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Paid parental leave law passes - your questions answered

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The Government has finally passed paid parental leave legislation providing 18 weeks of pay at the minimum wage, but some business groups are still confused and upset by some of the bill's inclusions.

While most say the parental leave scheme is a good initiative overall, many are worried the program will add burdensome paperwork for small businesses and increase regulatory hassles.

The problem is that businesses will need to distribute the payments to employees, even though funding will be provided by the Government.

Australian Industry Group chief executive Heather Ridout said in a statement there will be "compliance costs for business, which are always onerous", but also praised the scheme saying it would bring Australia up to speed with other developed nations.

Executive officer of the Tasmanian Small Business Council, Robert Mallett also said the notion of businesses acting as a "paymaster" shows the Government has "little or no real understanding of the culture of small business".

"Small business owners know their staff very well and don't need this contrived mechanism to ensure that their pregnant staff are more connected with the business."

But with the final piece of legislation having passed through Parliament, the scheme is set in stone and will begin on January 1, 2011.

With only six months to go, here some of the most important questions businesses need to ask.

Who is eligible?

Most workers, but there are a few provisions. The primary care giver, which the Government identifies as "usually the mother", must have worked at least one day per week for 10 of the 13 months before the birth, or adoption of the child, with no break longer than eight weeks between two working days.

Also, the parent receiving the payments cannot work from the date of birth until the payments cease.

Parents employed in casual or part-time jobs are also eligible, as well as the self-employed, but a salary cap for eligibility has been imposed at \$150,000.

How much will the payments be?

The legislation states the payments will be made for 18 weeks at the minimum wage, which is currently at \$569.90.

Is it true businesses have to actually make the payments?

Sort of.

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While businesses don't actually have to come up with the money themselves, they still need to distribute the money to employees. In most cases, businesses will receive money from the Family Assistance Office, and then pass that money on to the employee, acting as a "paymaster".

This aspect of the scheme has been the biggest point of controversy between Government and business.

Several groups, including the Australian Chamber of Commerce and Industry and the National Independent Retailers Association, say businesses shouldn't have to carry the regulatory burden of distributing payments.

But the Government argues acting as a "paymaster" will keep small businesses in touch with their employees while they are on leave.

After providing a number of details to the Family Assistance Office, including bank account and employee information, employers will receive money to pass on. Businesses aren't required to pay their employees until those funds have been provided, and they can even pay in as few as three instalments.

There's no need to set up a new bank account, or lodge regular reports. Payments can be given out during your normal pay cycle.

There are a few cases where businesses don't have to make payments, but this needs to be discussed with the FAO on a case-by-case basis.

So what do I have to do?

Firstly, a business needs to provide some details to the Family Assistance Office before the payments begin. These details include bank account and pay cycle information.

The FAO will then determine whether the business needs to make the payments, or whether the Government will pay them to the parent directly. In most cases, businesses will be taking care of the distribution.

While the current scheme does allow women to resign from work before a birth and still obtain payments, employers only need to make payments to those employees who intend to return.

The business in question will need to withhold tax from the parental leave pay under usual PAYG requirements, and will also need to include parental leave pay in the total amounts of annual and part-year payment summaries.

Employers must also provide employees with access to a record of their pay, usually in the form of a payslip, while the business also needs to keep written financial records of parental leave funds.

Do I need to talk to the Family Assistance Office?

Yes, but not very often.

Businesses need to tell the FAO when the employee returns to work, when the employee is no longer "engaged" in the business, if it changes bank accounts or pay cycles and if the business itself hasn't been provided enough funding.

SMEs also need to return any unpaid paid parental leave funds to the FAO, and an employer must notify the FAO if the business is closing, being sold or is merging with another company.

Does this mean I can scrap my company's own plan?

It depends on whether parental leave is written into an employee's contract, or whether it's part of a company's overall workplace policy.

While the Government included a last-minute amendment in the bill which confirms its scheme is "in addition to any other obligation" employers have, it has already said this won't cover everyone.

Senate leader Chris Evans told the *Australian Financial Review* that businesses including parental leave in policy only, not in contracts, can't be forced to keep their scheme on board.

"Where the policy is applied in a purely discretionary way that is not part of an employment contract or industrial agreement this amendment does not impact on the employer's ability to vary its own policy".

While a number of large companies have said they will keep their plans, emerging reports suggest businesses are exploring ways they can drop their schemes.

Individual businesses need to determine whether they can legally abandon their schemes before they drop them altogether.

How should I prepare?

The parental leave scheme is comprehensive and won't require an overhaul of your workplace practices, but there are still some issues to consider:

Do employment contracts already contain parental leave policies?

Will the business need to revise payroll systems?

Are employees likely to negotiate changes to existing contracts?

Will weekly payments be fine, or would fewer payments be preferable?

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