

Factsheet Thirteen

PARENTING & PREGNANCY

Pregnancy and parenthood are a part of life experienced by many women. A large number of these women are also employees. As a woman, a pregnant employee or a mother, you have the legal right to work in a safe and healthy workplace, free from discrimination. It is also unlawful for you to be treated unfairly or less favourably because of a potential pregnancy.

I just found out I'm pregnant, do I have to tell my boss?

Many women don't wish to tell anyone about their pregnancy until after the first trimester, or even later. You are not obliged to tell your employer that you are pregnant and want to take parental leave until 10 weeks before your expected start date. However if you have concerns about carrying out any of your normal duties, you may need to tell your employer earlier in order for safe arrangements to be made. Under the *NT Anti Discrimination Act*, your employer cannot unreasonably fail or refuse to accommodate a special need you may have. Special needs include pregnancy.

My pregnancy means I can't keep doing my job, what will happen to me?

Employers have a legal responsibility under the Northern Territory's *Work Health and Safety (National Uniform Legislation) Act 2011* to provide all employees with a safe and healthy workplace. They also have a responsibility under NT and Federal anti-discrimination legislation and the *Fair Work Act 2009* not to disadvantage or mistreat an employee because of pregnancy. Your employer should therefore perform a risk assessment to ensure that the work you do and the way you do it is safe for you while you are pregnant. They may need to make alternative equipment available to you, or temporarily adjust the duties you perform. NT WorkSafe can assist with information regarding undertaking a risk assessment. Your doctor can assist with information about what work is safe and appropriate for you to perform while pregnant.

If you are pregnant and your job poses a risk to your health or the health of your baby, you

have the right to be transferred to a safe job with the same pay and conditions. You need to provide a medical certificate stating that you are fit to work but are unable to continue in your present position. If a transfer is not reasonably practical (for example, because appropriate and safe work is not available), you are entitled to take paid leave for the period you can't continue in your position (as stated in the medical certificate). This paid leave is called 'paid no safe job leave' and is in addition to your normal leave entitlements, such as personal leave and annual leave. No safe job leave does not reduce your 12 months parental leave entitlement. Note that no safe job leave will only be paid if you are entitled to parental leave (see below) and you have notified your employer that you will be taking parental leave. If you are not entitled to parental leave you may be entitled to unpaid no safe job leave.

What if I need time off while I am pregnant and still working?

Generally, you should be able to access your paid personal leave (previously known as sick leave) to attend antenatal appointments or if you are unwell during your pregnancy. If you are too unwell to work and have no paid personal leave available, or don't want to take your paid personal leave, you are able to apply for unpaid 'special maternity leave'. Unpaid 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 stillbirth. You can take as much unpaid special maternity leave as your doctor recommends in a medical certificate. You must be eligible for parental leave to be able to take unpaid special maternity leave. The amount of 'special maternity leave' that you take is no longer deducted from the period of parental leave available once your baby is born and you have the right to choose whether you would prefer to take your paid personal leave or unpaid special maternity leave.

Some organisations have provisions for special antenatal leave, which may be paid or unpaid, to allow women to attend their appointments without having to use their paid personal leave. Check with your supervisor or HR officer or in your contract of employment agreement to see if this applies to you.

What happens once the baby arrives - what leave am I entitled to?

Under the National Employment Standards (NES), unpaid parental leave is leave taken on the birth of a child or the adoption of a child under 16 (the child may be your child or your partner's child). Note that partner includes a spouse, a former spouse, a de facto partner, a former de facto partner and a same sex de facto partner. The leave is only available if you will have a responsibility for the care of the child. The terms paternity and maternity leave are no longer used in the *Fair Work Act 2009*.

To be eligible to take unpaid parental leave, you must have worked continuously for the same employer for 12 months immediately before the child's due date or adoption placement date; this includes permanent full time and permanent part time employees. Unpaid parental leave is also available to casuals who have worked regular systematic hours and have a

reasonable expectation of continuing employment.

Each parent can each take a maximum of 12 months of unpaid leave, unless one parent requests an extension (see further information below).

What if I am not eligible for parental leave?

