



# **Paid Parental Leave Amendment Rules 2012 (No. 2)**

*Paid Parental Leave Act 2010*

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I, JENNY MACKLIN, Minister for Families, Community Services and Indigenous Affairs and Minister for Disability Reform, make these Rules under section 298 of the *Paid Parental Leave Act 2010*.

Dated 12 December

2012

J Macklin  
Minister for Families, Community Services and Indigenous Affairs and Minister for  
Disability Reform

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**1 Name of Rules**

These Rules are the *Paid Parental Leave Amendment Rules 2012 (No. 2)*.

**2 Commencement**

Schedule 1 of these Rules commences on 1 January 2013.

**3 Amendment of *Paid Parental Leave Rules 2010***

Schedule 1 amends the *Paid Parental Leave Rules 2010*.

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## Schedule 1                      Amendments commencing 1 January 2013

(rule 3)

**[1]            Subrule 2.31(1)**

*Omit* “For subparagraphs 2.28 (2) (b) (ii) and 2.29 (2) (c) (ii),”, *substitute* “For subparagraphs 2.28 (2) (b) (ii), 2.29(2) (c) (ii) and 3A.11 (3) (b) (ii),”.

**[2]            Subrule 2.31(2)**

*Omit* “For subparagraphs 2.28 (2) (b) (iii) and 2.29 (2) (c) (iii),”, *substitute* “For subparagraphs 2.28 (2) (b) (iii), 2.29 (2) (c) (iii) and 3A.11 (3) (b) (iii),”.

**[3]            After Part 3-3**

*Insert*

**Part 3A-2                      Determinations about whether dad and partner pay is payable to a person**

**Division 3A.2.1              Dad and partner pay is already payable to the person etc.**

**3A.1            Dad and partner pay is already payable to the person etc.**

- (1) This Division is made for subsection 115BF(2) of the Act and prescribes the circumstances in which a payability determination that dad and partner pay is payable to a person for a child may be made in respect of a different claim made by another person for the child.
- (2) A person who satisfies the circumstances in this Division may be paid dad and partner pay, despite a first person already having received the payment.
- (3) For a person to whom this rule applies, the circumstances are that the person:
  - (a) is an adoptive parent of the child;
  - (b) is the partner of an adoptive parent of the child in circumstances prescribed under rule 3A.13;
  - (c) is the partner of a child’s primary carer in circumstances prescribed under rule 3A.11;
  - (d) has care of the child as the birth mother has relinquished care of the child because of a surrogacy arrangement under rule 3A.14.

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**Part 3A-3 Eligibility for dad and partner pay**

**Division 3A.3.1 When a DAPP claimant is eligible for dad and partner pay**

**Subdivision 3A.3.1.1 When a DAPP claimant is eligible for dad and partner pay**

**3A.2 When a DAPP claimant is eligible for dad and partner pay**

This Subdivision is made for paragraph 115CB(4)(d) of the Act and prescribes the conditions that a person who is a DAPP claimant must satisfy to be eligible for dad and partner pay for a child.

*Note* Under subsection 115CB(4) of the Act, a DAPP claimant must satisfy the work test, the income test and the Australian residency test in addition to the conditions prescribed by this Subdivision.

**3A.3 Conditions – DAPP claimants**

- (1) The conditions are that:
- (a) the person:
    - (i) is caring for the child; or
    - (ii) satisfies the requirements of rule 3A.4 or rule 3A.5; and
  - (b) subject to subrule (1A), the person is not working.
- (1A) For the purposes of subparagraph 3A.3(1)(b), disregard a person working in any of the following circumstances:
- (a) if the person satisfies rule 3A.6 – a person working on a day referred to in paragraph 3A.6(b);
  - (b) if the person satisfies rule 3A.7 – a person working on a day referred to in rule 3A.7.

**3A.4 Care requirements for DAPP claimants – temporary inability to care**

For subparagraph 3A.3(1)(a)(ii), the requirements are as follows:

- (a) the person will be, or previously was, caring for the child;
- (b) the person is temporarily unable to be caring for the child due to circumstances beyond the person's control, other than a circumstance mentioned in paragraph 3A.5(b);
- (c) the period of temporary inability is likely to be less than two weeks;
- (d) there is no determination in force under the Act that dad and partner pay is payable for the child to another person for the same day;
- (e) the Secretary is satisfied that the person would have been caring for the child except for the person's temporary inability to be the child's carer.

