

## Clause 28 and Appendix 6

### 28.0 Parental Leave

**PLEASE REFER TO THE APPENDIX 6: BEST PRACTICE GUIDELINES – PARENTAL LEAVE FOR GUIDANCE AND STANDARDS ON MANAGING PARENTAL LEAVE FOR RMOS**

#### 28.1 Parental Leave

28.1.1 Parental leave shall be granted in accordance with the Parental Leave and Employment Protection Act 1987.

Except that, employees in their first twelve months of employment may apply for parental leave of up to six months duration. Such leave shall be applied for and granted as per the Parental Leave and Employment Protection Act 1987.

28.1.2 Guidelines: Please note the matters below are intended by way of general guidance only and it is not intended to add to the rights or obligations as provided by the governing Act. Employees should seek the advice of their manager, STONZ, or Employment New Zealand (<https://www.employment.govt.nz/leave-and-holidays/parental-leave> or 0800 20 90 20) in applying for parental leave.

Parental Leave is up to a maximum of 52 weeks, depending upon length of service for each couple excluding any period of paternity leave.

(a) Obligations of employee:

The employee must give a minimum of three months written notice to the employer prior to the expected date of delivery. Such notice shall contain a certificate from their medical practitioner or LMC stipulating that the employee or the employee's partner is pregnant and the expected date of delivery. The notice shall also stipulate the period for which the employee is seeking to take as leave.

If the employee is adopting a child whose age is less than five then the employee must notify the employer of such and their intention to take parental leave within fourteen days of receiving notification of the adoption or placement of the child to them. Note: this does not require the employee to give a minimum notice of their intention. Notice of actual placement and the need to commence parental leave may be less than two weeks.

In both such instances the employee must provide the date of delivery or adoption and the period for which the employee is seeking to take as leave.

Date of return that he or she intends to return to their employment.

Generally, any early return to workplace or any change to the terms and conditions of employment on the return to workforce must be with the agreement of both employer and employee.

(b) Obligations of employer:

Within 3 weeks of receiving an application for parental leave the employer notify in writing the employee of their entitlement to parental leave and whether their position will be kept open.

Subject to the position not being both a key position and one it which is not practical to employ someone on a fixed term agreement as a replacement then the employer shall keep the employee's position open for them on their return to work.

Recognise the employee's service as being continuous on their return to work.

Ensure the employee's terms and conditions remain the same.

## 28.2 Paid Parental Leave

### (a) Primary Care Giver:

Where an employee takes parental leave under this clause, meets the eligibility criteria in 28.1.1 (i.e. they assume or intend to assume the primary care of the child), and is in receipt of the statutory paid parental leave payment in accordance with the provisions of the Parental Leave and Employment Protection Act 1987 the employer shall pay the employee the difference between the weekly statutory payment and the equivalent weekly value of the employee's base salary (pro rata if less than full-time) for a period of up to 14 weeks.

The payments shall start at the commencement of the parental leave and shall be calculated at the ordinary rate (pro rata if appropriate) applicable to the employee immediately prior to commencement of parental leave. Except where an employee, on medical advice and with the consent of the employer, elects to work reduced hours at any time prior to the taking of leave, then the calculation of payment for the parental leave shall be based on the proportion of full-time employment immediately prior to any such enforced reduction in hours.

The payment shall be made only in respect of the period for which the employee is on parental leave and in receipt of the statutory payment if this is less than 14 weeks.

### (b) Non-Primary Care Giver:

An employee, who is not primary caregiver, shall be granted paid leave of up to two weeks on their ordinary salary. Such leave shall be continuous or may be taken in two separate week-long blocks and shall be taken within a period commencing three weeks prior to the expected date of delivery (adoption) and ending three weeks after the actual date of delivery (or adoption). Variations to this period may be agreed between the employee and the employer in order to meet the special needs of the child such as premature birth or placement prior to adoption. An employee availing him or herself of this entitlement shall not be eligible for paid parental leave pursuant to sub-Clause (a) above except where they share the statutory payment as the primary care giver described in a above for some part of the first 14 weeks of the payment in respect of their child. The payment under 28.2(a) and 28.2(b) will not be made in respect of the same period of time.