If you have not been employed by your current employer for at least 12 months at the time you will commence parental leave, then you are not eligible for parental leave under the *Fair Work Act 2009*.

Remember that you may still be protected from unlawful discrimination under the Federal *Sex Discrimination Act 1984*, the *NT Anti-Discrimination Act* or by the *Fair Work Act 2009*; all of which prohibit employers from discriminating against an employee due to their sex or pregnancy.

Women in the Northern Territory are also protected from discrimination on the grounds of parenthood and breastfeeding. These protections effectively mean that while you may not be eligible for parental leave, your employer has a responsibility to try and accommodate your needs arising from pregnancy and parenthood. For example, your employer may negotiate a reasonable alternative to you taking parental leave under the *Fair Work Act 2009*, such as allowing you to use accrued annual or long service leave and/or offering you leave without pay. The NT Working Women's Centre encourages you to seek some advice regarding your rights to leave if you are not entitled to the full 12 months unpaid leave.

Check the section below about Discrimination for more information.

Reducing or extending parental leave

For some women 12 months maternity leave is not enough time away from work and for other women, they need to return to work within 12 months as each and every family is different.

If you have arranged to take less than 12 months parental leave, then you are entitled to extend your return date once by giving written notice to your employer at least 4 weeks before your original return date, as long as your new return date will still fall within the 12 months immediately after the birth or adoption. If you wish to extend your leave again (within the 12 months), or if you wish to return to work earlier than arranged, your employer can agree but has the right to refuse your request.

If you, or your partner, has taken 12 months parental leave and wishes to extend, one of you can request an extension of leave to a maximum of 24 months, reduced by the amount of any leave (except unpaid special maternity leave) taken by your partner. So, if you have used your full 12 months entitlement, then you have the right to request a further period of up to 12 months unpaid parental leave.

You must make the request in writing at least 4 weeks before the end of the initial period of leave. Your employer must respond in writing within 21 days stating whether they grant or refuse the request. Employers may refuse the request only on reasonable business grounds and must include the reasons for the refusal in the written response. While reasonable business grounds are not defined in the NES, they may include the effect on the workplace (e.g. the impact on finances, efficiency, productivity, customer service), the inability to manage the workload among existing staff or the inability to recruit a replacement employee.

Can my partner and I take parental leave at the same time?

Under the NES, if you are both employed you can take 8 weeks unpaid parental leave at the same time, either immediately after the birth or adoption of a child or, by agreement with the employer, at any time during an extended period starting before the birth and ending no later than 6 weeks after the birth or adoption. The 8 weeks of concurrent unpaid parental leave can be taken in separate periods, but unless the employer agrees otherwise, each period must not be shorter than 2 weeks. This 8 weeks counts towards the total 12 months leave each.

Can I take other types of leave as well as parental leave?

You can also take other forms of leave, such as annual leave or long service leave, at this time. However, your entitlement to 12 months of unpaid parental leave will be reduced by the amount of any other form of leave you take. For example, if you take a month of annual leave, you will have 11 months of unpaid parental leave remaining.

When can I start parental leave?

If you are pregnant, your leave may start up to 6 weeks before your expected due date, but no later than the date of birth. For adoption leave, the leave must start on the day of placement of the child.

If you want to stay at work within 6 weeks before the expected date of birth, your employer may request a medical certificate to state that you are fit to work.

What notice do I have to give?

You must give your employer at least 10 weeks written notice before starting your leave, unless this is not possible. The notice must specify the intended start and end dates of the leave, and you must confirm the intended start and end dates of the leave (or advice of any

changes) at least 4 weeks before the intended start date, unless this is not possible. An employer may require evidence of the due date or adoption placement date.

If you or your partner are intending to take 8 weeks concurrent parental leave the notice period required is 10 weeks. However, if you or your partner is intending to take the 8 weeks of concurrent parental leave in separate blocks, the second and subsequent blocks of leave require 4 weeks notice only. The 8 weeks concurrent parental leave must be taken within 12 months of the birth or placement of the child.

If you do not provide the appropriate notice or evidence the employer may require you to commence your parental leave.

