

VPS Enterprise Agreement Common Policies

PARENTAL LEAVE

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Authorised by Industrial Relations Victoria

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Authority and Application

Clause 51 of the Victorian Public Service Enterprise Agreement 2016 (the Agreement) applies to Victorian Public Service Departments and Agencies (Employers) and their Employees covered by the Agreement.

Overview

Clause 51 of the Agreement, together with Part 2-2 of Chapter 2 of the *Fair Work Act 2009* (Cth), which prescribes minimum entitlements under the National Employment Standards (NES) sets out an Employee's entitlement with respect to parental leave. Full-time, part-time and Eligible Casual Employees are entitled to parental leave under clause 51 of the Agreement if the leave is associated with the birth of a child of the Employee or their spouse or the placement of a child with the Employee for adoption and the Employee has or will have responsibility for the care of the child.

Whilst the amount of paid parental leave differs depending whether the Employee is the primary or secondary caregiver, all Employees who are eligible for parental leave will be entitled to at least 52 weeks of paid and unpaid parental leave. That is a maximum of 104 weeks shared between the primary and secondary caregiver is available, up to 8 weeks of which may be taken concurrently.

Note that in November 2018, VPS Employers agreed the following changes in respect of parental leave entitlements provided by the Agreement, effective 1 January 2019:

- the 12-month paid continuous service requirements contained in clause 51 of the Agreement will be waived for any Employee who is not subject to probation at the time the parental leave commences; and
- the paid Secondary Caregiver entitlement provided by clause 51 of the Agreement will increase from 2 to 4 weeks to assist new parents to better share the caring responsibilities;
- notwithstanding clause 54.9(c)(ii) of the Agreement, long service leave will continue to accrue during the first 52 weeks of any period of unpaid parental leave (see the Long Service Leave Policy).

Relevant provisions of the VPS Enterprise Agreement

Clause 51. Parental Leave

51.1 Application

Full-time, part-time and Eligible Casual Employees are entitled to parental leave under this clause if:

- (a) the leave is associated with:
 - (i) the birth of a child of the Employee or the Employee's Spouse; or
 - (ii) the placement of a child with the Employee for adoption; and
- (b) the Employee has or will have a responsibility for the care of the child.

51.2 Definitions

For the purposes of this clause:

- (a) **Eligible Casual Employee** means a casual Employee:
 - (i) employed by the Employer on a regular and systematic basis for a continuing period or sequence of periods of employment during a period of at least twelve months; and
 - (ii) who has, but for accessing parental leave under this clause, a reasonable expectation of continuing employment by the Employer on a regular and systematic basis.
- (b) **Continuous Service** is work for the Employer on a regular and systematic basis (including any period of authorised leave) and any period of Recognised Prior Service (as defined in **clause 51.2(g)**).
- (c) **Child** means:
 - (i) in relation to birth-related leave, a child (or children from a multiple birth) of the Employee or the Employee's Spouse;
 - (ii) in relation to adoption-related leave, a child (or children) who will be placed with an Employee, and:
 - who is, or will be, under 16 as at the day of placement, or the expected day of placement;
 - has not, or will not have, lived continuously with the Employee for a period of 6 months or more as at the day of placement, or the expected day of placement; and
 - is not (otherwise than because of the adoption) a child of the Employee or the Employee's spouse.
- (d) **Primary Caregiver** means the person who is the primary carer of a newborn or newly adopted Child. The primary carer is the person who meets the Child's physical needs more than anyone else. Only one person can be a Child's primary carer on a particular day. In most cases the Primary Caregiver will be the birth mother of a newborn or the initial primary carer of a newly adopted child.
- (e) **Secondary Caregiver** means a person who has parental responsibility for the Child but is not the Primary Caregiver.

- (f) **Spouse** includes a de facto spouse, former spouse or former de facto spouse. The Employee's de facto spouse means a person who lives with the Employee as husband, wife or same sex partner on a bona fide domestic basis, whether or not legally married to the Employee.
- (g) **Recognised Prior Service** means any service where the Employee was employed:
- (i) by a public entity under the *Public Administration Act 2004* (Vic);
 - (ii) under Part 6 of the *Public Administration Act 2004* (Vic); or
 - (iii) as a parliamentary officer or electorate officer under the *Parliamentary Administration Act 2005* (Vic);
- immediately prior to the Employee's employment with the Employer.

51.3 Summary of Parental Leave Entitlements

Parental leave entitlements in this clause are summarised in the following table.

