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An Act to prescribe minimum entitlements with respect to parental leave for male and female employees and to protect the rights of employees during pregnancy and parental leave, and to repeal the Maternity Leave and Employment Protection Act 1980 [10 July 1987]

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—(1) This Act may be cited as the Parental Leave and Employment Protection Act 1987.
(2) This Act shall come into force on the 1st day of October 1987.

2. Interpretation—(1) In this Act, unless the context otherwise requires,—
“Company” has the same meaning as in the Companies Act 1955; and includes an overseas company within the meaning of that Act:
“Contract of employment” means a contract of service or apprenticeship:
"Court" or "Labour Court" means the Labour Court constituted under the Labour Relations Act 1987:

"Employee" means any person of any age employed by an employer to do any work for hire or reward, but does not include an independent contractor:

"Employer" means any person employing any employee or employees:

"Expected date of delivery" in respect of a pregnant woman means the date specified in writing by a medical practitioner as being the date on which that medical practitioner diagnoses that the pregnant woman may give birth to a child:

"Extended leave"—

(a) Means extended leave to which an employee is entitled in accordance with this Act; and

(b) Includes, for the purposes of Parts VI and VII of this Act, rights and benefits in the nature of extended leave to which an employee is entitled by virtue of any Act other than this Act, or any award, agreement, or contract of employment:

"Maternity leave"—

(a) Means maternity leave to which a female employee is entitled in accordance with this Act; and

(b) Includes, for the purposes of Parts VI and VII of this Act, rights and benefits in the nature of maternity leave to which a female employee is entitled by virtue of any Act other than this Act, or any award, agreement, or contract of employment:

"Mediator" means a mediator appointed under the Labour Relations Act 1987:

"Parental leave"—

(a) Means—

(i) Maternity leave to which an employee is entitled in accordance with this Act:

(ii) Paternity leave to which an employee is entitled in accordance with this Act:

(iii) Extended leave to which an employee is entitled in accordance with this Act:

(b) Includes, for the purposes of Parts VI and VII of this Act, rights and benefits in the nature of any of the kinds of leave described in paragraph (a) of this definition to which an employee is entitled by virtue of any Act other than this Act, or any award, agreement, or contract of employment:
"Paternity leave"—
(a) Means paternity leave to which a male employee is entitled in accordance with this Act; and
(b) Includes, for the purposes of Parts VI and VII of this Act, rights and benefits in the nature of paternity leave to which a male employee is entitled by virtue of any Act other than this Act, or any award, agreement, or contract of employment:

"Spouse" means the male or the female partner, as the case may be, to—
(a) A legal marriage; or
(b) A relationship in which the parties are living together as husband and wife, although not legally married to each other:

"State employee" means—
(a) Every person whose rate of remuneration is determined—
   (i) By an employing authority; or
   (ii) By the Arbitration Commission constituted under the Labour Relations Act 1987, under the State Services Conditions of Employment Act 1977:
(b) Every person whose rate of remuneration is determined under any of the provisions of sections 66A to 66G of the Police Act 1958:
(c) Every person whose rate of remuneration is fixed by an award within the meaning of the Labour Relations Act 1987 and who is employed pursuant to section 165c of the Education Act 1964 by an Education Authority:
(d) Every person employed in the State services whose rate of salary is determined by the Higher Salaries Commission:
(e) Every medical practitioner employed as a medical officer in the Health Service (as defined in section 2 of the Health Service Personnel Act 1983):
(f) Every dentist employed as a dental officer in the Health Service (as defined in section 2 of the Health Service Personnel Act 1983):

"State services" has the meaning given to it by section 4 of the State Services Conditions of Employment Act 1977:

"Union" means a union registered or deemed to be registered under the Labour Relations Act 1987.
(2) Where it is necessary, for the purpose of applying any of the provisions of sections 7 (b), 8 (1) (b), 17 (c), 18 (1) (b), 23 (b), 24 (1) (b), and 43 of this Act, to ascertain, in relation to any of the circumstances mentioned in clauses 1 to 5 of the Schedule to this Act,—

(a) Whether any employee has remained in the employment of the same employer during any period of time; or
(b) Whether any employee has resumed service with the same employer—
the provisions of the Schedule to this Act shall apply.