### (c) The entitlement to paid non-primary care giver leave in 28.2(b) above is in addition to any unpaid Partner's Leave under Part 2 of the Act.

## 28.3 Breastfeeding Facilities & Breaks

(a) Employees have a right to require, as far as it is reasonable and practicable to do so in the circumstances, to appropriate facilities in the workplace to undertaking breastfeeding in the workplace. In providing a facility, consideration should be given for privacy, comfort, proximity to normal place of work duties, and access to refrigeration for expressed milk if necessary.

(b) An employee is entitled to reasonable breaks without deduction from pay in order to breastfeed. The timing of such breaks, should subject to the requirements of the infant or the person breastfeeding, endeavour to align with paid or unpaid breaks.

(c) Breastfeeding encompasses the expressing of breast milk.

## 28.4 Limits on Hours for Pregnant employees. Employees shall be able to reduce hours of work as follows:

(a) From 28 weeks of pregnancy (or earlier if medically advised by the employee's lead maternity carer), no night shifts shall be worked.

(b) From 32 weeks of pregnancy (or earlier if medically advised by the employee's lead maternity carer), no long days in excess of 10 hours shall be worked.

(c) From 36 weeks of pregnancy (or earlier if medically advised by the employees lead maternity carer), no acute clinical workload shall be allocated.

28.4.1 Employees reducing hours as provided for in this clause above shall have their salary reduced in a manner to reflect their reduced workload in accordance with what would have been their expected roster but for the pregnancy.

## APPENDIX 6: Best Practice Guidelines - Parental Leave

Both parties acknowledge the importance of Parental Leave and ensuring that RMOs feel well supported to take parental leave and that they are provided with the appropriate information and guidance to take leave and also their transition back into the workplace following time away.

Both parties also acknowledge that there are unique challenges in ensuring RMOs are supported appropriately on their return due to the way they work. Parties recognise the importance that properly supporting RMOs through their return to work is vital in ensuring that RMOs continue to progress through training.

The below outlines the best practice guidelines & principles that both parties have agreed should underpin the basis for any communications and decision making in regards to parental leave.

### **Before going on leave**

RMOs are required to provide 3-months' notice of leave required for parental leave. Once a DHB is notified of the leave application, any process should include:

- Providing RMOs with a link to the appropriate IRD forms & advising them of the process in order to claim the statutory payments
- Notice of the ability to reduce hours prior to going on leave if required and the potential associated salary impact
- Provide the RMO with a copy of the DHB Policy for parental leave & breast-feeding policies
- Discuss keeping in touch days (if applicable) and the ability to access work emails etc while on leave

### **During Parental leave**

- RMO/DHB to facilitate conversation at least 3-months prior to returning to work including, but not limited to:
  - Confirming RMOs return date
  - RMOs working arrangements – Is there any ability for part-time work or flexible working arrangements. If Part-time or flexible arrangements have been requested, DHBs need to ensure that every effort is made to facilitate the request
  - Provide information in regards to breast feeding facilities and support available
- Provide returning RMO with their Roster for when they return, within the required notice periods

NB: The Parties note that an RMO may not be returning to the same DHB, hospital, service or position from which they commenced leave. The returning RMO will inform the new DHB if they are returning from a period of parental leave (no less than 2 months prior to start date). In applying the above guidance in such circumstances, the relevant DHBs, hospitals or services should ensure they liaise with one another in respect of the individual RMO's Parental Leave.

