



Unpaid parental leave

What has changed?

The *Fair Work Legislation Amendment (Protecting Worker Entitlements) Act 2023* strengthens access to unpaid parental leave and helps families share work and caring responsibilities.

The changes:

- increase flexibility for working parents by allowing them to take up to 100 days of their 12-month unpaid parental leave entitlement flexibly (up from 30 days)
- allow pregnant employees to access their flexible leave entitlement up to 6 weeks before the expected date of birth of their child
- remove restrictions that prevent employees who are married or in a de facto relationship from taking more than 8 weeks of unpaid parental leave at the same time
- ensure both parents can take up to 12 months of unpaid parental leave, regardless of the amount of leave the other parent takes. Further, both parents can request an extension of up to 12 months, without impacting the amount of leave available to the other parent.

What do these changes mean?

The National Employment Standards in the *Fair Work Act 2009* (the Act) provide eligible employees with an entitlement of 12 months unpaid parental leave.

The changes mean that employees can take up to 100 days of their 12-month unpaid parental leave entitlement flexibly, including as single days. The increase in flexible unpaid parental leave complements recent amendments to government-funded Parental Leave Pay. This means eligible employees have a right to take time off work to access the new 100 day Parental Leave Pay entitlement flexibly.

Employees also have more choice about when they take flexible unpaid parental leave. Employees can take flexible leave before, as well as after, any period of continuous unpaid parental leave they may take, and pregnant employees are entitled to take flexible leave in the period up to 6 weeks before birth.

Employees must still comply with the notice requirements in the Act when taking flexible unpaid parental leave, which include:

- 10 weeks prior to commencing leave—an employee must give notice of the total number of flexible unpaid parental leave dates they intend to take. The 10-week notice period may be reduced in certain circumstances if it is not practicable for the employee to give notice 10 weeks before commencing leave. However, if the first or only period of leave covered by the notice is flexible

unpaid parental leave after the birth or placement of the child, employer agreement is needed to reduce the notice period.

- 4 weeks prior to the intended flexible leave date—the employee must give their employer notice of a day on which they will take flexible unpaid parental leave. If this is not possible, the employee must give the notice as soon as practicable.

A note has been added to provide guidance on when it might not be practicable for an employee to give notice to their employer in accordance with the normal timeframes in the Act.

The changes make it easier for both parents to take time off work to share caring responsibilities. There is no limit on the amount of leave both parents can take at the same time. Both parents are entitled to take up to 12 months unpaid parental leave, regardless of the amount of leave taken by the other parent. Further, both parents can request an extension of up to 12 months, without impacting the amount of leave available to the other.

When will these changes come into effect?

The amendments commenced on 1 July 2023.

For more information on the Protecting Worker Entitlements package visit:

www.dewr.gov.au/protecting-worker-entitlements