	Paid leave	Unpaid leave	Total
Primary Caregiver			
More than 12 months service	14 weeks	Up to 38 weeks	52 weeks
Less than 12 months service	0	Up to 52 weeks	52 weeks
Eligible casual employee	0	Up to 52 weeks	52 weeks
Secondary Caregiver			
More than 12 months service	2 weeks	Up to 50 weeks	52 weeks
Less than 12 months service	0	Up to 52 weeks	52 weeks
Eligible casual employee	0	Up to 52 weeks	52 weeks
Pre-natal leave			
Pregnant employee	38 hours		
Spouse	7.6 hours		
Permanent Care Leave			
More than 12 months service	14 weeks	Up to 38 weeks	52 weeks
Less than 12 months service	0	Up to 52 weeks	52 weeks
Grandparent Leave	0	Up to 52 weeks	52 weeks

Note: Notwithstanding the table above and the terms of the Agreement, Employers will from 1 January 2019:

- waive the paid 12-month continuous service qualifying period for Employees who are not subject to probation at the time the parental leave commences; and
- increase the paid Secondary Caregiver parental leave entitlement from two to four weeks.

51.4 Parental Leave – Primary Caregiver

- (a) An Employee who has, or will have, completed at least twelve months paid Continuous Service and who will be the Primary Caregiver at the time of the birth or adoption of their Child, is entitled to up to 52 weeks parental leave, comprising:
 - (i) 14 weeks paid parental leave; and
 - (ii) up to 38 weeks unpaid parental leave.
- (b) An Employee who will be the Primary Caregiver but has not completed at least twelve months paid Continuous Service at the time of the birth or adoption of their Child, is entitled to up to 52 weeks unpaid parental leave.
- (c) An Eligible Casual Employee who will be the Primary Caregiver at the time of the birth or adoption of their Child is entitled to up to 52 weeks unpaid parental leave.
- (d) Only one parent can receive Primary Caregiver parental leave entitlements in respect to the birth or adoption of their Child. An Employee cannot receive Primary Caregiver parental leave entitlements:
 - (i) if their Spouse is, or will be, the Primary Caregiver at the time of the birth or adoption of their Child;
 - (ii) if their Spouse has received, or will receive, paid maternity leave, primary caregiver entitlements, or a similar entitlement, from their employer; or
 - (iii) if the Employee has received, or will receive, Secondary Caregiver parental leave entitlements in relation to their Child.
- (e) A period of parental leave taken in accordance with this clause must be for a single continuous period.

51.5 Parental Leave – Secondary Caregiver

- (a) An Employee who has, or will have, completed at least twelve months paid Continuous Service and who will be the Secondary Caregiver at the time of the birth or adoption of their Child, is entitled to up to 52 weeks parental leave, comprising:
 - (i) 2 weeks paid parental leave; and
 - (ii) up to 50 weeks unpaid parental leave.
- (b) An Employee who will be the Secondary Caregiver but has not completed at least twelve months paid Continuous Service at the time of the birth or adoption, is entitled to up to 52 weeks unpaid parental leave.

- (c) An Eligible Casual Employee who will be the Secondary Caregiver at the time of the birth or adoption of their Child is entitled to up to 52 weeks unpaid parental leave.
- (d) Only one parent can receive Secondary Caregiver parental leave entitlements in respect to the birth or adoption of their Child.
- (e) An Employee cannot receive Secondary Caregiver parental leave entitlements where the Employee has received Primary Caregiver parental leave entitlements in relation to their Child.

51.6 Pre Natal Leave

- (a) A pregnant Employee will have access to paid leave totalling up to 38 hours per pregnancy to enable the Employee to attend routine medical appointments associated with the pregnancy. The Employer should be flexible enough to allow the Employee the ability to leave work and return on the same day.
- (b) An Employee who has a Spouse who is pregnant will have access to paid leave totalling up to 7.6 hours per pregnancy to enable the Employee to attend routine medical appointments associated with the pregnancy.
- (c) The Employee is required to provide a medical certificate from a registered medical practitioner confirming that the Employee or their Spouse is pregnant. Each absence on pre-natal leave must also be covered by a medical certificate.
- (d) Paid pre-natal leave is not available to casual Employees.

