



Paid Parental Leave Amendment (Flexibility Measures) Rules 2020

I, Anne Ruston, Minister for Families and Social Services, make the following rules.

Dated 29 June 2020

Anne Ruston
Minister for Families and Social Services

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1 Name

This instrument is the *Paid Parental Leave Amendment (Flexibility Measures) Rules 2020*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	1 July 2020.	1 July 2020

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *Paid Parental Leave Act 2010*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

Paid Parental Leave Rules 2010

1 Rule 1.3

Insert:

test day has the meaning given by rule 2.1 (primary claimants), 2.5 (secondary claimants) or 2.10 (tertiary claimants).

2 Subdivisions 2.3.1.1 to 2.3.1.3

Repeal the Subdivisions, substitute:

Subdivision 2.3.1.1—When a primary claimant is eligible for parental leave pay

2.1 When a primary claimant is eligible for parental leave pay

For the purposes of subparagraph 31(4)(a)(iv) and paragraph 31AA(4)(e) of the Act, this Subdivision prescribes conditions that a person who is a primary claimant must satisfy on a day (the *test day*) in order to be eligible for parental leave pay for a child on that day.

2.2 Conditions

- (1) The conditions are that:
 - (a) on the test day, the person:
 - (i) is the primary carer of the child; or
 - (ii) satisfies rule 2.4, 2.13 or 2.14 for the child; and
 - (b) if the test day is not a flexible PPL day for the child—the person has not returned to work on (or before) the test day; and
 - (c) if the test day is a flexible PPL day for the child—the person is performing no more than 1 hour of paid work on the test day.
- (2) However:
 - (a) disregard a return to work on a day if:
 - (i) the person satisfies rule 2.3, 2.14, 2.15, 2.16 or 2.17 for the child on the day; or
 - (ii) the person satisfies rule 2.4 for the child on the day because of the reason set out in paragraph 2.4(2)(b); and
 - (b) disregard paid work performed on the test day if:
 - (i) the person is performing that work for a permissible purpose; or
 - (ii) the person satisfies rule 2.3, 2.14, 2.15, 2.16 or 2.17 for the child on the test day; or
 - (iii) the person satisfies rule 2.4 for the child on the test day because of the reason set out in paragraph 2.4(2)(b).

2.3 Work requirements—child remains in hospital following birth

A person satisfies this rule for a child on a day if:

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- (a) the person is the birth mother of the child; and
 - (b) the child is required to remain in hospital or is hospitalised immediately after their birth for one or more of the following reasons:
 - (i) the child was born prematurely;
 - (ii) the child developed a complication or contracted an illness during their period of gestation or at birth;
 - (iii) the child developed a complication or contracted an illness following their birth; and
 - (c) on that day:
 - (i) that stay in hospital is continuing; or
 - (ii) the child is being discharged from that stay in hospital; and
 - (d) that day is on or after the 14th day after the day the child is born.

2.4 Work requirements—birth mother relinquishing child

- (1) A person satisfies this rule for a child on a day if:
 - (a) the person is the birth mother of the child; and
 - (b) that day is within 18 weeks after the child’s birth; and
 - (c) on that day, the person is not caring for the child for a reason set out in subrule (2).
- (2) The reasons are either:
 - (a) because the person has relinquished the child:
 - (i) as part of the process for the adoption of the child; or
 - (ii) because the child was born of a surrogacy arrangement; or
 - (iii) because the child was removed from the person’s care by a State or Territory child protection agency; or
 - (b) because:
 - (i) the child is stillborn or has died before that day; and
 - (ii) the person would have relinquished the child for a reason set out in paragraph (a) had the child not been stillborn or died.

Subdivision 2.3.1.2—When a secondary claimant is eligible for parental leave pay

2.5 When a secondary claimant is eligible for parental leave pay

For the purposes of paragraphs 31(4)(b) and 31AA(5)(b) of the Act, this Subdivision prescribes conditions that a person who is a secondary claimant must satisfy on a day (the *test day*) in order to be eligible for parental leave pay for a child on that day.

Note: For normal circumstances, the conditions are set out in rule 2.6. For exceptional circumstances, the conditions are set out in rule 2.7.

2.6 Conditions—secondary claimants in normal circumstances

- (1) If the person can make a secondary claim for the child because of paragraph 54(2)(a), (b) or (c) of the Act, the conditions are that:
 - (a) the person satisfies the work test on the test day; and
 - (b) the person satisfies the income test on the test day; and

- (c) the person satisfies the Australian residency test on the test day; and
- (d) on the test day, the person:
 - (i) is the primary carer of the child; or
 - (ii) satisfies rule 2.13 or 2.14 for the child; and
- (e) if the test day is not a flexible PPL day for the child—the person has not returned to work on (or before) the test day; and
- (f) if the test day is a flexible PPL day for the child—the person is performing no more than 1 hour of paid work on the test day.

