

# Parental leave requirements – before leave



## *Requirements prior to taking a period of parental leave.*

### Notice and evidence requirements

An employee must provide the employer with written notice of the taking of parental leave at least 10 weeks before the intended start date of the leave. If that is not practicable in the circumstances, the employee must give written notice as soon as practicable.

The notice must specify the intended or presumed start date and end date of the parental leave, and specify any parental leave to be taken by the employee's spouse. The employee shall notify the employer as soon as practicable of any change to the intended start date of the leave.

The notice of the taking of parental leave must be accompanied by the following evidence:

- if the leave is birth-related leave, a medical certificate confirming the pregnancy and stating the expected date of birth of the child; or
- if the leave is adoption-related leave, evidence that would satisfy a reasonable person of the expected day of placement of the child and that the child will be under 16 as at the day of placement.

At least four weeks' notice before the intended start date of parental leave must be provided to the employer to:

- confirm the intended start and end dates of the leave; or
- advise the employer of any changes to the intended start and end dates of the leave.

If an employee takes a second or subsequent period of leave, the employee must give the employer written notice of the taking of the second and any subsequent periods of leave at least four weeks before the intended start date of the leave. If that is not practicable in the circumstances, the employee must give written notice as soon as practicable. The notice must specify the intended start date and end date of the second or subsequent period of leave.

### Pre-natal medical appointments

A female employee who is pregnant is entitled to use up to five days of any accrued personal leave to attend pre-natal medical appointments.

### Pre-adoption leave

The employer must grant to any employee who is seeking to adopt a child any unpaid leave not exceeding two days that is required by the employee to attend any interviews or examinations required to obtain approval for the employee's adoption of a child. The leave may be taken as a single continuous period of up to two days or any separate periods to which the employer and employee agree. If paid leave is available to the employee, the employee may elect to take such leave instead of pre-adoption leave.

An employee must provide notice to the employer of the taking of unpaid pre-adoption leave. The notice must be given to the employer as soon as practicable and must advise the employer of the duration of the leave.



The notice must be accompanied by evidence that would satisfy a reasonable person that the leave is taken to attend an interview or examination.

## Special maternity leave

A female employee is entitled to a period of unpaid special maternity leave if she is not fit for work for a period because:

- she has a pregnancy-related illness; or
- she has been pregnant, and the pregnancy ends within 28 weeks of the expected date of birth of the child otherwise than by the birth of a living child.

An employee must give her employer notice of the taking of special maternity leave. The notice must be given to the employer as soon as practicable and must advise the employer of the duration, or expected duration, of the leave.

The notice must be accompanied by a medical certificate stating that the leave is taken due to a pregnancy-related illness or the employee has been pregnant and the pregnancy ends within 28 weeks of the expected date of birth of the child.

An employee entitled to a period of special maternity leave may elect to take any paid personal leave to which she is entitled during that period (unless the leave has commenced within six weeks of the birth of the child). If the employee does not have any accrued personal leave or does not have sufficient accrued personal leave to cover the entire period then all or part of the period of special maternity leave will be unpaid.

## Transfer to a safe job or no safe job leave

If an employee provides her employer with a medical certificate stating that she is fit for work, but that it is inadvisable for her to continue in her present position during a stated period (risk period) because of:

- illness, or risks, arising out of her pregnancy; or
- hazards connected with that position,

an appropriate safe job is a safe job that has either the same ordinary hours of work as the employee's present position or a different number of ordinary hours agreed to by the employee.

If a medical certificate is supplied in accordance with the above and there is an appropriate safe job available, the employer must transfer the employee to that job for the risk period, with no other changes to the employee's terms and conditions of employment.

The employer must pay the employee for the safe job at the employee's ordinary rate of pay for the position she was in before the transfer. Any overtime performed by the employee during the risk period will be paid as overtime on the employee's ordinary rate of pay.

If there is no appropriate job available, the employee is entitled to take paid no safe job leave for the risk period.

The employer must pay the employee at the employee's ordinary rate of pay applicable immediately prior to the taking of paid no safe job leave in the risk period.

If an employee is on paid no safe job leave during the six week period before the expected date of birth of the child, the employer may ask the employee to provide a medical certificate stating whether the employee is fit for work. The employee may require the employee to commence parental leave if the employee does not provide evidence in accordance with the VCMEA (leave within six weeks of birth).



## Leave within six weeks of birth

If a pregnant employee who is entitled to parental leave continues to work during the six week period before the expected date of birth of the child, the employer may ask the employee to provide a medical certificate containing:

- a statement of whether the employee is fit for work;
- if the employee is fit for work—a statement of whether it is inadvisable for the employee to continue in her present position during a stated period because of:
  - illness, or risks, arising out of the employee's pregnancy; or
  - hazards connected with the position.

An employer may require an employee to take a period of parental leave (required leave) as soon as practicable if:

- the employee does not give the employer the requested medical certificate within seven days after the request; or
- the employee gives the employer a medical certificate stating that the employee is not fit for work; or
- the employee gives the employer a medical certificate stating that she is fit for work, but that it is inadvisable for her to continue in her present position for a stated period because of illness, or risks, arising out of the employee's pregnancy or hazards connected with the position.

## Resources

- *Victorian Catholic Education Multi-Enterprise Agreement 2018* (Appendix 1)

*Note: This document provides a summary of the conditions in the VCEMEA related to parental leave requirements before leave. However, it is recommended that reference be made to the specific provisions in the VCEMEA when make decisions regarding any of the above matters.*