51.7 Pre-adoption leave

- (a) An Employee seeking to adopt a Child is entitled to unpaid leave for the purpose of attending any compulsory interviews or examinations as are necessary as part of the adoption procedure.
- (b) The Employee and the Employer should agree on the length of the unpaid leave. Where agreement cannot be reached, the Employee is entitled to take up to two days unpaid leave.
- (c) Where paid leave is available to the Employee, the Employer may require the Employee to take such leave instead.
- (d) The Employer may require the Employee to provide satisfactory evidence supporting the leave.

51.8 Permanent Care Leave

If, pursuant to the *Children, Youth and Families Act 2005* (Vic) or any successor to that legislation, an Employee (other than a casual Employee), is granted a permanent care order in relation to the custody or guardianship of a child and the Employee is the Primary Caregiver for that child, the Employee will be entitled to 14 weeks' paid leave at a time to be agreed with the Employer.

51.9 Grandparent Leave

An Employee, who is or will be the Primary Caregiver of a grandchild, is entitled to a period of up to 52 weeks' continuous unpaid grandparent leave in respect of the birth or adoption of the grandchild of the Employee.

51.10 Continuing to work while pregnant

- (a) The Employer may require a pregnant Employee to provide a medical certificate stating that the Employee is fit to work their normal duties where the Employee:
 - (i) continues to work within a six week period immediately prior to the expected date of birth of the child; or
 - (ii) is on paid leave under **clause 51.12(b)**.
- (b) The Employer may require the Employee to start parental leave if the Employee:
 - (i) does not give the Employer the requested certificate within seven days of the request; or
 - (ii) gives the Employer a medical certificate stating that the Employee is unfit to work.

51.11 Personal/Carer's Leave

A pregnant Employee, not then on parental leave, who is suffering from an illness whether related or not to the pregnancy, may take any paid and/or unpaid personal/carer's leave in accordance with **clause 47**.

51.12 Transfer to a Safe Job

- (a) Where an Employee is pregnant and, in the opinion of a registered medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the Employee make it inadvisable for the Employee to continue at their present work, the Employee will, if the Employer deems it practicable, be transferred to a safe job with no other change to the Employee's terms and conditions of employment until the commencement of parental leave.
- (b) If the Employer does not think it to be reasonably practicable to transfer the Employee to a safe job, the Employee may take no safe job paid leave, or the Employer may require the Employee to take no safe job paid leave immediately for a period which ends at the earliest of either:
 - (i) when the Employee is certified unfit to work during the six week period before the expected date of birth by a registered medical practitioner; or
 - (ii) when the Employee's pregnancy results in the birth of a living child or when the Employee's pregnancy ends otherwise than with the birth of a living child.

- (c) The entitlement to no safe job leave is in addition to any other leave entitlement the Employee has.

51.13 Special Parental Leave

Where the pregnancy of an Employee not then on parental leave terminates other than by the birth of a living child, the Employee may take leave for such periods as a registered medical practitioner certifies as necessary, as follows:

- (a) where the pregnancy terminates during the first 20 weeks, during the certified period/s the Employee is entitled to access any paid and/or unpaid personal/carer's leave entitlements in accordance with **clause 47**;
- (b) where the pregnancy terminates after the completion of 20 weeks, during the certified period/s the Employee is entitled to paid special maternity leave not exceeding the amount of paid parental leave available under **clause 51.3** and thereafter, to unpaid special maternity leave.

51.14 Notice and evidence requirements

- (a) An Employee must give at least 10 weeks written notice of the intention to take parental leave, including the proposed start and end dates. At this time, the Employee must also provide a statutory declaration stating:
 - (i) that the Employee will become either the Primary Caregiver or Secondary Caregiver of the Child, as appropriate;
 - (ii) the particulars of any parental leave taken or proposed to be taken or applied for by the Employee's Spouse; and
 - (iii) that for the period of parental leave the Employee will not engage in any conduct inconsistent with their contract of employment.
- (b) At least four weeks before the intended commencement of parental leave, the Employee must confirm in writing the intended start and end dates of the parental leave, or advise the Employer of any changes to the notice provided in **clause 51.14(a)**, unless it is not practicable to do so.
- (c) The Employer may require the Employee to provide evidence which would satisfy a reasonable person of:
 - (i) in the case of birth-related leave, the date of birth of the Child (including without limitation, a medical certificate stating the date of birth or expected date of birth); or
 - (ii) in the case of adoption-related leave, the commencement of the placement (or expected day of placement) of the Child and that the Child will be under 16 years of age as at the day of placement or expected day of placement.

