



Paid Parental Leave Amendment Rules 2012 (No. 1)

Paid Parental Leave Act 2010

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 3 October 2012

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

1 Name of Rules

These Rules are the *Paid Parental Leave Amendment Rules 2012 (No. 1)*.

2 Commencement

Schedule 1 of these Rules commences on the day after these Rules are registered.

3 Amendment of *Paid Parental Leave Rules 2010*

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

Schedule 1 Amendments

(rule 3)

[1] Paragraph 2.2(1)(b)

Repeal the paragraph, substitute:

(b) subject to subrule (1A), the person has not returned to work; and

[2] After subrule 2.2(1)

Insert

(1A) For the purposes of paragraph 2.2(1)(b), disregard a return to work in any of the following circumstances:

- (a) if the person satisfies rule 2.4—a return to work on one or more days in the period the child is not in the person’s care;
- (b) if the person satisfies rule 2.5—a return to work on a day referred to in paragraph 2.5(b);
- (c) if the person satisfies rule 2.5A—a return to work on a day referred to in rule 2.5A;
- (d) if the person satisfies rule 2.5B—a return to work on one or more days in the period that starts on the day that is 14 days after the day the child is born and ends on the day the child is discharged from hospital;
- (e) if paragraph 2.6(b) applies to the person—a return to work on one or more days to which paragraph 2.6(b) applies.

[3] Rule 2.5

Omit “subparagraph 2.2(1)(b)(iii)”, substitute “paragraph 2.2(1A)(b)”

[4] After rule 2.5

Insert

2.5A Work requirements for primary claimants – summons or other compulsory process

For paragraph 2.2(1A)(c) 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.

2.5B Work requirements for primary claimants – child remains in hospital following birth

For paragraph 2.2(1A)(d), the requirements are that:

- (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.

[5] Paragraph 2.8(2)(e)

Repeal the paragraph, substitute:

- (e) subject to subrule (2A), the person has not returned to work; and

[6] After subrule 2.8(2)

Insert

(2A) For the purposes of paragraph 2.8(2)(e), disregard a return to work in any of the following circumstances:

- (a) if the person satisfies rule 2.10—a return to work on one or more days in the period the child is not in the person’s care;
- (b) if the person satisfies rule 2.11—a return to work on a day referred to in paragraph 2.11(b);
- (c) if the person satisfies rule 2.11A—a return to work on a day referred to in rule 2.11A;
- (d) if the person satisfies rule 2.11B—a return to work on one or more days in the period that starts on the day the child is born and ends the day the child is discharged from hospital.

[7] Rule 2.11

Omit “subparagraph 2.8(2)(e)(iii)”, substitute “paragraph 2.8(2A)(b)”

[8] After rule 2.11

Insert

2.11A Work requirements for secondary claimants – summons or other compulsory process

For paragraph 2.8(2A)(c) the requirement is that the person has performed 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.

2.11B Work requirements for secondary claimants in normal circumstances – child remains in hospital following birth

For paragraph 2.8(2A)(d), the requirements are that:

- (a) the person is a father of the child or a partner of the birth mother or a partner of the 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.

[9] Paragraph 2.12(2)(c)

Repeal the paragraph, substitute:

- (c) subject to subrule (2A), the person has not returned to work; and

[10] After subrule 2.12(2)

Insert

(2A) For the purposes of paragraph 2.12(2)(c), disregard a return to work in any of the following circumstances:

- (a) if the person satisfies rule 2.14—a return to work on one or more days in the period the child is not in the person’s care;
- (b) if the person satisfies rule 2.15—a return to work on a day referred to in paragraph 2.15(b);
- (c) if the person satisfies rule 2.16—a return to work on a day or days referred to in paragraph 2.16(a);
- (d) if the person satisfies rule 2.16A—a return to work on a day referred to in rule 2.16A.

[11] Rule 2.15

Omit “subparagraph 2.12(2)(c)(iii)”, substitute “paragraph 2.12(2A)(b)”

[12] Paragraph 2.15(a)

After “defence force member”, insert “or a law enforcement officer”

[13] Rule 2.16

Omit “subparagraph 2.12(2)(c)(iii)”, substitute “paragraph 2.12(2A)(c)”

[14] **After rule 2.16**

Insert

2.16A Exceptional circumstances work requirements for secondary claimants – summons or other compulsory process

For paragraph 2.12(2A)(d) the requirement is that the person has performed 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.

[15] **Paragraph 2.18(1)(c)**

Repeal the paragraph, substitute:

(c) subject to subrule (1A), the person has not returned to work; and

[16] **After subrule 2.18(1)**

Insert

(1A) For the purposes of paragraph 2.18(1)(c), disregard a return to work in any of the following circumstances:

- (a) if the person satisfies rule 2.20—a return to work on one or more days in the period the child is not in the person’s care;
- (b) if the person satisfies rule 2.21—a return to work on a day referred to in paragraph 2.21(b);
- (c) if the person satisfies rule 2.22—a return to work on a day or days referred to in paragraph 2.22(a);
- (d) if the person satisfies rule 2.22A—a return to work on a day referred to in rule 2.22A.

[17] **Rule 2.21**

Omit “subparagraph 2.18(1)(c)(iii)”, substitute “paragraph 2.18(1A)(b)”

[18] **Rule 2.22**

Omit “subparagraph 2.18(1)(c)(iii)”, substitute “paragraph 2.18(1A)(c)”

[19] **After rule 2.22**

Insert

2.22A Work requirements for tertiary claimants –summons or other compulsory process

For paragraph 2.18(1A)(d) the requirement is that the person has performed paid work on a day because the person has to comply with the requirement of a summons or other compulsory process to appear to give evidence or information or to produce documents or other things.

[20] **Subrule 2.28(1)**

Omit “Subject to rule 2.30, the”, *substitute* “The”.

[21] **After subrule 2.28(2)**

Insert

(3) This rule does not apply to circumstances to which rule 2.30 applies.

[22] **Rule 2.30**

Repeal the rule, *substitute*:

2.30 Exceptional circumstance – surrogacy arrangements

- (1) This rule applies to a person who is the primary carer of 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
 - (b) became, or will become, the child’s primary carer before the child’s first birthday; and
 - (c) satisfies the circumstances mentioned in subrule 2.30(3).
- (3) A person is covered by this subrule if the Secretary is satisfied on reasonable grounds that:
 - (a) the person is the primary carer of 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

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- (4) For paragraph 2.30(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 primary 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.

[23] Subrule 3.5(1)

After “85”, insert “,”.

[24] Subrule 4.2(1) (definition of *one-off payment to families*)

After “Family”, insert “ ”.