Cf. 1980, No. 162, s. 2

3. Act to bind the Crown—This Act shall bind the Crown.

Cf. 1980, No. 162, s. 3

4. Application of this Act to employees—Subject to section 72 (2) of this Act, where provision is made by or under any Act other than this Act or by any award, agreement, or contract of employment for rights and benefits in the nature of parental leave, the following provisions shall apply:

(a) Parts I to V of this Act shall not apply to an employee who is entitled under any such provision—
(i) To rights and benefits that, while not the same as the rights and benefits provided for in Parts I to V of this Act, are in their overall effect as favourable to that employee as the rights and benefits provided for in Parts I to V of this Act; or
(ii) To rights and benefits that are more favourable to that employee in their overall effect than the rights and benefits provided for in Parts I to V of this Act; and

(b) Parts I to V of this Act shall apply to an employee who is entitled under any such provision—
(i) To the rights and benefits provided for in Parts I to V of this Act; or
(ii) To rights and benefits that are less favourable to that employee in their overall effect than the rights and benefits provided for in Parts I to V of this Act.

5. Restriction on parental leave under this Act where employee or employee's spouse takes parental leave under any other provision—Nothing in this Act shall entitle an employee otherwise entitled to any period of parental leave under this Act to take a period of parental leave under this Act which, when aggregated with any rights and benefits in the
nature of parental leave taken or proposed to be taken by that employee’s spouse under any Act other than this Act or under any award, agreement, or contract of employment, would exceed the total period of parental leave to which that employee and that employee’s spouse would be entitled by virtue of this Act if the provisions of this Act regarding maternity leave, paternity leave, and extended leave were to apply to both that employee and that employee’s spouse.

6. Restriction on taking of parental leave within 12 months of end of previous period of parental leave in respect of another child—An employee shall not be entitled to parental leave in respect of a child by virtue of this Act if—
(a) That employee has previously taken, in respect of another child, a period of leave, being—
   (i) Parental leave under this Act; or
   (ii) A period of leave in the nature of parental leave under any Act other than this Act, or any award, agreement, or contract of employment; and
(b) Less than 12 months have elapsed since the day after the date on which the most recent period of leave referred to in paragraph (a) of this section ended.

PART I
MATERNITY LEAVE

7. Entitlement of female employee to maternity leave—Except as otherwise provided in this Act, every female employee—
(a) Who becomes pregnant; and
(b) Who, at the expected date of delivery, will have been for the immediately preceding 12 months in the employment of the same employer for at least 10 hours in each week,—
shall be entitled to maternity leave in accordance with this Act.

Cf. 1980, No. 162, s. 5

8. Entitlement of adoptive mother to maternity leave—
(1) Except as otherwise provided in this Act, every female employee—
(a) Who assumes (with a view to adoption by her or by her and her spouse jointly) the care of a child who is not more than 5 years of age; and
(b) Who, at the date on which she, with a view to adoption, first assumes the care of the child, will have been for
the immediately preceding 12 months in the employment of the same employer for at least 10 hours in each week,—

shall be entitled to maternity leave in accordance with this Act.

(2) A female employee shall not be entitled to maternity leave in respect of a child by virtue of subsection (1) of this section if she has previously taken, in respect of that child, a period of leave, being—

(a) Maternity leave under this Act; or
(b) A period of leave in the nature of maternity leave under any Act other than this Act, or any award, agreement, or contract of employment.

Cf. 1980, No. 162, s. 6

9. Duration of maternity leave—(1) Subject to subsection (2) of this section, maternity leave shall be taken in one continuous period not exceeding 14 weeks.

(2) If a female employee begins her maternity leave—

(a) On a date specified, pursuant to section 13 (1) of this Act, in a medical practitioner's certificate; or
(b) On a date appointed, pursuant to section 14 of this Act, by her employer,—

the female employee shall be entitled to take at least 8 weeks of her maternity leave after the expected date of delivery and, if necessary for that purpose, to extend the duration of her maternity leave.

(3) Any period of maternity leave in excess of 14 weeks taken by a female employee pursuant to subsection (2) of this section shall be deemed to be maternity leave for the purposes of this Act, but shall not be taken into account in assessing under section 26 of this Act the period of extended leave to which that female employee or her spouse is entitled under this Act.

