

Parental leave requirements – returning to work



Requirements when returning to work following a period of parental leave.

Return to work guarantee

On ending parental leave (including any special maternity leave), an employee is entitled to return to:

- the employee's pre-parental leave position; or
- if that position no longer exists, a position commensurate with his or her qualifications and experience.

An employee with an ongoing part-time position is entitled to return to an ongoing part-time position of the same number of hours per week but not necessarily the times or class levels.

Timing of return to work

If the period of parental leave taken by an employee is one school term or more, the employee is required to return to work at the start of a school term, preferably at the start of a school year. An employer may by agreement with the employee arrange for an employee to return to work at some date earlier than the commencement of a school term.

If the period of parental leave taken by an employee is 104 weeks or more, the employee is required to return to work at the start of a school year, even if this extends the total period of parental leave beyond 156 weeks unless otherwise agreed with the employer.

Notice of return to work

This notice period applies to employees taking parental leave for a period of one school term or more.

For employees taking parental leave for less than one school term, notice of return to work is taken to be covered by the confirmation of the end date of parental leave.

An employee must confirm their intention to return to work in writing as soon as practicable but not less than one school term prior to the employee's intended return to work date.

If an employer does not receive such notice from the employee, the employer may send written notice to the employee requesting confirmation of the employee's intentions.

Changing the end date of leave

An employee on parental leave may extend the period of parental leave once by giving the employer written notice of the extension at least four weeks before the end date of the original leave period. The notice must specify the new end date for the leave. The total period of parental leave including the extension (and including any parental leave taken by the employee's spouse save for concurrent leave) must be no more than 156 weeks (unless the leave is extended to allow a return to work at the start of a school year).

If the employer agrees, the employee may further extend the period of parental leave one or more times.



If the employer agrees, an employee may reduce the period of parental leave and return to work prior to the original end date of the leave.

(Note that in particular circumstances as outlined in Clause 6 and 7 of Appendix 1 an Employee accessing parental leave has the right to cancel their leave and return to work early).

Return to work part-time

An employee who is returning to work from a period of parental leave is eligible to make a request to the employer for part-time work if the employee has a child under school age.

The request for part-time work must:

- be in writing;
- be made as soon as practicable but not less than eight weeks, wholly within a school term, prior to the employee's intended return to work date (where practicable, employees are encouraged to give one term's notice of the request for part time work);
- set out details of the nature of part-time work sought;
- specify the start and end dates of the period of part-time work sought.

The employer must give the employee a written response to the request for part-time work within 21 days of the request, stating whether the employer grants or refuses the request.

The employer must consider the request to work part-time having regard to the employee's circumstances and, provided the request is genuinely based on the employee's parental responsibilities, may only refuse to permit the employee part-time work on reasonable grounds related to the effect of the change on the workplace or the employer's business. If the employer refuses the request for part-time work, the written response must include details of the reasons for the refusal.

Without limiting what are reasonable grounds related to the effect of the change on the workplace or the employer's business, such grounds include the following:

- that the new working arrangements requested by the employee would be too costly for the employer;
- that there is no capacity to change the working arrangements of other employees to accommodate the new working arrangements requested by the employee;
- that it would be impractical to change the working arrangements of other employees, or recruit new employees, to accommodate the new working arrangements requested by the employee;
- that the new working arrangements requested by the employee would be likely to result in a significant loss in efficiency or productivity;
- that the new working arrangements requested by the employee would be likely to have a significant negative impact on customer service.

The work to be performed part-time need not be the work performed by the employee in his or her former position but must be work commensurate with the employee's qualifications and experience.

Before commencing part-time work under the VCMEA, the employer and employee must enter into a part-time work agreement that contains the following information:



- that the part-time work agreement constitutes a temporary variation of the employee's ongoing position;
- details of the part-time work (including hours to be worked, days of work and commencing times for work for the specific period of the part-time work agreement);
- the start and end dates of the period of part-time work; and
- that the part-time work agreement may be varied by consent.

The terms of the part-time work agreement and any variation to it shall be in writing and retained by the employer. A copy of the part-time work agreement and any variation to it shall be provided to the employee by the employer.

If an employee continues to be eligible, the employee may request a subsequent period or periods of part-time work.

This applies to any such subsequent requests as though they were an initial request for part-time work.

The former position means the permanent position held by an employee prior to a period or periods of part-time work. If the employee enters into a part-time work agreement upon their return to work from parental leave, the former position will be the permanent pre-parental leave position.

At the expiration of the part-time work agreement, if the employer and employee have not entered into a subsequent part-time work agreement, the employee is entitled to return to:

- the Employee's former position; or
- if that position no longer exists—a commensurate position for which the employee is qualified and suited nearest in status and pay to the former position.

References

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

Note: This document provides a summary of the conditions in the VCEMEA related to returning to work from parental 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.