

# What are my Maternity Rights?



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.

## **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 until ten weeks before your expected due 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.

## **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 *Workplace Health and Safety Act* 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* 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 in addition to your normal leave entitlements, such as personal leave and annual leave. This leave does not reduce your 12 months parental leave entitlement. Note that you can only be transferred to a safe job if you are entitled to parental leave (see below) and you have notified your employer that you will be taking parental 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 (often called 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'. 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 special maternity leave as your doctor recommends in a medical certificate. You must be eligible for parental leave to be able to take special maternity leave. Note that the amount of 'special maternity leave' that you take is deducted from the period of parental leave available once your baby is born.

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 or employment agreement to see if this applies to you.

## **I'm going to be a parent, what leave am I entitled to?**

Under the National Employment Standards (NES), 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 defacto 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 federal legislation.

To be eligible to take 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 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*. However, you are protected by the *Federal Sex Discrimination Act (1984)*, by the *NT Anti-Discrimination Act (1992)*, and by the *Fair Work Act 2009*, all of which prohibit employers from discriminating against an employee due to their sex or pregnancy. The NT Act also prohibits 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, such as allowing you to use any accrued annual or long service leave and/or offering you leave without pay.

Check the section below about Discrimination for more information.

### **Reducing or Extending parental leave**

You may find that you are not ready or able to return to your old position when it is time to go back to work after parental leave. 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 taken by your partner. So, if you have used your full 12 months entitlement and your partner does not wish to use all or any of their 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 (eg. 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 only take 3 weeks unpaid parental leave at the same time, either immediately after the birth or placement 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 six weeks after the birth or placement. This 3 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 advise 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.

### **Pre-Adoption leave**

Adopting parents can take up to two 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.

### **Paid parental leave**

Many organisations 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 service. You should check your award, agreement, contract or letter of offer to see if you may be eligible for paid parental leave.

The Federal Government is proposing to introduce a paid parental leave scheme for parents (or, in exceptional circumstances a third party) who are the primary carers of a child born or adopted on or after 1 January 2011. The leave must be taken *after* the birth or adoption and be completed within 12 months of the date of the birth or adoption.

While the details of the scheme are still being devised, the Federal Government has proposed taxable payments at the level of the Federal Minimum Wage for a maximum period of 18 weeks. It will be possible for each parent to take part of the 18 weeks paid leave, provided that no more than 18 weeks is taken in total per child. In most cases, you will receive the payment through your employer. It is proposed that to be eligible you must be in paid work and have undertaken at least 330 hours of paid work in the 13 month period prior to the expected birth or adoption (an average of around one day of paid work a week). You may have taken a break of no longer than eight consecutive weeks between two periods of work during that time. An income test of \$150,000 will apply based on the primary carer's adjusted taxable income in the previous financial year. You must be an Australian resident or have a special category visa. The scheme will be available to all employees, including casual workers, as well as contractors and the self-employed. The leave will also be payable to mothers in the event of a stillborn baby. Employees who have resigned from work or finished a contract can still make a claim.

The leave can be taken in conjunction with, or in addition to, employer-provided paid parental leave, and other employer-provided leave entitlements such as recreation leave. If you meet the eligibility criteria, you can *choose* between the scheme or the Baby Bonus and other family assistance.

Employers who currently provide paid parental leave through an agreement *cannot* withdraw that entitlement for the life of the agreement. However, existing leave schemes could be modified in the bargaining process for a new agreement.

Provided that the Federal Government's legislation proceeds as planned, it is likely that you will be able to lodge a claim from 1 October 2010. You can visit the Federal Government's Family Assistance Office website for more information about paid parental leave or contact them by phone. The details appear at the end of this Factsheet.

### **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 the Termination of Employment Factsheet for more information.



### **Staying in touch**

It may be beneficial to stay in touch with your employer while you are on parental 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*, 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. 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. 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 will find that for many reasons they are not able to, or do not wish to, return to their 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 Flexible and family friendly work arrangements 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* 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*, 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.

See the section on Discrimination and the Termination of Employment Factsheet for more information.

### **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 award or negotiated and formally written in to your agreement.

Under the *Fair Work Act*, if you are a parent or have responsibility for the care of a child under school age (or a child with a disability under 18), you can request a change in working arrangements to assist with the care of your child. School age in the NT is 6 years old.





To make this request, 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*, 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 Fair Work Australia for assistance in resolving the disagreement. However, Fair Work Australia can only help you if this is provided for in your contract of employment, enterprise agreement or Award.

Check the Negotiating with your Employer and Balancing Work and Family Factsheets 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 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 the Adverse Action and Termination of Employment Factsheets for more information.

## **Where can I get more help?**

NT Working Women's Centre  
Ph: 8981 0655  
Freecall: 1800 817 055  
Web: [www.ntwwc.com.au](http://www.ntwwc.com.au)

Your Union  
Unions NT  
Ph: 8941 0001  
Web: [www.unionsnt.com.au](http://www.unionsnt.com.au)

NT Anti Discrimination Commission  
Ph: 8999 1444  
Freecall: 1800 813 846  
Web: [www.adc.nt.gov.au](http://www.adc.nt.gov.au)



Australian Human Rights Commission  
Ph: (02) 9284 9600  
Complaints Infoline: 1300 656 419  
General enquiries and publications: 1300 369 711  
Web: [www.humanrights.gov.au](http://www.humanrights.gov.au)

The Fair Work Ombudsman  
Fair Work Infoline: 13 13 94  
Web: [www.fwo.gov.au](http://www.fwo.gov.au)

Fair Work Australia  
Ph: 8936 2800  
Local call: 1300 799 675  
Web: [www.fwa.gov.au](http://www.fwa.gov.au)

Family Assistance Office  
Ph: 136150  
Web: <http://www.familyassist.gov.au>

Telephone Interpreter Service  
Ph: 131 450

National Relay Service (for people with a hearing  
and/or speech impairment)  
Ph: 133 677



**The NT Working Women's Centre provides free and confidential information, advice and assistance to women about work related matters.  
Contact us on 1800 817 055, or [www.ntwwc.com.au](http://www.ntwwc.com.au)**

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