Cf. 1980, No. 162, s. 8

10. Date of commencement of maternity leave—Maternity leave shall begin—

(a) On the date of confinement; or
(b) In the case of adoption, on the date on which the female employee first assumes (with a view to adoption by her or by her and her spouse jointly) the care of the child; or
(c) On such earlier date—

(i) As is determined in accordance with section 11 or section 12 or section 13 of this Act; or
(ii) As is appointed by the employer pursuant to section 14 of this Act.

Cf. 1980, No. 162, s. 9

11. Right of employee to determine date of commencement of maternity leave—Maternity leave may, at the option of the female employee and subject to compliance with section 37 of this Act, begin on a date which is earlier, by not more than 6 weeks,—

(a) Than the expected date of delivery; or
(b) In the case of adoption, than the date applicable under section 10 (b) of this Act.

Cf. 1980, No. 162, s. 10 (1)

12. Right of employer and employee to determine date of commencement of maternity leave by agreement—Maternity leave may, by agreement between the female employee and her employer, begin on any date before the date of confinement.

Cf. 1980, No. 162, s. 11

18. Right of medical practitioner to determine date of commencement of maternity leave—(1) Where a registered medical practitioner considers that the female employee, being pregnant, should begin her maternity leave before the expected date of delivery, the medical practitioner may give to the female employee a written certificate specifying the date on which, in the medical practitioner’s opinion, the female employee should begin her maternity leave.

(2) If the female employee gives the medical practitioner’s certificate to her employer, her maternity leave shall, notwithstanding anything in section 10 or in section 12 or in section 14 of this Act, begin on the earlier of—

(a) The date specified in the medical practitioner’s certificate; or

(b) The date of confinement.

Cf. 1980, No. 162, s. 12

14. Right of employer to appoint date of commencement of maternity leave—Where, by reason of pregnancy, a female employee is unable to perform her work to the safety of herself or others or is incapable of performing her work adequately, her employer, if no other suitable work is available, may, subject to section 9 (2) of this Act, direct her to
commence her maternity leave on such date as the employer appoints (including a date that is earlier, by more than 6 weeks, than the expected date of delivery).

Cf. 1980, No. 162, s. 13

15. Special leave—(1) A female employee who is pregnant is entitled, before taking maternity leave, to take a total of up to 10 days special leave without pay for reasons connected with her pregnancy.

(2) No period of special leave taken under subsection (1) of this section by a female employee shall be taken into account in assessing the period of maternity leave or the period of extended leave to which that female employee or her spouse is entitled in accordance with this Act.

Cf. 1980, No. 162, s. 25

16. Ability to perform work—Where, by reason of pregnancy, a female employee is unable to perform her work to the safety of herself or others or is incapable of performing her work adequately, her employer may temporarily transfer her from one job to another.

Cf. 1980, No. 162, s. 24

PART II
Paternity Leave

17. Entitlement of male employee to paternity leave—Except as otherwise provided in this Act, every male employee—
(a) Who is the spouse of a pregnant woman; and
(b) Who assumes or intends to assume the care of the child of the pregnancy; and
(c) Who, at the expected date of delivery of that child, will have been for the immediately preceding 12 months in the employment of the same employer for at least 10 hours in each week,—
shall be entitled to paternity leave in accordance with this Act.

18. Entitlement of adoptive father to paternity leave—(1) Except as otherwise provided by this Act, every male employee—
(a) Who assumes (with a view to adoption by him or by him and his spouse jointly) the care of a child who is not more than 5 years of age; and
(b) Who, at the date on which he, with a view to adoption, first assumes the care of the child, will have been for the immediately preceding 12 months in the employment of the same employer for at least 10 hours in each week,— shall be entitled to paternity leave in accordance with this Act.

(2) A male employee shall not be entitled to paternity leave in respect of a child by virtue of subsection (1) of this section if he has previously taken, in respect of that child, a period of leave, being—

(a) Paternity leave under this Act; or
(b) A period of leave in the nature of paternity leave under any Act other than this Act, or any award, agreement, or contract of employment.

19. **Duration of paternity leave**—Paternity leave shall be taken in one continuous period not exceeding 2 weeks.

