

SAYWELLS

Chartered Accountant – Registered Tax Agent - Business Advisor

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Saywells Chartered Accountant, 12 Vincent Street / PO Box 263, Cessnock, NSW 2325
Website: www.saywells.com.au Email: office@saywells.com.au Phone: 02 4990 9766

Pregnant pause

Understanding the new paid parental leave scheme

The Federal Government's paid parental leave scheme is open for business. Available to eligible parents whose babies are born or adopted from 1 January 2011, the scheme opened for registrations on 1 October.

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Expectant parents can apply to access the scheme through the Family Assistance Office (FAO) up to 3 months prior to the birth of their child. During the six month phase-in period of the scheme, employers can opt into the scheme. If they don't, the FAO will administer the parental leave payments for them. From 1 July 2011 however, responsibility for administering the scheme will predominantly fall to employers.

Who can access paid parental leave?

The parental leave payment is made to the primary carer of a baby born or adopted from 1 January 2011 (this is likely to be the birth mother or the initial primary carer of an adopted child unless there are exceptional circumstances).

To access the scheme, parents need to:

- Register for the scheme through the Family Assistance Office;
- Be Australian residents;
- Earn \$150,000 or less (based on your adjustable taxable income in the previous financial year);
- Be the primary carer of the child; and
- Pass the work test.

To pass the work test, you need to have worked at least 10 months of the 13 months prior to the birth or adoption of the child and completed at least 330 hours of work within that 10 months. As long as you pass the work test, it does not matter if you are a part-time worker, casual, full time employee, contractor or self-employed.

Unlike many other benefits provided to expectant parents, the paid parental leave scheme is available regardless of whether or not you have worked for your current employer for 12 months or more. As long as you meet the work test, you can claim the paid parental leave. It does not however provide you with leave – only an entitlement to be paid for 18 weeks if you are able to take leave.

Parents can start paid parental leave at any point from 12 months following the birth of the child but they cannot work from the birth or adoption until the final day of parental leave payments. The legislation is flexible enough to allow parents to transfer their entitlement to paid parental leave. For example, a new mother could transfer her right to paid parental leave to the father as long as both parents are eligible and together they take no more than 18 weeks of paid parental leave.



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Why every person with a SMSF needs a will

Approximately 60% of Australian's die without a will in place. The average age of people with a will is 82 and the average age of people who die without a will is 62. Apparently, the majority of us believe that we are all going to die of extreme old age.

Dying intestate can be complex enough but if you have a Self Managed Superannuation Fund the situation can become even more complex. Dying without a will in place is likely to mean that there will be a significant period of time before your beneficiaries can access your superannuation - even if you have binding death benefit nominations in place. The reason is that once the trustee dies, there may not be anyone with the legal authority to approve the payment of your superannuation to your nominated beneficiaries. If you are a Director of a trustee company with multiple directors, it will depend on whether the trust deed and the company constitution allow the other directors to act without you.

With many of us building a significant amount of wealth within SMSFs, it's important that these funds are not unnecessarily tied up when our families most need them.

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There are also special provisions that allow parents to 'stay in touch' with work where you can have up to 10 days of contact time with work within the 18 weeks of paid parental leave without being considered to have returned to work. The self-employed are also able to oversee business operations. If you intend to utilise these provisions you will need to be very clear about what you can and can't do and for how long, or risk losing your entitlements.

What does the scheme provide?

The Paid Parental Leave Scheme provides 18 weeks of paid parental leave at the minimum weekly wage (currently \$570 per week). Tax is paid on this amount.

Anyone receiving the payments under the paid parental leave scheme will not be eligible for the \$5,000 baby bonus. Eligible parents can elect to take the baby bonus instead of participating in the parental leave scheme.

It's important to recognise that the Paid Parental Leave Scheme gives you an entitlement to pay, not leave.

So, what do employers need to do?

Parental leave is paid by the employer in line with the employee's normal pay cycle. The Government's parental leave payments are treated in much the same way that salary and wages are paid to the employee. That is:

- Any tax owing will need to be withheld and remitted to the Tax Office.
- Any amounts paid are included on the employee's PAYG summary.
- Payslips should be provided as per usual.

Unlike normal employment conditions:

- Superannuation guarantee does not apply to paid parental leave payments.
- Leave does not accrue during the period of the paid parental leave.
- If your business is enrolled or liable for Payroll Tax, parental leave payments are not included. You will need to make sure you can distinguish between the different payments.
- Parental leave payments are not included in worker's compensation calculations.



"If you intend to utilise these provisions you will need to be very clear about what you can and can't do and for how long, or risk losing your entitlements."

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The scheme triggers when an employee registered under the scheme advises the FAO about the birth or adoption of a child (parents have 12 months to make the notification and can take the parental leave at any time within this period as long as they do not work during that period). From that point, the FAO will pay the employer and the employer will then pay the employee as part of the normal pay cycle. The employer will be paid in advance of the employee's payment cycle to ensure they are not out of pocket.

Employers are not obliged to pay the employee until they have been paid by the FAO. The first payment is likely to be in arrears as the details of the claim are processed by the FAO which might create some angst if employees are not aware of this.

There are also a series of administrative functions that employers will need to perform outside of the payments to administer the scheme. These include:

- Providing the employee's bank details and normal payment cycle to the FAO when the employee registers (and keeping the FAO updated of any changes).
- Notify the FAO when the employee returns to work or if they are no longer employed by the employer.
- Keep records of the amounts paid to the employee and funding received from the FAO. If the amounts are incorrect, you need to advise the FAO.
- The FAO also needs to be advised if anything occurs that will change the employment relationship such as the business closing down, sale of business, merger, or a transition of ownership.

Employers are only responsible for paying the parental leave payments to eligible employees who have been with them for 12 months or more and intend to take 8 weeks or more of parental leave. Anyone who is eligible to access paid parental leave but does not meet these criteria will be paid directly by the FAO.

How does the scheme fit with existing private parental leave schemes?

If you have an existing private parental leave scheme in place, you should consult an employment lawyer. The Government's scheme does not supersede any existing agreements and as such, any agreement will remain in place for the life of that agreement.

"Employers are not obliged to pay the employee until they have been paid by the FAO."



Want to know more? Talk to us if you are concerned or want to know more about any of the areas covered.

Quote of the month

"Every man dies. Not every man really lives."

William Wallace

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