(2) However:

- (a) if the test day is a flexible PPL day for the child—paragraphs (1)(a) and (b) only apply if the person has not previously satisfied the work and income tests in relation to the child; and
- (b) disregard a return to work on a day if the person satisfies rule 2.8, 2.14, 2.15, 2.16 or 2.17 for the child on the day; and
- (c) disregard paid work performed on the test day if:
 - (i) the person is performing that work for a permissible purpose; or
 - (ii) the person satisfies rule 2.8, 2.14, 2.15, 2.16 or 2.17 for the child on the test day.

2.7 Conditions—secondary claimants in exceptional circumstances

- (1) If the person can make a secondary claim for the child because of paragraph 54(2)(d) of the Act, the conditions are that:
 - (a) the person satisfies the Australian residency test on the test day; and
 - (b) on the test day, the person:
 - (i) is the primary carer of the child; or
 - (ii) satisfies rule 2.13 or 2.14 for the child; and
 - (c) if the test day is not a flexible PPL day for the child—the person has not returned to work on (or before) the test day; and
 - (d) if the test day is a flexible PPL day for the child—the person is performing no more than 1 hour of paid work on the test day.

Note: For when the person can make a secondary claim for the child because of paragraph 54(2)(d) of the Act, see Subdivision 2.4.1.2 of this instrument.

(2) However:

- (a) disregard a return to work on a day if the person satisfies rule 2.9, 2.14, 2.15, 2.16 or 2.17 for the child on the day; and
- (b) disregard paid work performed on the test day if:
 - (i) the person is performing that work for a permissible purpose; or
 - (ii) the person satisfies rule 2.9, 2.14, 2.15, 2.16 or 2.17 for the child on the test day.

2.8 Work requirements in normal circumstances—child remains in hospital following birth

A person satisfies this rule for a child on a day if:

- (a) the person is:
 - (i) a father of the child; or
 - (ii) a partner of the birth mother; or

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- (iii) a partner of a father of the child; and
 - (b) the child is required to remain in hospital or is hospitalised immediately after their birth for one or more of the following reasons:
 - (i) the child was born prematurely;
 - (ii) the child developed a complication or contracted an illness during their period of gestation or at birth;
 - (iii) the child developed a complication or contracted an illness following their birth; and
 - (c) on that day:
 - (i) that stay in hospital starts or is continuing; or
 - (ii) the child is being discharged from that stay in hospital.

2.9 Work requirements in exceptional circumstances—working while care arrangements being settled

A person satisfies this rule for a child on a day if:

- (a) that day is during the period:
 - (i) starting when the primary claimant stopped caring for the child; and
 - (ii) ending when the child’s care arrangements were settled; and
- (b) the child’s care arrangements were settled within a reasonable time after the primary claimant stopped caring for the child.

Subdivision 2.3.1.3—When a tertiary claimant is eligible for parental leave pay

2.10 When a tertiary claimant is eligible for parental leave pay

For the purposes of paragraphs 31(4)(b) and 31AA(5)(b) of the Act, this Subdivision prescribes conditions that a person who is a tertiary claimant must satisfy on a day (the *test day*) in order to be eligible for parental leave pay for a child on that day.

2.11 Conditions

- (1) The conditions are that:
 - (a) the person satisfies the Australian residency test on the test day; and
 - (b) on the test day, the person:
 - (i) is the primary carer of the child; or
 - (ii) satisfies rule 2.13 or 2.14 for the child; and
 - (c) if the test day is not a flexible PPL day for the child—the person has not returned to work on (or before) the test day; and
 - (d) if the test day is a flexible PPL day for the child—the person is performing no more than 1 hour of paid work on the test day.
- (2) However:
 - (a) disregard a return to work on a day if the person satisfies rule 2.12, 2.14, 2.15, 2.16 or 2.17 for the child on the day; and
 - (b) disregard paid work performed on the test day if:
 - (i) the person is performing that work for a permissible purpose; or

- (ii) the person satisfies rule 2.12, 2.14, 2.15, 2.16 or 2.17 for the child on the test day.

2.12 Work requirements—working while care arrangements being settled

A person satisfies this rule for a child on a day if:

- (a) that day is during the period:
 - (i) starting when the secondary claimant stopped caring for the child; and
 - (ii) ending when the child's care arrangements were settled; and
- (b) the child's care arrangements were settled within a reasonable time after the secondary claimant stopped caring for the child.

Subdivision 2.3.1.3A—Common requirements for eligibility for parental leave pay

2.13 Care requirements for all claimants—temporary inability to care

A person satisfies this rule for a child on a day if:

- (a) the person:
 - (i) will be the primary carer of the child after that day; or
 - (ii) was the primary carer of the child before that day; and
- (b) on that day, the person is temporarily unable to be the primary carer of the child due to events beyond the person's control, other than an event mentioned in paragraph 2.14(b); and
- (c) the continuous period of this temporary inability (that includes that day) is likely to be less than 26 weeks; and
- (d) there is no determination in force under the Act that parental leave pay is payable for the child to another person for that day; and
- (e) the Secretary is satisfied that the person would have been the child's primary carer for that day except for the person's temporary inability to be the child's primary carer.