- (d) An Employee will not be in breach of this clause if failure to give the stipulated notice is occasioned by confinement or placement occurring earlier than the expected date or in other compelling circumstances. In these circumstances the notice and evidence requirements of this clause should be provided as soon as reasonably practicable.

51.15 Commencement of parental leave

- (a) An Employee who is pregnant may commence Primary Caregiver parental leave at any time within 14 weeks prior to the expected date of birth of the Child. The period of parental leave must commence no later than the date of birth of the Child.
- (b) In all other cases, Primary Caregiver parental leave commences on the day of birth or placement of the Child.
- (c) Secondary caregiver parental leave may commence on the day of birth or placement of the Child.
- (d) The Employer and Employee may agree to alternative arrangements regarding the commencement of parental leave.
- (e) Unless otherwise agreed, any entitlement to paid parental leave will be paid from the date of commencement of parental leave.

51.16 Single period of parental leave

Parental leave is to be available to only one parent at a time, in a single unbroken period, except in the case of concurrent leave.

51.17 Employee Couple – Concurrent Leave

- (a) Two Employees covered by this Agreement may take up to eight weeks concurrent leave in connection with the birth or adoption of their Child.
- (b) Concurrent leave may commence one week prior to the expected date of birth of the Child or the time of placement in the case of adoption.
- (c) Concurrent leave can be taken in separate periods, but each block of concurrent leave must not be less than 2 weeks, unless the Employer otherwise agrees.

51.18 Parental Leave and Other Entitlements

- (a) An Employee may in lieu of or in conjunction with parental leave, access any annual leave or long service leave entitlements which they have accrued subject to the total amount of leave not exceeding 52 weeks or a longer period as agreed under **clause 51.20(b)**.
- (b) Where a Public Holiday occurs during a period of paid parental leave, the Public Holiday is not to be regarded as part of the paid parental leave and the Employer will grant the Employee a day off in lieu, to be taken by the Employee immediately following the period of paid parental leave.

- (c) Unpaid parental leave under **clauses 51.4, 51.5, 51.20** and **51.22** shall not break an Employee's continuity of employment but it will not count as service for leave accrual or other purposes.

51.19 Keeping in touch days

- (a) During a period of parental leave an Employer and Employee may agree to perform work for the purpose of keeping in touch in order to facilitate a return to employment at the end of the period of leave.
- (b) Keeping in touch days must be agreed and be in accordance with section 79A of the *Fair Work Act 2009*.

51.20 Extending parental leave

- (a) Extending the initial period of parental leave
- (i) An Employee, who is on an initial period of parental leave of less than 52 weeks under **clause 51.4** or **51.5**, may extend the period of their parental leave on one occasion up to the full 52 week entitlement.
- (ii) The Employee must notify the Employer in writing at least four weeks prior to the end date of their initial parental leave period. The notice must specify the new end date of the parental leave.
- (b) Right to request an extension to parental leave
- (i) An Employee who is on parental leave under **clause 51.4** or **51.5** may request an extension of unpaid parental leave for a further period of up to 12 months immediately following the end of the current parental leave period.
- (ii) In the case of an Employee who is a member of an employee couple, the period of the extension cannot exceed 12 months, less any period of parental leave that the other member of the Employee couple will have taken in relation to the Child.
- (iii) The Employee's request must be in writing and given to the Employer at least 4 weeks before the end of the current parental leave period. The request must specify any parental leave that the Employee's spouse will have taken.
- (iv) The Employer shall consider the request having regard to the Employee's circumstances and, provided the request is based on the Employee's parental responsibilities, may only refuse the request on reasonable business grounds.
- (v) The Employer must not refuse the request unless the Employer has given the Employee a reasonable opportunity to discuss the request.
- (vi) The Employer must give a written response to the request as soon as practicable, and no later than 21 days after the request is made. The response must include the details of the reasons for any refusal.

(c) Total period of parental leave

- (i)** The total period of parental leave, including any extensions, must not extend beyond 24 months.
- (ii)** In the case of an Employee Couple, the total period of parental leave for both parents combined, including any extensions, must not extend beyond 24 months. The Employee's entitlement to parental leave under **clause 51.4 or 51.5** will reduce by the period of any extension taken by a member of the couple under **clause 51.20**.