### **Following Parental Leave**

- Where requested RMOs should not be rostered for any long days, weekends or nights in their first month after returning from parental leave
- The employing DHBs are responsible for ensuring that any RMO who wishes to continue their breast-feeding journey on their return to work are strongly supported to do so including;
  - Ensuring appropriate breaks are provided to an RMO who is breastfeeding and wishes to breastfeed during work
  - Ensuring appropriate facilities are provided in the workplace for an RMO who is breastfeeding and who wishes to breastfeed in the workplace and that these facilities are within a reasonable distance

of the RMOs workplace i.e., accessible (and near acute services if applicable) with access to refrigeration facilities

- If the above cannot be provided then the DHB will agree with the RMO what other support may be provided including reimbursement (in part or in full) of a portable/wearable breast pump so RMOs can continue to breast feed and work

Attention is drawn to the Code of Employment Practice issued by the Minister of Labour (February 2010) outlining how employers can meet their statutory obligations under s.69Y of the Employment Relations Act to provide breastfeeding facilities and breaks as reflected in the above.

## Overview – Application

### Clarification on Specific Sub Clauses

Clause 28.2(a) the top up payment will be made fortnightly and will be the difference between the statutory payment and the ordinary rate of pay that would have applied had the employee not been on leave. The payment will apply for 14 weeks which will be 7 fortnightly payment periods.

### Parental Leave Clause 28.1

Parental leave entitlements are those set out in the Parental Leave and Employment Protection Act 1987 (“**the Act**”). A summary of the types of parental leave and eligibility for leave under the Act are set out in the comparison table [below](#).

Parental Leave is up to a maximum of 52 weeks (12 months service) or 26 weeks (6 months service) shared between both partners. This **excludes** any period of partners leave:

- The primary carer is entitled to 26 weeks of primary carer leave.
- From 1 March 2021, if the primary carer leave starts early (by medical or employer direction as above), the female employee giving birth may still take at least 20 weeks’ primary carer leave after the expected date of delivery birth (even if this means that she will have taken more than 26 weeks primary carer leave). In this situation the additional weeks of primary carer leave is not included in the calculation of the amount of extended leave available.
- Extended leave is a period of either 26 or 52 weeks’ leave. It may be taken in more than one continuous block, if the employer and employee agree. Any primary carer leave taken will reduce the number of weeks that can be taken as extended leave. As an example, if the employee is entitled to 52 weeks of extended leave and takes 26 weeks of paid primary carer leave, they will have a remaining 26 weeks of extended leave available to take.
- Extended leave can be taken by either or both partners (depending on eligibility) up to the maximum entitlement (dependent on length of service – see table below).
- Extended leave can be taken in any period or periods, up to the maximum entitlement, between the applicable start date and the applicable end date.

Clause 28.1 provides for an exception to the Act:

- An employee can access up to six months parental leave if they commence the leave within their first six months of employment.
- The eligibility test for the leave is different to the eligibility test for the government paid parental leave. So even if you are only eligible for 6 months leave you may still be eligible for the government paid parental leave. Where this occurs the RMO would be eligible for paid parental leave under clause 28.2(a).

## **Paid Parental Leave Clause 28.2**

### Primary Care Giver Clause 28.2(a)

Must meet the eligibility criteria in clause 28.1.1 (i.e. they assume or intend to assume the primary care of the child) and is in receipt of the statutory paid parental leave payment in accordance with the provisions of the Act.

**The primary care giver is eligible for a paid parental leave top up for 14 weeks.** This is the difference between the statutory payment and the equivalent weekly value of the employee's base salary (prorata if less than full time).

It is important for RMOs to remember that they need to apply to the IRD for the government paid parental leave, as well as parental leave from their employer. This IRD process is managed on line via the myIR login on the IRD website.

### Non-Primary Care Giver Clause 28.2(b)

An employee, who is not the primary care giver, shall be granted **paid partners leave of up to two weeks** on their ordinary salary. Such leave:

- Can be taken in two separate week long blocks
- Be taken within a period commencing three weeks prior to the expected date of delivery (adoption) and ending three weeks after the actual date of delivery (or adoption). Variations to this period may be agreed between the employee and employer in order to meet the special needs of the child such as a premature birth or placement prior to adoption.

