Article Information

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Paid Parental Leave and double dipping – what will happen next?

In May 2015, the Federal Treasurer Joe Hockey announced that from 1 July 2016, the Government's Paid Parental Leave (PPL) scheme would not allow employees to access entitlements from both the parental leave pay from the Australian Government scheme, as well as PPL provided by their employer through a workplace scheme. This was a controversial announcement which claimed some mothers were "double dipping" on PPL entitlements.

However, the *Paid Parental Leave Act 2010* (Cth) (Act), which sets out the Government's provision of PPL, provides that an object of the Act is to provide financial support which complements and supplements existing entitlements to paid or unpaid leave in connection with the birth or adoption of a child. Or in other words, the PPL scheme under the Act is in place to supplement entitlements provided by an employer, thereby existing in part to allow so called "double dipping".

The Government has now introduced into the House of Representatives the *Fairer Paid Parental Leave Bill 2015* (Bill) which, if passed, will amend the Act. The Explanatory Memorandum to the Bill explains that the measures provided for in the Bill will more fairly target parents who do not also have sufficient access to employer-provided parental leave or similar payments, and that parents will no longer be able to receive employer-provided primary carer leave payments, as well as the full amount of PPL under the Government's scheme.

Parents who are entitled to receive PPL from their employer *in excess* of the total entitlement under the Fairer Paid Parental Leave Scheme (Scheme) will not receive any parental leave pay from the Government. Parents who are entitled to receive PPL from their employer which is *less* than the entitlement under the Scheme will receive a top up payment to ensure they can access a total amount equivalent to the Government scheme.

Calculating Entitlements

The calculation to determine the payment to a primary carer, and any adjustment which needs to be made, is calculated as follows:

1. Calculate the number of week days in the worker's maximum PPL period (normally 18 weeks or 90 working days).
2. Apply the national minimum wage to each of these days. If the period extends over 1 July in any given year, the minimum wage to be applied from 1 July must be in accordance with the new rate released in the National Minimum Wage decision for that financial year. Add up the daily entitlements to calculate the overall entitlement for the PPL period.
3. Once there is an overall monetary entitlement for the leave to be taken, divide the figure by 90 days. This will be the person's national minimum daily wage for the PPL period.
4. Divide the overall entitlement of the worker from their employer by the person's national minimum daily wage at point 3. This is the number of week days by which a person's maximum PPL period end day is brought forward for the purposes of the Scheme payment. If the result is not a whole number, it is rounded down.
5. Subtract the number of days in point 4 from the 90 day maximum entitlement to arrive at the worker's maximum PPL period under the Scheme. If a negative number is the result, the worker is not entitled to any payment under the Scheme.
6. The payment from the Scheme will be the maximum PPL period under point 5 applied to the applicable national minimum wage.

The following are worked examples using the steps set out above.

Example 1:

Jo receives from her employer an entitlement to 5 weeks PPL at $1000 per week, giving her an overall entitlement of $5000. She plans to take 18 weeks leave beginning 20 July 2016.

- In 18 weeks leave, there are 90 week days (maximum PPL period)
- The national minimum daily wage for the financial year beginning 1 July 2016 is $131.40. 90 week days × $131.40= $11,826 (overall entitlement for PPL period)
- $11,826 ÷ 90 days = $131.40 (national minimum daily wage for the PPL period)
- $5000 ÷ $131.40 = 38.05 days, rounded down to 38 days (number of week days by which the person's maximum PPL period end day is brought forward)
- 90 – 38 = 52 days (maximum PPL period under the Scheme)
- 52 × $131.40 = $6,832.80 (entitlement under the Scheme)

Example 2:

Anna receives from her employer an entitlement to 2 weeks PPL at $2000 per week, giving her an overall entitlement of $4000. She plans to take 18 weeks leave beginning 20 July 2016.

- In 18 weeks leave, there are 90 week days (maximum PPL period)
- The national minimum daily wage for the financial year beginning 1 July 2016 is $131.40. 90 week days × $131.40= $11,826 (overall entitlement for PPL period)
- $11,826 ÷ 90 days = $131.40 (national minimum daily wage for the PPL period)
- $4000 ÷ $131.40 = 30.44 days, rounded down to 30 days (number of week days by which the person's maximum PPL period end day is brought forward)
- 90 – 30 = 60 days (maximum PPL period under the Scheme)
- 60 × $131.40 = $7,884 (entitlement under the Scheme).

Example 3:

Jenny receives from her employer an entitlement to 18 weeks PPL at $500 per week, giving her an overall entitlement of $9000. She plans to take 18 weeks leave beginning 20 July 2016.

- In 18 weeks leave, there are 90 week days (maximum PPL period)
- The national minimum daily wage for the financial year beginning 1 July 2016 is $131.40. 90 week days × $131.40= $11,826 (overall entitlement for PPL period)
- $11,826 ÷ 90 days = $131.40 (national minimum daily wage for the PPL period)
- $9000 ÷ $131.40 = 68.49 days, rounded down to 68 days (number of week days by which the person's maximum PPL period end day is brought forward)
- 90 – 68 = 22 days (maximum PPL period under the Scheme)
- 22 × $131.40 = $2,890.80 (entitlement under the Scheme).

A person wishing to claim PPL entitlements must declare to the Secretary (as represented by the Department of Human Services) any entitlements that they will receive from their employer, and must provide their Tax File Number so that the Department can verify this information. The Department can go back and check payments received, or not received, after this declaration is made and make an appropriate adjustment to the payment.

The Next Step

The Bill will need to pass through both houses of parliament, and the Senate has proven itself to be somewhat unpredictable in recent times. The position is therefore still uncertain. Employers who are currently negotiating enterprise agreements (EAs) should consider what this might mean for their current PPL scheme.

An employer with an existing EA, who wishes to change their workplace PPL scheme contained therein, cannot unilaterally withdraw the scheme without going through the process of varying their EAs. This is similar to contractual schemes, which also cannot be unilaterally changed or withdrawn.

Employers with existing schemes set out in their policies should seek advice about whether and how they can change those schemes with respect to their individual circumstances.

If you would like advice on your position in relation to an existing scheme, or in relation to a proposed scheme to be placed in an upcoming EA, please do not hesitate to contact our Employment Relations team.