2.14 Care requirements for all claimants—loss of care for child

A person satisfies this rule for a child on a day if:

- (a) sometime before that day, the person was the primary carer of the child; and
- (b) an event occurs in relation to the child:
 - (i) on or before that day; and
 - (ii) without the person's consent;that prevents the child being in the person's care on that day; and
- (c) the person takes reasonable steps on or before that day to have the child again in the person's care sometime after that day; and
- (d) on that day, the person, or the person's partner:
 - (i) is the child's legal parent; or
 - (ii) is otherwise legally responsible for the child; and
- (e) in the case where the child is in the care of another legal parent of the child on that day—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 on or after that day; and

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- (f) there is no determination in force under the Act that parental leave pay is payable for the child to another person for that day.

2.15 Work requirements for all claimants—recall to duty

A person satisfies this rule for a child on a day if, on that day, the person:

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

2.16 Work requirements for all claimants—summons or other compulsory process

A person satisfies this rule for a child on a day if, on that day, the person is performing paid work because the person has to comply with the requirements of a summons or other compulsory process to appear to:

- (a) give evidence or information; or
- (b) produce documents or other things.

2.17 Work requirements for all claimants—return to work due to State, Territory or national emergency

- (1) A person satisfies this rule for a child on a day if, on that day, the person:
 - (a) is a health professional, emergency services worker or other essential worker; and
 - (b) is performing paid work because the person has returned to work in response to a State, Territory or national emergency (including in response to the coronavirus known as COVID-19).
- (2) For the purposes of this rule, a person is an *essential worker* if the person has specific skills, or is involved in the production of goods or the delivery of services, where the skills, goods or services are essential in responding to an emergency.

3 At the end of Part 2-4

Add:

Division 2.4.2—Determining a claim to have different flexible PPL days

2.40 Determining a claim to have different flexible PPL days

Each item of the following table prescribes:

- (a) for the purposes of paragraph 57A(4)(b) of the Act, circumstances in which one or more days (the *eligible days*) specified in a person's claim for parental leave pay as flexible PPL days for a child may be taken to be one or more other days (the *actual days*); and
- (b) for those circumstances, the requirements for determining under subsection 57A(4) of the Act that the claim is taken to have specified the actual days as flexible PPL days for the child.

Determining a claim to have different flexible PPL days		
Item	Circumstances:	Requirements:
1	<ul style="list-style-type: none"> (a) the person has a continuous PPL period for the child under subsection 6A(3) of the Act that includes the eligible days; and (b) the person’s PPL period for the child is later found to be different from the person’s expected PPL period for the child 	<p>the actual days are to be determined:</p> <ul style="list-style-type: none"> (a) by reference to the end of that PPL period rather than the end of that expected PPL period; and (b) so that they will be included in the person’s continuous PPL period for the child under subsection 6A(1) of the Act
2	<ul style="list-style-type: none"> (a) the circumstances in item 1 do not apply; and (b) the eligible days are consecutive week days; and (c) the first of the eligible days is the first week day that occurs after the end of the period (the anticipated PPL period) that: <ul style="list-style-type: none"> (i) starts on the primary claimant’s nominated start date; and (ii) is stated in the claim as the period the person anticipates will be the person’s PPL period for the child; and (d) the person’s PPL period for the child is later found to be different from that anticipated PPL period 	<p>the actual days are to be determined by reference to the end of that PPL period rather than the end of that anticipated PPL period</p>

Note 1: Item 1 can only apply if the claim is made before the child’s birth. Item 2 can apply if the claim is made after the child’s birth.

Note 2: The eligible days need not be all of the days specified as flexible PPL days in the person’s claim.

4 Paragraph 3.4(1)(a)

Repeal the paragraph, substitute:

- (a) a PPL funding amount received by the employer for the person and:
 - (i) the PPL days (within the meaning of paragraph 63(3)(a) of the Act) for which the PPL funding amount was paid; or
 - (ii) the flexible PPL days for which the PPL funding amount was paid; and

5 At the end of subrule 3.5(2)

Add:

- ; (k) if a deduction from the PPL payment is made under section 69A or 69B of the Act—the amount of each deduction.

6 At the end of the instrument

Add:

Part 7—Application, saving and transitional provisions

7.1 *Paid Parental Leave Amendment (Flexibility Measures) Rules 2020*

The amendments of this instrument made by the *Paid Parental Leave Amendment (Flexibility Measures) Rules 2020* apply in relation to a claim for parental leave pay for a child if:

- (a) the claim is made on or after 1 July 2020; and
- (b) the child is born on or after 1 July 2020.