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Information Sheet:

Proposed changes to the Parental Leave and Employment Protection Act 1983

The information set out in this information sheet is derived from the Employment Standards Legislation Bill 2015 that is currently going through Parliament. This Bill is due to be reported back for a second reading in Parliament in February 2016.

The Bill proposes to allow for a broader application of parental leave entitlements. This includes extending provisions to self-employed and where an employee has changed employers.

Primary Carer

A key change is that the Bill introduces the concept of a Primary Carer to refer to the person who will have primary responsibility for the day to day care of the child under 5 years of age. A Primary Carer could be:

- The biological mother
- The partner/spouse of the biological mother
- Another person other than the biological mother or their partner/spouse who assumes responsibility for the child, but not a foster parent or on any other temporary basis.

Primary Carer Leave

Maternity Leave is replaced by Primary Carer Leave. And an employee may be entitled to up to 18 weeks of Primary Carer Leave if they have worked for at least 6 months with the same employer immediately prior to becoming the primary carer for the child.

Partner's/Paternity Leave becomes Partners leave and an employee will be entitled to either 1 or 2 weeks depending on whether or not they meet the 6-month or 12-month

To be entitled to Primary Carer Leave the employee must be a primary carer and meet the 6-month or 12-month employment test (see below).

Negotiated Carer Leave

Where an employee is not eligible for Primary Carer Leave, but is entitled to paid parental leave, the employee may make a request to their employer for Negotiated Carer Leave. Any request must be in writing and must be made at least 3 months before the expected delivery date (where the child is to be born to the employee or their spouse or partner), or in any other case at least 14 days before they become the primary carer for the child.

The employer **MUST** notify the employee of their decision in respect to a request for negotiated carer leave within one month of receiving that requests. The Bill sets out seven grounds on which

the employer may refuse to grant the leave. Where the employer refuses a request for negotiated carer leave, they must do so in writing, setting out the grounds for the refusal and why those grounds apply. If the employer fails to notify the employee of their decision within one month they become liable for a penalty of not more than \$2000, imposed by the Employment Relations Authority.

The Bill sets out rules that apply with an employee who is not the biological mother or her spouse/partner intends to be the primary carer of a child.

Definition of Self-Employed

The definition of a self-employed person changes to be a person who is self-employed AND who will have been self-employed for any 26 of the 52 weeks immediately preceding the expected delivery date or date on which the person becomes the primary carer of the child.

Employment tests

The thresholds for parental leave entitlements are subject to a 6-month and 12-month employment test. To meet the 6-month test an employee must have worked for at least an average of 10 hours per week in the 6 months prior to the expected delivery date or date of becoming primary carer. The 12-month test is the same except the employee must have worked for at least an average of 10 hours per week in the 12 months prior to the expected delivery date or date of becoming primary carer.

Working during Extended Leave

The Bill changes the current application of extended leave. Currently an employee must take their extended leave in one block. If they return to work their extended leave is deemed to have ended. Under the Bill it is proposed that an employee may return to work for a limited period of time for paid work and then return to their extended leave. Under this proposal the duration of the extended leave is **not** extended by the period of paid work. This concept of returning to work during extended leave is called "Keeping-in-touch Days". Basically an employee is not treated as having returned from their extended leave if they meet the following criteria:

- They have performed one or more hours of paid work for their employer on a mutually agreed basis; **and**
- The day of worked is not within the 28 day period after the date on which the child for which the leave was taken was born.

If the employee performs paid work for their employer within the 28 day period **OR** performs more than 40 hours of paid work, their extended leave treated as having ended.

Calculating Average Weekly Earnings

The Bill sets out changes to the calculation of an employee's average weekly earnings that mean the employer must use the 26 weeks of pay out of the relevant 52 week period in respect of which the highest amounts were earned by the employee and divide that sum by 26. A similar calculation is done to determine the average weekly earnings for a self-employed person.

What does this mean for employers?

Should these changes go through as set out in the Bill, all employers will need to review their current policies and practices to ensure they comply with whatever the final Bill proposes.

Certainly the biggest changes to consider is that of Primary Carer. It would appear that any person, other than the biological mother or her spouse/partner can become a primary carer and therefore

potentially be eligible for Primary Carer or Negotiated Carer Leave. The way the new Primary Carer is defined means anyone be taking parental leave in the future. This could on the one hand see birth mothers returning to work for their employer, but another relative of the birth mother, who works for someone else, applying for Primary Carer leave not just birth parents and adopting parents. This will be challenging for some employers to get their heads around. On the other hand it would be interesting to see just how many relatives of birth parents, particularly working grandparents do take up the opportunity to use this proposed change in the Act to take responsibility for a child under 5.

There is a benefit to employees who have changed employers being able to negotiate carer leave. However the employee will require the approval of their new employer to that leave and there appears to be no absolute right to having that request approved. Although the Bill does limit the grounds on which the employer may refuse the request.

If you require assistance in reviewing your policies and/or procedures to see how well prepared you are for these changes, give Tony a call on 027 698 2123 or email tony@mckoneconsultancy.com

Disclaimer:

*The detail set out in this information sheet is for **INFORMATIONAL PURPOSES ONLY** and is not intended as advice. If you need advice on how these changes might impact your workplace, please contact McKone Consultancy Ltd on 027 698 2123. Tony is happy to talk with you about your organisation's specific circumstances on a no obligations basis.*