20. **Date of commencement of paternity leave**—Paternity leave shall begin—

(a) On the date of confinement of the employee’s spouse; or
(b) In the case of adoption, on the date on which the employee first assumes (with a view to adoption by him or by him and his spouse jointly) the care of the child; or
(c) On such earlier or later date as is determined in accordance with section 21 or section 22 of this Act.

21. **Right of employee to determine date of commencement of paternity leave**—Paternity leave may, at the option of the male employee, begin—

(a) On any date in the period—
(i) Beginning on the 21st day before the expected date of delivery; and
(ii) Ending with the close of the 21st day after the actual date of delivery or, where the child is discharged from a hospital or a similar establishment more than 21 days after the actual date of delivery, the close of the day on which the child is discharged from that hospital or establishment; or

(b) In the case of adoption, on any date in the period beginning on the 21st day before the date applicable under section 18 (1)(b) of this Act and ending with the close of the 21st day after the date so applicable.
22. Right of employer and employee to determine date of commencement of paternity leave by agreement—Paternity leave may, by agreement between the male employee and his employer, begin on any date.

PART III
EXTENDED LEAVE

23. Entitlement of employee to extended leave—Except as otherwise provided in this Act, and subject to sections 25 to 30 of this Act, every employee—
(a) Who—
   (i) Gives birth to a child and assumes or intends to assume the care of that child; or
   (ii) Assumes or intends to assume the care of a child to whom his spouse gives birth; and
(b) Who, at the expected date of delivery of that child, will have been for the immediately preceding 12 months in the employment of the same employer for at least 10 hours in each week,—shall be entitled to extended leave in accordance with this Act.

24. Entitlement of adoptive parent to extended leave—
(1) Except as otherwise provided in this Act, and subject to sections 25 to 30 of this Act, every employee—
(a) Who assumes (with a view to adoption by that employee or by that employee and that employee's spouse jointly) the care of a child who is not more than 5 years of age; and
(b) Who, at the date on which that employee, with a view to adoption, first assumes the care of the child, has been for the immediately preceding 12 months in the employment of the same employer for at least 10 hours in each week,—shall be entitled to extended leave in accordance with this Act.
(2) An employee shall not be entitled to extended leave in respect of a child by virtue of subsection (1) of this section if that employee has previously taken, in respect of that child, a period of leave, being—
   (a) Extended leave under this Act; or
   (b) A period of leave in the nature of extended leave under any Act other than this Act, or any award, agreement, or contract of employment.

25. Restriction where two or more children born or adopted at one time—(1) Where any employee gives birth to
2 or more children as a result of one pregnancy and assumes or intends to assume the care of those children, any extended leave to which that employee is entitled in accordance with section 23 of this Act shall be determined as if that employee had given birth to only one child as a result of the pregnancy and had assumed or intended to assume the care of only one of those children.

(2) Where any male employee assumes or intends to assume the care of 2 or more children to whom his spouse has given birth as a result of one pregnancy, any extended leave to which that employee is entitled in accordance with section 23 of this Act shall be determined as if that employee's spouse had given birth to only one child as a result of the pregnancy and that employee had assumed or intended to assume the care of only one of those children.

(3) Where, in the case of adoption, any employee assumes (with a view to adoption by that employee or by that employee and that employee's spouse jointly) the care of 2 or more children within one month, any extended leave to which that employee is entitled in accordance with section 24 of this Act shall be determined as if that employee had assumed (with a view to adoption by that employee or by that employee and that employee's spouse jointly) the care of only the youngest of those children within that month.

26. **Duration of extended leave**—(1) Subject to subsection (2) of this section and to sections 27 to 30 of this Act, extended leave may be taken by the employee and the employee's spouse in no more than one continuous period each, the combined total of which does not exceed 52 weeks.

(2) Where, on any occasion, a female employee who is entitled to both maternity leave and extended leave in accordance with this Act, takes maternity leave, the period of extended leave to which she or her spouse is entitled in respect of the child shall be the period specified in subsection (1) of this section reduced by the total period of the maternity leave taken excluding any period of maternity leave in excess of 14 weeks taken pursuant to section 9 (2) of this Act.