## **Frequently Asked Questions (FAQs)**

1. What is the Primary and non-primary caregiver?
  - The Primary Caregiver can be either
    - The mother who is pregnant or giving birth to a child; or
    - The spouse/partner of the biological mother if the mother has transferred her entitlement; or
    - is the person who takes permanent primary responsibility for the care, development and upbringing of a child who is under 6 years of age
  - The non-primary Caregiver is the partner/spouse of the primary carer.
2. As the non-primary caregiver am I able to take my 2 week entitlement in sections, maybe one week at a time?
  - Yes, you can take this in two separate week long blocks and it must be taken within three weeks prior to the delivery date or adoption, or within three weeks after the date of delivery or adoption.
  - Variations to the date in which this leave is taken may be agreed by the DHB and the RMO.
3. Can I apply for both the unpaid partner's leave under Part 2 of the Parental Leave and Employment Protection Act 1987, as well as the two weeks of paid non primary care giver leave under clause 28.2.(b)?
  - Yes you are eligible for both where you meet the criteria set out in the Act;
    - Where you meet the six month criteria you may take one week of unpaid partner's leave under the Act
    - Where you meet the twelve month criteria you may take two weeks of unpaid partner's leave under the Act

4. As an RMO is it my responsibility to complete the IRD paperwork and ensure it is submitted prior to commencing parental leave?
  - Yes, you need to complete the IRD paperwork via the [myIR](#) login as part of your parental leave application. Whilst DHB processes may differ it is the individual's responsibility to ensure that this paperwork is submitted to the IRD within the required timeframe.
5. What happens if I have already commenced my parental leave when I become a STONZ member?
  - Any RMO joining STONZ who is on parental leave at the time of joining shall retain their former entitlement to paid parental leave and not the provisions of the STONZ MECA.
6. I was an RDA member but cancelled my membership and became a STONZ member on 1 November 2019. I am locked into an RDA IEA as a result of s58 of the Employment Relations Act until I end my current rotation and change employing DHB on 9 December 2019. I am due to commence two weeks of parental leave on 2 December 2019, am I entitled to the STONZ parental leave provisions under clause 28.2(b) as the non primary caregiver?
  - In principle the transition provisions set out at Appendix Three of the STONZ MECA apply in this situation. You will not be eligible for STONZ terms and conditions until 9 December 2019 when you change employing DHB. Your parental leave commences whilst you are employed under the RDA IEA terms and conditions so you will not be eligible for clause 28.2(b) under the STONZ MECA.
  - You will retain your former entitlement to the parental leave provisions under the RDA IEA from 9 December 2019, which means you will be eligible to claim the 6 week lump sum payment after having returned from parental leave and worked a further 6 months, as set out at clause 23.8 of your IEA. Where the parental leave is less than 6 weeks the lump sum payment is prorated to the number of weeks of leave so you will be eligible to receive the equivalent of a 2 week lump sum payment.
7. I will be taking 12 months parental leave however my first allocation following my return from leave will be at a different DHB. What am I required to do about my return to work noting that I will be returning to a different DHB?
  - In accordance with the Parental Leave Guidelines at Appendix 6 before your return from parental leave the following should occur;
    - At least 3-months prior the DHB should have a conversation with you to confirm the return date and working arrangements, which may include any ability for part-time work or flexible working arrangements. Noting where requested the DHB will make every effort to facilitate requests of this nature. At this point the DHB should also provide information in regards to breast feeding facilities and support available.
    - Where you are returning from parental leave to a different DHB, this conversation should be with the new DHB so that appropriate arrangements can be made. You must inform your new DHB that you are returning from a period of parental leave no less than 2 months prior to your start date.
    - Your return to work arrangements can include not being rostered for any long days, weekends or nights in your first month after returning from parental leave. Where requested, the DHB has an obligation to accommodate this requirement for the first month of your roster. To enable the DHB to plan and source cover any request should preferably be confirmed as part of the discussion 3 months prior to your return date, but no later than 2 months prior to this date.
    - Where you are returning from parental leave at reduced hours your FTE will be prorated to the run category hours in accordance with clause 13 Part-time employees, for the period you are not working 1.0 FTE.
    - The DHB where you are returning to work will provide you with your roster within the required notice period.
  - Following your return from parental leave the DHB is responsible for ensuring that where you wish to continue your breast-feeding journey you are strongly supported to do so, this includes;