Pre-Adoption leave

Adopting parents can take up to 2 days of unpaid pre-adoption leave for adoption interviews or exams (unless their employer requires them to take other paid leave they have available, such as annual leave). You do not need to meet service requirements to access this leave. You must give notice of the intention to take pre-adoption leave and your employer can require reasonable evidence.

Employer provided paid parental leave

Many employers provide paid parental leave as a way of valuing, supporting and retaining, their staff. For example, female employees of the NT public service are entitled to 14 weeks paid maternity leave after 12 months. You should check your Modern Award, agreement, contract or letter of offer to see if you may be eligible for paid parental leave. It is not compulsory for your employer to provide paid parental leave.

Some employers provide paid parental leave for the father of a newborn or adopted child, this is often referred to as paternity leave. You should check your Modern Award, agreement, contract or letter of offer to see if you may be eligible for paid paternity leave.

Commonwealth Parental Leave Pay

Under the Commonwealth Parental Leave Pay scheme, eligible working parents can get 18 weeks of government-funded Parental Leave Pay at the rate of the National Minimum Wage. Full-time, part-time, casual, seasonal, contract and self-employed workers may be eligible. Parental Leave Pay used to be called Paid Parental Leave.

Eligibility for Commonwealth Parental Leave Pay

On the 1 January 2011 the Federal Government introduced Parental Leave Pay to financially

support eligible working parents of children born or adopted from 1 January 2011.

Parental Leave Pay is a government-funded entitlement for working parents. Eligible parents are entitled to 18 weeks of pay at the National Minimum Wage. It is, as most pay is, taxable. As at 1 July 2014 the National Minimum Wage is \$640.90 per week.

You may be eligible if you:

- are the primary carer of a newborn or recently adopted child from 1 January 2011; and
- are an Australian resident; and
- have worked for at least 10 of the 13 months before the birth or adoption of your child and
- worked for at least 330 hours in that 10-month period (just over one day a week), with no more than an eight-week gap between any two consecutive working days; and
- have received an individual adjusted taxable income of \$150,000 or less in the financial year before the date of birth or adoption or date of claim, whichever is earlier; and
- are on leave or not working, from when you become the child's primary carer until the end of your Paid Parental Leave period.

There are some circumstances in which you can receive Parental Leave Pay if you are not the primary carer of your child—for example, being temporarily unable to care for your child due to illness, or being the birth mother in an adoption arrangement.

The Parental Leave Pay may still be awarded in circumstances where a stillbirth or infant death occurs.

You can take your Parental Leave Pay before, during, or after any paid or unpaid maternity or parental leave or other employer-funded leave entitlements (such as annual leave or long-service leave).

The scheme recognises all types of workers, including those in full-time, part-time, casual, seasonal, contract, or self-employed work. It also recognises working parents who have multiple employers, those who work for a family business, and those who have recently changed jobs.

From 1 March 2014 Parental Leave Pay will be paid directly to workers by Centrelink. Prior to 1 March 2014, it may be paid to workers by Centrelink or the employer depending on the circumstances.

Dad and partner pay

From 1 January 2013, the Parental Leave Pay scheme was expanded to include a new 2 week payment for working Dads or partners. The payment is at the National Minimum Wage which at 1 July 2014 was \$640.90.

Dads and partners may be eligible if they:

- are caring for a child born or adopted from 1 January 2013; and
- are an Australian resident; and
- have worked for at least 10 of the 13 months prior to the start date of the Dad and Partner Pay; and
- worked for at least 330 hours in that 10-month period (just over one day a week), with no more than an 8-week gap between any 2 consecutive working days; and
- have received an individual adjusted taxable income of \$150,000 or less in the previous financial year; and
- are on leave or not working during the Dad and Partner pay period.

Dad and Partner pay does not change any of the entitlements to unpaid parental leave under the NES.

Dad and Partner pay is paid directly to workers by Centrelink.

What is the difference between Parental Leave Pay and the Baby Bonus?

The Commonwealth government (Centrelink) has a scheme called the 'Baby Bonus'. Eligible parents are entitled to 13 fortnightly instalment payments. It is paid to eligible families following the birth (including stillbirth) of a child. You can also claim it for adopted children who enter your care before they turn 16 years old. Parents may be eligible to receive up to \$5,000 for their first child and \$3,000 for each and every child thereafter.