51.21 Calculation of pay for the purposes of parental leave

- (a)** The calculation of weekly pay for paid parental leave purposes will be based on the average number of ordinary hours worked by the Employee over the past three years. The calculation will exclude periods of unpaid parental leave.
- (b)** The average number of weekly hours worked by the Employee, determined in accordance with **clause 51.21(a)** above, will be then applied to the annual salary applicable to the Employee's classification and salary point at the time of taking parental leave to determine the actual rate of pay whilst on parental leave.
- (c)** Despite **51.21(a)**, an Employee who reduces the time fraction they work to better cope during pregnancy will not have their subsequent paid parental leave reduced accordingly.

(d) Half Pay

The Employee may elect to take any paid parental leave entitlement at half pay for a period equal to twice the period to which the Employee would otherwise be entitled.

51.22 Commonwealth Paid Parental Leave

Paid parental leave entitlements outlined in this clause are in addition to any payments which may be available under the Commonwealth Paid Parental Leave Scheme.

51.23 Returning to Work

(a) Returning to work early

- (i)** During the period of parental leave an Employee may return to work at any time as agreed between the Employer and the Employee, provided that time does not exceed four weeks from the recommencement date desired by the Employee.
- (ii)** In the case of adoption, where the placement of an eligible child with an Employee does not proceed or continue, the Employee will notify the Employer immediately and the Employer will nominate a time not exceeding four weeks from receipt of notification for the Employee's return to work.

(b) Returning to work at conclusion of leave

- (i) At least four weeks prior to the expiration of parental leave, the Employee will notify the Employer of their return to work after a period of parental leave.
- (ii) Subject to **51.23(b)(iii)**, an Employee will be entitled to the position which they held immediately before proceeding on parental leave. In the case of an Employee transferred to a safe job pursuant to **clause 51.12** above, the Employee will be entitled to return to the position they held immediately before such transfer.
- (iii) Where such position no longer exists but there are other positions available which the Employee is qualified for and is capable of performing, the Employee will be entitled to a position as nearly comparable in status and pay to that of their former position.

(c) Returning to work at a reduced time fraction

- (i) To assist an Employee in reconciling work and parental responsibilities, an Employee may request to return to work at a reduced time-fraction until their Child reaches school age, after which the Employee will resume their substantive time-fraction.
- (ii) Where an Employee wishes to make a request under **51.23(c)(i)** such a request must be made as soon as possible but no less than seven weeks prior to the date upon which the Employee is due to return to work from parental leave.

51.24 Consultation and Communication during Parental Leave

- (a) Where an Employee is on parental leave and a definite decision has been made to introduce significant change at the workplace, the Employer shall take reasonable steps to:
 - (i) make information available in relation to any significant effect the change will have on the status or responsibility level of the position the Employee held before commencing parental leave; and
 - (ii) provide an opportunity for the Employee to discuss any significant effect the change will have on the status or responsibility level of the position the Employee held before commencing parental leave.
- (b) The Employee shall take reasonable steps to inform the Employer about any significant matter that will affect the Employee's decision regarding the duration of parental leave to be taken, whether the Employee intends to return to work and whether the Employee intends to request to return to work on a part-time basis.

- (c) The Employee shall also notify the Employer of changes of address or other contact details which might affect the Employer's capacity to comply with clause 51.24(a).

51.25 Extended Family Leave

- (a) An Employee who is the Primary Caregiver and has exhausted all parental leave entitlements may apply for unpaid Extended Family Leave as a continuous extension to their parental leave taken in accordance with this clause. The total amount of leave, inclusive of parental leave taken in accordance with this clause cannot exceed seven years.
- (b) The Employee must make an application for Extended Family Leave each year.
- (c) An Employee will not be entitled to paid parental leave whilst on Extended Family leave.
- (d) Upon return to work the Employer may reallocate the Employee to other duties.

51.26 Replacement Employees

- (a) A replacement Employee is an Employee specifically engaged or temporarily acting on higher duties or transferred, as a result of an Employee proceeding on parental leave.
- (b) Before an Employer engages a replacement Employee the Employer must inform that person of the temporary nature of the employment and of the rights of the Employee who is being replaced.
- (c) The limitation in clause 15.6 on the use of fixed term employment to replace the Employee does not apply in this case.

51.27 Casual Employees

The Employer must not fail to re-engage a casual Employee because the Employee has accessed parental leave in accordance with this clause. The rights of the Employer in relation to engagement and re-engagement of casual Employees are not affected, other than in accordance with this clause.