(3) The taking by a female employee of any special leave pursuant to section 15 of this Act shall not reduce the period of extended leave to which that female employee or her spouse is entitled in accordance with this Act.

(4) The taking by a male employee of any paternity leave in accordance with this Act shall not reduce the period of
extended leave to which that male employee or his spouse is entitled in accordance with this Act.

27. Extended leave to be shared between parents—
(1) Subject to the provisions of this Act, where an employee and that employee's spouse are both entitled to extended leave pursuant to section 23 or section 24 of this Act, the combined entitlements of that employee and that employee's spouse to extended leave under this Act shall be a total period or periods not exceeding 52 weeks which shall be shared between them in accordance with subsection (2) of this section.

(2) Subject to the provisions of this Act, the period or periods of extended leave provided by section 26 (1) of this Act shall be shared between an employee and that employee's spouse in one of the following ways:

(a) By either the employee or the employee's spouse taking the full period of extended leave, or any lesser period, in a continuous period not exceeding 52 weeks, and by the other of them not taking any period of maternity or extended leave under this Act:

(b) By both the employee and the employee's spouse each taking one period of extended leave in such a manner that the total period formed by adding together the 2 periods of extended leave does not exceed 52 weeks, and by neither the employee nor the employee's spouse taking any period of maternity leave under this Act:

(c) By either the employee or the employee’s spouse taking a period of maternity leave and by either or both of the employee and the employee’s spouse each taking one period of extended leave in such a manner that the total period formed by adding together the period or periods of extended leave and the period of maternity leave (excluding any period of maternity leave in excess of 14 weeks taken under section 9 (2) of this Act) does not exceed 52 weeks:

(d) In such a manner as may be agreed on by the employee and the employee's spouse and their respective employers.

28. Extended leave may be taken consecutively or concurrently with any leave taken by other parent—
Subject to the provisions of this Act, where an employee takes a period of extended leave in accordance with section 27 of this Act, the period of leave so taken may be taken consecutively or
concurrently with any period of maternity leave, paternity leave, or extended leave taken by the employee or the employee’s spouse, as the case may be, under this Act.

29. Date of commencement of extended leave—Except as otherwise provided by section 27 or section 30 of this Act, extended leave shall begin,—

(a) In the case of a female employee who has taken maternity leave in relation to the birth or adoption of the child, on any date in the period beginning with the expiry or earlier determination of the employee’s maternity leave, and ending,—

(i) in the case of a child born to the employee, with the date on which the child attains the age of 12 months; or

(ii) in the case of a child adopted by the employee, with the date that is the first anniversary of the date on which the employee first assumed the care of the child with a view to adoption:

(b) In the case of a male employee who has taken paternity leave in relation to the birth or adoption of the child, on any date in the period beginning with the expiry or earlier determination of the employee’s paternity leave, and ending,—

(i) in the case of a child born to the employee’s spouse, with the date on which the child attains the age of 12 months; or

(ii) in the case of a child adopted by the employee, with the date that is the first anniversary of the date on which the employee first assumed the care of the child with a view to adoption:

(c) In the case of an employee who is entitled to take maternity leave or paternity leave in relation to the birth of a child and who has not taken any such leave, on any date in the period beginning with the date of confinement and ending with the date on which the child attains the age of 12 months:

(d) In the case of an employee who is entitled to take maternity leave or paternity leave in relation to the adoption of a child and who has not taken any such leave, on any date in the period beginning with the date on which the employee first assumes (with a view to adoption by that employee or by that employee and that employee’s spouse jointly) the care of the child and ending with the date that is the
first anniversary of the date on which the employee first assumed the care of the child with a view to adoption:

(e) On such other date as may be agreed on by the employee and that employee’s employer.

30. **Termination of extended leave**—Notwithstanding anything contained in any other provision of this Act, no employee shall be entitled to commence or continue any period of extended leave under this Act after—

(a) The date on which the child in respect of whom the extended leave is taken (other than a child to whom paragraph (b) of this section applies) attains the age of 12 months; or

(b) In the case of an adopted child, the first anniversary of the date on which the employee first assumed the care of the child with a view to the adoption of that child by that employee, or by that employee and that employee’s spouse jointly; or

(c) The date on which the employee ceases to have care of the child in respect of whom the extended leave is taken.