- Ensuring appropriate breaks are provided to allow you to breastfeed during work.
- Ensuring appropriate breastfeeding facilities are available in the workplace and that these facilities are within a reasonable distance of your workplace i.e. accessible (and near acute services if applicable) with access to refrigeration facilities.
- Where the above cannot be provided the DHB will agree with you what other support may be provided including reimbursement (in part or in full) of a portable/wearable breast pump so the RMO can continue to breast feed and work

## Scenarios

### Sharing Primary Care Giver Responsibilities

- The father is employed as an RMO at a DHB and the mother is not a DHB employee
- Each parent will be taking a period of parental leave in one continuous block where they will be assuming responsibility of the primary carer
- The mother has completed the application for Paid Parental Leave Transfer via myIR because both parents will be sharing the Government funded paid leave
- Over that period of parental leave as the primary carer each has been approved the statutory IRD payment
- The father has provided a copy of the letter from the IRD confirming the dates he will be in receipt of the statutory IRD payment

#### Example # 1

The mother takes 20 weeks of government paid parental leave and the father takes the remaining 6 weeks

Parent	Government Paid Parental Leave	Full Salary Top Up Clause 28.2a	Paid Partners Leave Clause 28.2b
Mother	20 weeks	Not applicable	Not applicable
Father	6 weeks	6 weeks	Not eligible

#### Example # 2

The mother takes 6 weeks of government paid parental leave and the father takes the remaining 20 weeks

Parent	Government Paid Parental Leave	Full Salary Top Up Clause 28.2a	Paid Partners Leave Clause 28.2b
Mother	6 weeks	Not applicable	Not applicable
Father	20 weeks	14 weeks	Not eligible

### RMO becomes a STONZ member whilst on Parental Leave

#### Example 1 – Non Primary Care Giver

- The RMO is the non primary care giver and is granted two weeks unpaid partners leave under their current employment agreement for the period Monday 12 July 2021 to Sunday 25 July 2021
- The RMO commences their unpaid partners leave one week prior to the birth of their child
- At the commencement of the second week of the unpaid partners leave on Monday 19 July 2021 the RMO becomes a STONZ member and is bound by the STONZ MECA
- The RMO queries whether they are now entitled to access the paid partners leave under clause 28.2(b) of the STONZ MECA

### Answer

- The RMO is entitled to 2 weeks unpaid partners leave under the Parental Leave and Employment Protection Act 1987
- In addition to the statutory entitlement the STONZ MECA provides for 2 weeks paid partners leave under clause 28.2(b) which can be taken in two separate blocks. The leave must be taken within a 6 week period (no earlier than 3 weeks prior to the birth or adoption of the child and have ended 3 weeks after the date of birth or adoption of the child)
- From 19 July 2021 (date of union membership) the RMO is eligible to apply for 2 weeks paid partners leave provided that the leave is taken before 3 weeks after the date of the birth (the leave must be completed before 9 August 2021)