Supplementary Guidance Information

1. **Other sources of entitlements to Parental Leave – Interaction with the National Employment Standards**
 - 1.1. The *Fair Work Act 2009* (Cth) (FW Act) prescribes minimum parental leave entitlements for eligible employees in the National Employment Standards (NES). An enterprise agreement may include terms that are ancillary or incidental to the operation of an entitlement of an employee under the NES and terms that supplement the NES only to the extent that the effect

of those terms is not detrimental to an employee in any respect, when compared to the NES (s.55(3), FW Act).

- 1.2. Clause 51 of the Agreement comprehensively covers the minimum parental leave entitlements prescribed by the NES.

2. Interaction with the *Paid Parental Leave Act 2010* (Cth)

- 2.1. Clause 51.22 of the Agreement prescribes that the entitlements of clause 51 are in addition to any payments which may be available under the Commonwealth Paid Parental Pay Scheme (PPP Scheme). The PPP Scheme derives from the *Paid Parental Leave Act 2010* (Cth) (PPL Act).
- 2.2. The PPP Scheme is a Commonwealth Government program that is not administered by the Employer. For information around eligibility or queries in relation to the PPP Scheme please refer to the Family Assistance Office's website at www.familyassist.gov.au or call 136 150.

3. Waiving the 12-month continuous service qualifying period for Employees are not subject to probation

- 3.1. From 1 January 2019, Employers will, for Employees not subject to probation at the time the parental leave commences, waive the 12-month paid continuous service qualifying period before an Employee can access paid primary and secondary caregiver leave under the Agreement.
- 3.2. To be eligible to have the paid continuous service qualifying period waived the Employee's parental leave must commence on or after 1 January 2019 and the Employee must not be subject to probation at the time the parental leave commences.
- 3.3. Employees who commence parental leave prior to 1 January 2019 will continue to receive paid entitlements in accordance with existing arrangements outlined in clause 51 of the Agreement, even if the period of parental leave continues beyond 1 January 2019.

4. Additional Paid Leave for Secondary Caregivers

- 4.1. In order to better assist new parents to share the caring responsibilities for their newborn child, from 1 January 2019, Employers have agreed to provide an additional 2 weeks paid Secondary Caregiver parental leave to Employee's eligible for Secondary Caregiver leave.
- 4.2. This paid leave is in addition to the two weeks paid secondary caregiver leave already provided for in clauses 51.3 and 51.5 of the Agreement. This additional leave does not extend the total duration of an Employee's absence on parental leave which cannot exceed 52 weeks unless an extension is approved under clause 51.20(b) of the Agreement.
- 4.3. To be eligible for the additional secondary caregiver leave the Employee's parental leave must commence on or after 1 January 2019.

5. Total duration of absences on Parental Leave

- 5.1. Unless an extension is approved, the total duration of an Employee's absence on Parental Leave under the Agreement, including paid and unpaid leave under the Agreement cannot exceed 52 weeks.
- 5.2. Extensions to the duration of absence on Parental Leave may be applied for and considered under clause 51.20 of the Agreement. Where an extension is granted, the total duration of the absence must be no longer than 24 months (or for an Employee Couple, a combined period of 24 months). Consistent with clause 51.20(b)(iv) of the Agreement request for an extension to parental leave may only be refused on reasonable business grounds.
- 5.3. The Agreement also allows an Employee who is a primary caregiver and has exhausted all parental leave entitlements to apply for Extended Family Leave on an annual basis for up to a total of seven years, including any period of Parental Leave.

6. Eligibility for primary caregiver parental leave

- 6.1. Primary caregiver parental leave is leave that is associated with either the birth or adoption of a child for whom the Employee will be the primary caregiver.
- 6.2. Under clause 51.2(d) of the Agreement, the primary caregiver is the person who will meet the child's physical needs more than anyone else at the time the child is born or placed with the Employee for adoption.
- 6.3. Under clause 51.2(d) of the Agreement, only one person can be the child's primary caregiver on any particular day. Therefore, because eligibility for primary caregiver parental leave will be dependent on an Employee's caregiver status at the time child is born or placed with the Employee for adoption, an Employee will not be eligible for primary caregiver parental leave if another person is the primary caregiver at the date of the birth or placement of the child.
- 6.4. Given the above, in a scenario where the Employee's spouse does not work or isn't entitled to paid parental leave from their employer, the mere fact that an Employee's spouse will not be taking parental leave does not mean that the Employee is the child's primary caregiver. The Employee's spouse, or another person, may be the person who will meet the child's physical needs more than anyone else at the time child is born or placed with the Employee for adoption, meaning that the Employee will not be the child's primary caregiver for the purposes of the Agreement.

