leave and Surplus Positions

If the Department wishes to disestablish a position or a number of positions and any of the affected positions are usually occupied by employees who are at the time of structural change, on parental leave without pay, then;

- an employee on parental leave without pay must be notified in writing if their position is to be disestablished;
- the Department's Management of Change provisions will apply in any cases when the position of an employee on parental leave without pay is disestablished. Options from the Deployment Agreement made available to such employees will be the same as those agreed as being available to other employees who are part of the same surplus.

Page 6: Ex-gratia Payment

After six months service following return from parental leave without pay, an employee will be paid a one-off ex-gratia payment equivalent to 30 working days. The rate of payment is based on the employee's annual rate and hours of work prior to going on parental leave, without pay.

Where less than 30 working days' parental leave without pay were taken the payment will be paid on a pro rata basis.

If you and your partner both work for a state sector employer, only one of you will be eligible for the payment. If your partner works for a private sector employer your eligibility is unaffected.

The payment is calculated on basic salary (including equalisation allowance if applicable, but not other allowances) and is taxed at extra emolument rates but not liable to superannuation deductions.

Page 7: Re-entry after absence due to child care

An employee who resigns from the Department to care for pre-school children may apply to re-enter the Department under the preferential provision provided that:

- The absence does not exceed four years from the date of resignation or five years from the date of cessation of duties to take parental leave without pay.
- On resigning the employee cites the reason for resignation as being for childcare purposes and indicates that they may wish to use the preferential re-entry option.

Application to Re-enter

An ex-employee who has been engaged in caring for her/his child/ren and wishing to apply for preferential re-entry must:

- give at least three months written notice to the Department of their wish to return under this provision and renew that notice one month before expiry of the four or five year period or the date of availability to work, whichever is the earlier;
- provide the birth certificate of the pre-school child together with the application; and
- sign a statutory declaration to the effect that the absence has been due to the care of a pre-school child/ren and provide details of employment undertaken during the period of absence.

The Department will acknowledge receipt of the application and where it is satisfied that the applicant meets the provisions, will advise the applicant in writing accordingly. This advice will confirm the applicant's eligibility for the following:

Appointments

Where the applicant meets all the provisions as outlined above and at the time of application:

- has the necessary skills to competently fill a vacancy which is available in the Department; and
- the position is substantially the same in character and at the same or lower salary and banding as the position previously held;

then the applicant will receive preference in appointment over any other applicant.

Request for Review of Appointment

This appointment will be subject to review where only internal applicants are involved or where the 'preferential re-entry' employee is appointed to a position at a higher salary or band than that held at the time they resigned.

Non-appointment

If an applicant for the preferential re-entry provisions is not appointed to any position.