### Example 2 – Primary Care Giver Full Salary Top Up

- The RMO is the primary care giver and has been in receipt of the 26 week government paid parental leave since 8 March 2021 when they commenced their parental leave
- The RMO has not received any paid parental leave under their current employment agreement
- On Monday 19 July 2021 the RMO becomes a STONZ member and is bound by the STONZ MECA
- The RMO queries whether they are now entitled to access the paid primary care giver parental leave under clause 28.2(a) of the STONZ MECA

### Answer

- To be eligible for clause 28.2(a) the RMO must be in receipt of the statutory government paid parental leave and the 14 week top up payments must start at the commencement of the parental leave
- In this case the RMO is not eligible for the top up payments because they have already been on parental leave for more than 14 weeks

### Example 3 – Primary Care Giver Full Salary Top Up

- The RMO is the primary care giver and they are in receipt of the 26 week government paid parental leave which commenced on Monday 5 July 2021
- They are in receipt of the 14 week partial salary top up payment under their current employment agreement from Monday 5 July 2021
- On Monday 19 July 2021 the RMO becomes a STONZ member and is bound by the STONZ MECA
- The RMO queries whether they are now entitled to access the paid primary care giver parental leave top up under clause 28.1(b) of the STONZ MECA

### Answer

- The RMO is entitled to receive the top up payment under clause 28.2(a) of the STONZ MECA from 19 July 2021 (date of union membership)
- At the date the RMO became a STONZ member they have 12 weeks of the 14 week salary top up payment remaining
- The RMO is eligible to receive the full salary top up payment for 12 weeks



## Comparison STONZ and NZRDA MECAs

The following table sets out where there are differences between the STONZ MECA and NZRDA MECA. Where there is no difference between clauses no detail has been provided in the comparison table.

Provision	STONZ MECA Clause 28	RDA MECA Clause 23
Parental Leave entitlements	<p>Up to 6 months (26 weeks) with less than 12 months service:</p> <ul style="list-style-type: none"> <li>26 weeks primary carers leave for primary care giver</li> </ul> <p>Up to 12 months (52 weeks) with 12 months service or more:</p> <ul style="list-style-type: none"> <li>26 weeks primary carers leave for primary care giver</li> <li>Both primary and non primary care giver can share a total of up to 26 weeks extended leave</li> </ul>	<p>Both primary and non primary care giver can access up to 6 months parental leave where length of service is less than 12 months</p> <p>Both primary and non primary care giver can access up to 12 months parental leave where length of service is 12 months or more</p> <p>Discretion to extend up to a further 12 months where employer agrees</p>
Notice Requirements for Parental Leave	<p><b>Employee Notice Period</b></p> <p>At least three months before the expected date of delivery</p> <p><b>Employers Response</b></p> <p>Within 21 days of receiving the notice</p>	<p><b>Employee Notice Period</b></p> <p>At least one month before it is intended to commence parental leave</p> <p><b>Employers Response</b></p> <p>Silent in RDA MECA so in line with the Act which is within 21 days of receiving the notice</p>
Best Practice Parental Leave Guidelines	<p><b>Appendix 6</b></p> <p>Best Practice Parental Leave Guidelines includes what DHBs and RMOs should do before, during and returning from Parental Leave.</p> <p>RMOs returning from parental leave can request not to be rostered out of hours shifts for the first month after they return from parental leave.</p> <p>DHBs are responsible for ensuring RMOs that wish to continue their breast-feeding journey can do so. This includes;</p> <ul style="list-style-type: none"> <li>Ensuring appropriate breaks can be taken.</li> <li>Ensuring appropriate facilities are accessible and within a reasonable distance.</li> </ul> <p>Where this can't be done, the DHB will agree with an RMO what other support could be provided such as reimbursement of portable/wearable breast pumps.</p>	<p>Not in NZRDA MECA</p>

### Forms, Templates and Other Resources

The following resources form part of clause 28 Parental Leave of the Manual. Click on the item to access the template.

Resource	Comment
Parental Leave Application Form	Used by the RMO to apply for parental leave under the STONZ MECA terms and conditions