7. Notice and evidence requirements for primary caregiver parental leave

- 7.1. Under clause 51.14(a) of the Agreement, an Employee requesting parental leave must give 10 weeks' written notice of their intention to take parental leave, including the proposed start and end dates. The Employee must confirm these details including the intended start and end dates or advise of any changes to the proposed arrangements no later than four weeks before the intended commencement of parental leave in accordance with clause 51.14(b) of the Agreement.
- 7.2. Whilst it is up to the parents to determine who is the primary caregiver of their child, to be entitled to paid primary caregiver parental leave under the Agreement, the Employee must comply with the evidence requirements outlined in the Agreement. Under clause 51.14(a) of the Agreement, an Employee requesting parental leave must also substantiate their eligibility by providing a statutory declaration stating that they will be the primary caregiver of the child, as appropriate, as well as the particulars of any parental leave taken or proposed to be taken by their spouse.
- 7.3. The statutory declaration must provide evidence that would satisfy a reasonable person of the person's eligibility to take primary caregiver leave and state that for the period of the parental leave the Employee will not engage in any conduct inconsistent with their contract of employment. The Employee may also be required to provide the evidence outlined in clause 51.14(c) of the Agreement, to confirm the birth or adoption of the child.
- 7.4. If the Employee is requesting primary caregiver parental leave, the statutory declaration must satisfy the Employer that the Employee will meet the child's physical needs more than anyone else at the time of the birth or placement of the child. The evidence required to satisfy the Employer that the Employee will be the primary caregiver of the child will vary depending on the circumstances of each individual case.
- 7.5. The Employer may require an Employee applying for primary caregiver parental leave to provide a further statutory declaration or other appropriate evidence to the satisfaction of the Employer to substantiate their entitlement to primary caregiver parental leave if the statutory declaration provided under clause 51.14(a) of the Agreement provides insufficient evidence to substantiate that the Employee will be the primary caregiver of the child.

8. Commencement of parental leave

- 8.1. Under clause 51.15 of the Agreement, an Employee who is pregnant may commence parental leave up to 14 weeks prior to the expected date of the birth of the child and must commence no later than that date. In all other cases, primary caregiver leave commences no later than the expected date of birth or the placement of the child.

8.2. Parental leave is available in connection to the birth or adoption of a child. In a situation where an Employee does not wish to take primary caregiver parental leave at the time of the birth or the placement of the child, the Employee will not qualify for primary parental leave under the Agreement. Primary caregiver parental leave cannot be deferred beyond the date of birth or placement of the child (clause 51.15(b) of the Agreement) unless otherwise agreed under clause 51.15(d) and 51.15(e). In such circumstances, the Employee may be eligible to apply for secondary caregiver leave. The Employee may also apply for unpaid leave or any other type of paid leave under the Agreement which has been accrued by the Employee, when, for example, the Employee's spouse returns to work.

9. Concurrent Leave

- 9.1. Under clause 51.16 of the Agreement, parental leave is to be available to only one parent at a time, in a single unbroken period, except in the case of concurrent leave.
- 9.2. An Employee and their spouse may take concurrent leave in accordance with clause 51.17 of the Agreement, which provides for up to 8 weeks of concurrent leave to be taken in connection with the birth or placement of a child, and allows for leave to be taken in separate periods. Therefore, an Employee and their spouse may take parental leave at same time following the birth or placement of the child, provided the Employee is eligible for concurrent leave.

10. Calculating rate of pay for paid parental leave

- 10.1. Under clause 51.21(a) of the Agreement, the calculation of weekly pay to be paid to an Employee during paid parental leave is based on the average number of ordinary hours worked by the Employee over the preceding three years ('Averaging Period'), excluding periods of unpaid parental leave.
- 10.2. Further clause 51.21(c) makes it clear this calculation must also exclude time worked at a reduced time fraction in order to better cope during pregnancy.
- 10.3. However, a strict application of clause 51.21 of the Agreement, which only provides for these two circumstances to be excluded from the averaging calculation, may unfairly disadvantage an Employee who has, in the preceding three years:
 - (a) Taken authorised unpaid leave for an unforeseen reason beyond the Employee's control; or
 - (b) Worked at a reduced time fraction upon returning to work after a period of parental leave under clause 51.23(c) of the Agreement.