An income test applies to Baby Bonus. This is based on your family's income for the first 6 months after your child is born or adopted. If your family does not qualify for Baby Bonus, you may be eligible for Parental Leave Pay.

You cannot receive both Parental Leave Pay and Baby Bonus for the same child.

On 1 March 2014 the Baby Bonus will be replaced with an increase in Family Tax Benefit Part A.

For more information on the Baby Bonus or Family Tax Benefit Part A please visit www.humanservices.gov.au

What if I get the sack while I am pregnant or on parental leave?

It is unlawful for your employer to dismiss you because you are pregnant or on parental leave. Your employer should not downgrade your work or refuse you a job solely because you are pregnant, have been on parental leave or because you have a young child.

Check the section below on Discrimination, and factsheet 7 *Termination of employment* for more information.

Staying in touch

We encourage you to stay in touch with your employer, where possible, whilst on maternity leave. This can help maintain your connection to the workplace and ensure your employer keeps you informed about any changes which may affect you on your return to work.

Many organisations have policies in place regarding staying in touch while on parental leave and will encourage you to decide how much contact you will have such as receiving staff newsletters or the opportunity to attend important events, meetings or training during your leave period.

You should discuss options with your employer before you commence leave and not be afraid to alter your arrangements if you find they aren't suitable.

Under the *Fair Work Act 2009*, if your employer makes a decision about your job while you are on parental leave, and that decision will have a significant effect on the pay, status or location of your position, then they must take all reasonable steps to give you information about the changes and an opportunity to discuss them.

Returning to work

When returning to work from parental leave you have the right to return to your old position or to a new position if you have been promoted or agreed to accept a new position. It is unlawful for your employer to demote you because of your absence from work.

If you had been performing light duties or reduced hours prior to commencing parental leave, you are entitled to have your original position back. If your old job no longer exists and you are qualified and able to work in another position, then you are entitled to work in another position or you may be entitled to a redundancy. When there is more than one appropriate position, you are entitled to the position nearest in status and pay to your former position.

Some women may not want to, wish to, or be able to return to their full time original position at the end of their parental leave. If this happens to you and you wish to maintain your employment relationship, you will need to negotiate with your employer to find an alternative that works for everyone. Part-time work may be available upon your return. You should let your employer know early of your interest in working part-time and commence negotiations as soon as possible. See the section on Right to request flexible working arrangements and the factsheet 16 *Balancing work and family* for more information.

If you do not return to your position at the end of your period of parental leave, you will lose your entitlement under the *Fair Work Act 2009* to have your old position back when you are ready to return. However, depending on the circumstances, you may have protection under the General Protections and Unlawful Termination provisions of the *Fair Work Act 2009*, which make it against the law to dismiss you because of your family responsibilities, as well as protection under both NT and Federal Anti-Discrimination legislation, which require your

employer to attempt to accommodate your responsibilities and needs as a mother.

Right to request flexible working arrangements

Increasingly, it is being recognised that providing employees with family friendly options is of benefit to employers as well as to employees. Benefits include happier, more productive employees, higher retention rates, lower recruitment expenses and becoming known as an employer of choice.

There are many ways that your workplace can help you in balancing your work and family commitments including but not limited to allowing you to work part-time. They could also include allowing you to perform some work from home or bringing children to work, providing a breastfeeding friendly workplace, providing assistance with child care, allowing you to access leave over school holidays or at half pay, and salary banking to provide for extra leave. These flexible arrangements may be informal agreements between you and your employer (although it is always best to get such things in writing), part of your workplace policies, or could be part of your Modern Award or negotiated and formally written in to your agreement.

Under the *Fair Work Act 2009* you can request a change in working arrangement to assist with the care of your child in certain circumstances. You can make the request if you are a parent or have responsibility for the care of a child who is school age or younger or if you are a carer (as per the meaning of the *Carer Recognition Act 2010*).

