

CLIENT ALERT 2011 No. 1

Paid Parental Leave

Many of our clients may now be, or will become, eligible for up to 18 weeks Paid Parental Leave (PLP). In order to provide some assistance to our clients in this regard we have set out some of the basic guidelines regarding PLP as they affect both individual clients and employer clients.

Eligibility

The foremost criterion is that you must become a parent on or after 1 January 2011 (i.e. become a primary carer of either a child born on or after 1 January 2011 or an adopted a child on or after 1 January 2011). It is also necessary to meeting the following criteria:

- Be an Australian resident (essentially an Australian citizen or holder of a permanent visa);
- Meet the PLP work test before the birth or adoption of the child;
- Have received less than \$150,000 in individual adjusted taxable income in the financial year prior to the date of birth or date of claim, whichever is earlier; **and**
- Be on leave or at least not be working from the time you become the child's primary carer.

It is generally the birth mother or the initial primary carer of an adopted child that makes the claim for PLP.

In order to be eligible for the full 18 weeks of PLP, you also must nominate a start date for your pay that is within 34 weeks of the birth or adoption of the child.

If you are also eligible for the Baby Bonus for a child, then you must decide which payment option is best suited. In the event of a multiple birth that qualifies for both the Baby Bonus and PLP, then you may select a Baby Bonus for one child and PLP for the other.

The Baby Bonus may be paid to families following the birth (including stillbirth) or adoption of a child if you:

- are eligible for Family Tax Benefit for the child within 26 weeks of the child's birth or adopted child aged under 16 years being entrusted to your care; or
- if you are claiming for a child other than your own, you started caring for the child within 26 weeks of the child's birth and you are likely to continue caring for the child for at least 26 weeks; and
- have care of the child for at least 35% of the time or more;
- are an Australian resident;
- meet the income test (total taxable family income of \$75,000 or less for the 6 month period following the birth of the baby or the date that the child enters your care);
- are not receiving PLP; and
- make your claim no later than 52 weeks after the birth of the child or adopted child entering your care.

How are employees paid?

PLP may be provided either:

- by the employer as part of the normal pay cycle; or
- by the Family Assistance Office as fortnightly payments.

Because the scheme is optional for employers from 1 January to 30 June 2011 employers may agree to provide the PLP. If the employer does not agree, or if the employee does not want the employer to pay, then the PLP is made by the Family Assistance Office.

In the case of employers opting into PLP it is necessary for the employer to register with Centrelink Business Online Services.

From 1 July 2011, the employer is responsible for providing employees with PLP if:

- a child is born on or after 1 July 2011;
- the employee has worked for the employer for at least 12 months prior to the expected date of birth or adoption of the child; **and**
- the employee is receiving at least eight weeks of PLP.

How much is the Parental Leave Pay?

Eligible working parents are entitled to receive PLP at \$570 a week (the National Minimum Wage) for a maximum period of 18 weeks.

If the employer is providing the PLP:

- Employees remain eligible to access other paid leave such as maternity leave;
- If required by law to do so, the employer can deduct child support from an employee's PLP;
- Employees may arrange for other deductions to be made from PLP;
- Employees may salary sacrifice all or part of PLP;
- PLP is not subject to the superannuation guarantee; and
- PLP is subject to the normal PAYG (tax withholding) provisions.

If the Family Assistance Office provides the PLP:

- PAYG (tax withholdings) is deducted at the rate of 15 per cent unless you request some other rate;
- You are not able to salary sacrifice any PLP;
- You may voluntarily request a Family Assistance and/or Centrelink debt to be deducted from the PLP;
- You may arrange for other deductions, to be made from PLP through Centrepay;
- Child support payments may be deducted from PLP if required.

Tax consequences of Parental Leave Pay

PLP is taxable income (the Baby Bonus is non-taxable income). PLP also counts as taxable income for Family Tax Benefit and child support purposes in the financial year in which the PLP is received by the employee.

It is important to note that while in receipt of PLP neither the employee nor their spouse/partner is eligible to receive:

- Family Tax Benefit Part B;
- the dependant spouse offset;
- child housekeeper and housekeeper tax offsets.

Once the PLP ceases, subject to eligibility, these benefits may recommence.

Impact on Employers

From 1 January 2011 it is optional for employers to provide PPL.

From 1 July 2011, all employers must provide PPL to any eligible employee who:

- has a child born or adopted from 1 July 2011; and
- will have been your employee for 12 months or more prior to the expected date of birth or adoption; and
- will be your employee for their PPL period of up to 18 weeks; and
- is expected to receive eight weeks or more of PPL; and
- is an Australian-based employee.

It is worth noting that the PPL scheme does not provide eligible employees with new entitlements to leave. Prior to the introduction of PPL, long-term employees were already eligible for up to 12 months unpaid parental leave within the National Employment Standards under the *Fair Work Act 2009*.

For more information contact the Family Assistance Office

Sources: Family Assistance Office Web site;
ATO Web site; Centrelink Web site.

Changes to Awards

We remind our employer clients that from 1 February 2011 **ALL** employers are now covered by the federal modern awards system. This now means that those employers who operated as unincorporated entities (including sole traders and partnerships) and other non trading corporations must now comply with the relevant federal modern award and transitional arrangements. These employers were previously covered under a State reference award. These employers are now covered by federal modern awards, provided there is an applicable modern award covering their industry or the work performed by their employees. NSW Award information will no longer be available on the NSW Industrial relations website.

Transitional provisions in most federal modern awards mean that differences between the modern award and the former NSW award conditions relating to monetary entitlements (excluding overtime), may be phased in over the next 3 years until the end of the first full pay period on or after 1 July 2014.

Source: NSW Industrial Relations Web site; Fairwork Web site.