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### **3A.5 Care requirements for DAPP claimants – loss of care for child**

For subparagraph 3A.3(1)(a)(ii), the requirements are that:

- (a) the person previously was caring for the child; and
- (b) an event occurs in relation to the child without the person's consent that prevents the child being in the person's care; and
- (c) the person takes reasonable steps to have the child again in the person's care; and
- (d) the person, or the person's partner, is the child's legal parent or is otherwise legally responsible for the child; and
- (e) if the child is in the care of another legal parent – the person, or the person's partner, has a court order or a parenting plan to the effect that the child is to live with the person or the person's partner; and
- (f) there is no determination in force under the Act that dad and partner pay is payable for the child to another person for the same day.

### **3A.6 Work requirements for DAPP claimants – recall to duty**

For paragraph 3A.3(1A)(a), the requirements are that the person:

- (a) is a defence force member or a law enforcement officer; and
- (b) has performed paid work on a day because the person has been compulsorily recalled to duty.

### **3A.7 Work requirements for DAPP claimants – summons or other compulsory process**

For paragraph 3A.3(1A)(b), the requirement is that the person has performed paid work on a day because the person has to comply with the requirements of a summons or other compulsory process to appear to give evidence or information or to produce documents or other things.

## **Division 3A.3.2 The work test**

### **Subdivision 3A.3.2.1 Not working**

#### **3A.8 Purpose**

This Subdivision is made for subsection 115CM(2) of the Act and prescribes circumstances in which a DAPP claimant is taken to be not working.

#### **3A.9 What is taken to be not working**

- (1) A person is taken to be not working if:
  - (a) the person is on unpaid leave from their employer and during the period of unpaid leave, the person receives workers' compensation payments or accident compensation payments from another body in relation to the person's employment with their employer; or

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(b) the person receives a top-up payment from their employer during or in relation to their DAPP period.

(2) For paragraph (1)(b), a *top-up payment* means a payment made by an employer to an employee that supplements a person's dad and partner pay during their DAPP period.

*Note* The "top-up payment" may be an adjustment to partial or full income replacement.

## **Part 3A-4                    Claims for dad and partner pay**

### **Division 3A.4.1.        Claims for dad and partner pay**

#### **Subdivision 3A.4.1.1 Prescribed circumstances for dad and partner pay claims**

##### **3A.10    Who can make a claim for dad and partner pay**

(1) This Subdivision is made for paragraph 115DD(d) of the Act and prescribes the circumstances in which a claim for dad and partner pay for a child can be made.

(2) A person who satisfies the circumstances prescribed by this Subdivision can make a claim for dad and partner pay.

##### **3A.11    Prescribed circumstances – partner of a child's primary carer when care arrangements change**

(1) This rule applies to a person who is the partner of a child's primary carer.

(2) For a person to whom this rule applies, the circumstances are that the person:

(a) has, and is likely to continue to have, care of the child for at least 26 weeks; and

(b) became, or will become, a carer of the child;

(i) before the child's first birthday; or

(ii) for an adopted child – before the first anniversary of the day of placement of the child; and

(c) is covered by subrule (3).

(3) For paragraph (2)(c), a person is covered by this subrule if:

(a) the birth mother and their partner, or the adoptive parent and their partner is incapable of caring for the child and will be incapable, or is likely to be incapable, of caring for the child for at least 26 weeks;

(b) the Secretary is satisfied on reasonable grounds that:

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- (i) the person became the carer of the child in special circumstances; and
  - (ii) it would be unreasonable for the birth mother and their partner, or the adoptive parent and their partner to care for the child; and
  - (iii) it is in the interests of the child for the person to care for the child;
- (c) the child was not entrusted to the care of the person, or to the care of the person's partner, under a decision by a State or Territory child protection agency under legislation dealing with child protection in the State or Territory.

*Note* For the meaning of incapable of caring for a child, see rule 1.4.