There are other circumstances in which you can request a change in working arrangements that don't necessarily relate to parenting and pregnancy such as if you have a disability; are 55 or older; are experiencing domestic or family violence from a member of the employee's family; or you are the carer or provide support to somebody who is experiencing domestic or family violence who requires care or support because they are experiencing violence from that person's family. See factsheet 16 *Balancing work and family* for more information.

To make the request for flexible working arrangements, you must have 12 months continuous service with the employer, and if you are a casual, you must also have an expectation of ongoing employment on a regular and systematic basis. You must make the request in writing and include what change you are wanting and why. Your employer must give you a written response within 21 days, stating whether the request is granted or refused, and if refused, detailed reasons why. You should be able to clearly understand why your request is rejected. They cannot just give a refusal without reasons. A request can only be refused on reasonable business grounds. While these are not defined in the *Fair Work Act 2009*, they may include the effect on the workplace, including the financial impact and the impact on efficiency, productivity and customer service; the inability to organise work among existing staff; and the inability to recruit a replacement employee or the practicality or otherwise of the arrangements that may need to be put in place to accommodate the request.

If your request for flexible working arrangements is rejected and you are not satisfied with your employer's stated reasons, then you can go to the Fair Work Commission for

assistance in resolving the disagreement. However, the Fair Work Commission can only help you if this is provided for in your contract of employment, enterprise agreement or Modern Award.

If your request for flexible working arrangements is rejected you may also be entitled to make a discrimination complaint to the NT Anti-Discrimination Commission. Under the *NT Anti Discrimination Act*, your employer cannot unreasonably fail or refuse to accommodate a special need you may have. A special need includes parenthood. This means that there may be an obligation on your employer to accommodate a request for flexible working arrangements that enables you to care for your child.

Check factsheet 8 *Negotiating with your employer* and factsheet 16 *Balancing work and family* for more information.

What if I am discriminated against or unfairly treated?

It is illegal to discriminate against pregnant and breastfeeding women in the workplace. It is also illegal to discriminate against women on the ground of 'potential pregnancy' (i.e. women of child bearing age, who may be likely or perceived to be likely, to become pregnant). So, if you are pregnant, potentially pregnant, or breastfeeding, this cannot be used as a reason to refuse to employ you, transfer you (without a valid medical or safety reason), demote you, change your hours or status, deny you access to training and other opportunities, or dismiss you. It is unlawful for employers or potential employers to question you about current or future pregnancies including when they are interviewing you for a job.

It is also unlawful to be discriminated against or dismissed because of family or carer's responsibilities. This includes if your employer does not allow you to use your personal leave to care for your children when they are sick. If you need to use your personal leave to care for a sick child or other family member, it is known as carer's leave and this right is protected by law.

If you are dismissed or pressured to resign while on parental leave or when you return from leave, or if your job is changed while you are on parental leave, this may be an adverse action and/or an unlawful dismissal.

Check factsheet 12 *General protections and adverse action* and factsheet 7 *Termination of employment* for more information.

Where can I get more help?

NT Working Women's Centre

Freecall: 1800 817 055

Web: www.ntwwc.com.au

Your Union

Unions NT

Ph: 8941 0001

Web: www.unionsnt.com.au

NT Anti Discrimination Commission

Freecall: 1800 813 846

Web: www.adc.nt.gov.au

Australian Human Rights Commission

Complaints Info line: 1300 656 419

Web: www.humanrights.gov.au

The Fair Work Ombudsman

Fair Work Info line: 13 13 94

Web: www.fairwork.gov.au

The Fair Work Commission

Ph: 08 8936 2800

Local call: 1300 799 675

Web: www.fwc.gov.au

Department of Human Services - Families

Ph: 13 61 50

Web: www.humanservices.gov.au

To access an interpreter

Interpreting and Translating Service NT

Ph: 1800 676 254

Web: www.itsnt.nt.gov.au/

Aboriginal Interpreter Service

Ph: 8999 8353

Web: www.ais.nt.gov.au/

For people with a hearing and/or speech impairment

National Relay Service

Ph: 133 677

Freecall: 1800 555 677

The NT Working Women's Centre provides free and confidential information, advice and assistance to women about work related matters.

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NT Working Women's Centre 1800 817 055

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