- 10.4. Where an Employee's service history involves one of the abovementioned scenarios, a strict application of clause 51.21(a) of the Agreement will result in the Employee receiving a lower rate of pay during their parental leave period, even if their entire service history up to that point had been undertaken at a higher number of ordinary hours of work.
- 10.5. It was not the intent of the Agreement to unfairly disadvantage Employees who have taken leave for unforeseen reasons beyond their control or exercised their rights under clause 51.23(c) of the Agreement to request to return to work at a reduced time fraction after the birth or adoption of their child.
- 10.6. Clause 51.21(a) of the Agreement was intended to capture situations where Employees had made an active decision to take unpaid leave or to change their hours or patterns of work for reasons not contemplated by clause 51.23(c) of the Agreement, and in doing so, ensure that the rate of pay to be paid in the event of parental leave, fairly reflected those changes and decisions.
- 10.7. When calculating the weekly rate of pay under clause 51.21(a) of the Agreement for the purposes of parental leave, the Employer will take into consideration whether the calculation should, in addition to the requirements of clause 51.21 of the Agreement, also exclude periods of:
- (a) Authorised unpaid leave taken for unforeseen reasons beyond the Employee's control; and
 - (b) Work at a reduced time fraction under clause 51.23(c) of the Agreement.
- 10.8. An 'unforeseen reason beyond the Employee's control' may include, for example, a personal illness or injury suffered by the Employee, or the care or support of an ill or injured immediate family or household member by the Employee.
- 10.9. This can be contrasted with scenarios where an Employee has taken unpaid leave for a reason that is not unforeseen, for example, for a lifestyle or personal reason, such as extended leave for recreational purposes, leave for a career break, or leave to undertake another form of employment. In these cases, the Employer will adopt a stricter interpretation of clause 51.21(a) of the Agreement.

11. Returning from a period of parental leave

- 11.1. The Employer can only refuse a request to return to work at a reduced time fraction for the purpose of reconciling work and parental responsibilities under clause 51.23(c)(i) of the Agreement, on reasonable business grounds.

12. Keeping in touch days

- 12.1. During a period of Parental Leave an Employee and their Employer may agree to perform work for the purpose of keeping in touch in order to facilitate a return to employment at the end of the period of leave.

- 12.2. Keeping in touch days may be used by the Employee to participate in work related training or team meetings.
- 12.3. Prior to commencing parental leave, the Employee and their Employer should discuss appropriate arrangements for keeping in touch, including the use of keeping in touch days to assist with achieving any training identified in the Employee's Performance Development Plan.

13. Breastfeeding and work

- 13.1. Employees cannot be discriminated against for breastfeeding or expressing milk in the workplace.
- 13.2. Employees on parental leave who wish to continue breastfeeding after returning to work or on keeping in touch days, may discuss how this could be accommodated with their Employer.
- 13.3. For further information on breastfeeding at work contact the Australian Breastfeeding Association: www.breastfeeding.asn.au.

14. Extended Family Leave

- 14.1. Where an Employee wishes to take extended family leave, the Employee will be required to acknowledge in writing that in accordance with clause 51.25(d) of the Agreement they may not be able to return to their substantive position on their return to the workplace at the conclusion of their period of extended family leave.

15. Surrogacy Arrangements

- 15.1. An Employee whose child is born through a surrogacy arrangement which complies with Part 4 of the *Assisted Reproductive Treatment Act 2008* (Vic), may be eligible to access the parental leave entitlements outlined in clause 51 of the Agreement subject to meeting the eligibility, notice and evidence requirements outlined within.

Making decisions under this policy

Under section 20(1) of the *Public Administration Act 2004*, the public service body head has all the rights, powers, authorities and duties of an Employer, which will usually be delegated to staff within their Department or Agency. Employers should ensure that any actions under this policy are only taken by an Employee with the delegation to do so. Each Department and Agency should give effect to this policy in accordance with its own delegations.

Dispute resolution

An Employee who is directly affected by a decision made or action taken pursuant to clause 51 may apply for a review of actions under the Employer's review of actions policy or seek to resolve a dispute through the Resolution of Disputes procedure at clause 12 of the Agreement.

Further Information

Employees should refer to their Department or Agency's intranet for information on procedural requirements, systems and approval delegations.

For further information and advice please contact your local Human Resources or People and Culture Unit (or equivalent).

Related policies or documents

VPS Enterprise Agreement Common Policies

- Leave Without Pay
- Long Service Leave
- Personal / Carer's Leave

All policies in the VPS Enterprise Agreement Common Policies collection, can be found at <https://vpsc.vic.gov.au/vps-enterprise-agreement-common-policies/>