For what is unreasonable and in the interests of the child, see rule 2.31.

- (4) This rule does not apply to circumstances to which rule 3A.14 applies.

### **3A.12 Prescribed circumstance – partner of the biological father of the child**

- (1) This rule applies to a person who is the partner of the biological father of the child.
- (2) For a person to whom this rule applies, the circumstances are that:
- (a) the birth mother is no longer caring for the child;
  - (b) the person mentioned in subrule (1) has, and is likely to continue to have, care of the child for at least 26 weeks.
- (3) For subrule (2), *no longer caring* means that the birth mother is not caring for the child for at least 26 weeks.

### **3A.13 Prescribed circumstance – partner of an adoptive parent of the child**

- (1) This rule applies to a person who is the partner of an adoptive parent of the child.
- (2) For a person to whom this rule applies, the circumstances are that:
- (a) the birth mother has relinquished care of the child;
  - (b) the person mentioned in subrule (1) has, and is likely to continue to have, care of the child for at least 26 weeks.

### **3A.14 Prescribed circumstance - surrogacy arrangements**

- (1) This rule applies to a person who is caring for a child born of a surrogacy arrangement.
- (2) For a person to whom this rule applies, the circumstances are that the person:
- (a) has, and is likely to continue to have, care of the child for at least 26 weeks; and

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- (b) became or will become, the child's carer before the child's first birthday; and
  - (c) satisfies the circumstances mentioned in subrule 3A.14(3).
- (3) A person is covered by this subrule if the Secretary is satisfied on reasonable grounds that:
- (a) the person is caring for a child born of a surrogacy arrangement; and
  - (b) it is in the interests of the child for the person to care for the child.
- (4) For paragraph 3A.14(3)(b), in considering what is in the interests of the child, the Secretary is to consider:
- (a) whether the person intends to be the long-term carer of the child;
  - (b) whether the surrogate birth mother has relinquished care of the child;
  - (c) any other matter that the Secretary considers relevant to a proper consideration of what is in the interests of the child.

### **Part 3-4 Payment of dad and partner pay by Secretary**

#### **3A.15 Record of payment**

- (1) This rule is made for section 115EE of the Act and prescribes the information that the Secretary must give a person who has been paid dad and partner pay.
- (2) The Secretary must give the person the following information in connection with the dad and partner pay payment:
- (a) information that the payment:
    - (i) is paid by the Secretary; and
    - (ii) is a dad and partner pay payment;
  - (b) the name of the person to whom the dad and partner pay payment is paid;
  - (c) the period to which the dad and partner pay payment applies;
  - (d) the date on which the dad and partner pay payment is paid;
  - (e) the gross amount of the dad and partner pay payment;
  - (f) the net amount of the dad and partner pay payment;
  - (g) the total amount of income tax withheld from the gross amount of the dad and partner pay payment.
- (3) The information is required to be given to the person:
- (a) only once; and
  - (b) at the time the dad and partner pay payment is given to the person or as soon as possible after that date.

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[4] **Subrule 4.2(1) (definition of *Centrelink*)**

*Repeal* the definition of *Centrelink*, *insert*:

***Human Services Department*** means the Department administered by the Human Services Minister.

[5] **Subrule 4.2(1) (definition of *Family Assistance Office*)**

*Repeal* the definition of *Family Assistance Office*.

[6] **Subrule 4.2(1) (definition of *Minister*)**

*Repeal* the definition of *Minister*, *substitute*:

***Minister*** means:

- (a) the Minister administering the Act; or
- (b) a Minister of State administering any part of:
  - (i) the social security law; or
  - (ii) the family assistance law; or
  - (iii) the *Human Services (Centrelink) Act 1997*; or
- (c) the Prime Minister; or
- (d) the Minister administering the *Fair Work Act 2009*; or
- (e) the Minister administering the *Human Services (Medicare) Act 1973*.

[7] **Subparagraph 4.6(1)(b)(iv)**

*Omit* “Family Assistance Office”, *substitute* “Human Services Department”.

[8] **Paragraph 4.8(d)**

*Omit* “Family Assistance Office”, *substitute* “Human Services Department”.