**PART IV**

**Requirements Concerning Notice**

31. **Obligation to notify employer**—(1) An employee who wishes to take parental leave under this Act shall give written notice to the employee’s employer of the employee’s wish to take that leave.

(2) The notice under subsection (1) of this section shall state the proposed date on which the employee wishes to commence leave, and the duration of the leave.

(3) Except where the employee is proposing to adopt a child, the notice under subsection (1) of this section—

(a) Shall be given at least 3 months before the expected date of delivery; and

(b) If given by a female employee, shall be accompanied by a certificate from a registered medical practitioner—

(i) Certifying that the female employee is pregnant; and

(ii) Stating the expected date of delivery; or
(c) If given by a male employee shall be accompanied by—

(i) A certificate or a copy of a certificate from a registered medical practitioner certifying that the woman named in the certificate is pregnant and stating the expected date of delivery; and

(ii) A written assurance from the woman named in the medical certificate that the male employee is her spouse and that the male employee intends to assume care of the child to be born to her.

Cf. 1980, No. 162, s. 14 (1), (3)

32. Requirements where extended leave sought—
Where any notice is given in accordance with section 31 of this Act by an employee wishing to take any period of extended leave under this Act, that notice shall, in addition to the matters required by that section or by section 33 of this Act,—

(a) State whether the employee’s spouse is proposing to take any period of extended leave or maternity leave under this Act:

(b) State the name of the employee’s spouse and the name and address of the employer of the employee’s spouse:

(c) State the proposed dates of commencement and expiry of each period of leave proposed to be taken in respect of the child by—

(i) The employee; and

(ii) The employee’s spouse,—

under this Act or under any provision contained in any Act other than this Act or in any award, agreement, or contract of employment:

(d) Contain an assurance by the employee that the aggregate periods of—

(i) All maternity leave (other than maternity leave in excess of 14 weeks taken under section 9 (2) of this Act) and extended leave under this Act; and

(ii) All leave (other than paternity leave) to which the employee or the employee’s spouse is entitled by or under any Act other than this Act or under any award, agreement, or contract of employment,—

that are proposed to be taken in respect of the child by the employee and the employee’s spouse will not exceed 52 weeks.
38. **Requirements where child to be adopted**—Where the employee is proposing to adopt a child, the notice required to be given by section 31 (1) of this Act shall,—

(a) Where the placing of the child in the home of the employee has been approved by a Social Worker under section 6 (1) (a) of the Adoption Act 1955,—

(i) Be given within 14 days after the date on which the employee receives notice that a child will be placed with the employee within the next 3 months with a view to adoption by the employee, or by the employee and the employee’s spouse jointly; and

(ii) Be accompanied by a letter from a Social Worker (as defined in section 2 of the Adoption Act 1955) stating that the employee is keeping or will be keeping a child in the employee’s home with a view to adoption:

(b) Where a court has made an interim order under section 6 (1) (b) of the Adoption Act 1955,—

(i) Be given within 14 days after the date on which the order is made; and

(ii) Be accompanied by a certified copy of the order:

(c) Where the child is otherwise lawfully in the employee’s home under section 6 (4) of the Adoption Act 1955,—

(i) Be given within 14 days after the date on which the employee makes a statutory declaration to the effect that the employee has assumed the care of the child with a view to adoption by the employee, or by the employee and the employee’s spouse jointly; and

(ii) Be accompanied by a copy of the declaration.

34. **Incomplete notification**—(1) Where any employee gives a written notice to the employee’s employer stating that the employee wishes to take parental leave under this Act and any of the provisions of sections 31 to 33 of this Act that apply in respect of any information or assurance to be stated or given in, or any document required to accompany, that notice are not complied with, that notice shall be an incomplete notice for the purposes of subsection (2) of this section and sections 35 (2) and 36 (2) of this Act.

(2) Where an employee gives an incomplete notice within the meaning of subsection (1) of this section, the employer of that employee shall, within 7 days after the date on which it comes to that employer’s attention that the notice is an incomplete
notice, give to the employee a written notice stating that the notice is an incomplete notice and specifying the additional information, documentation, or assurance that the employee is required by any provision of sections 31 to 33 of this Act to give to the employer.

(3) An employee to whom a notice is given under subsection (2) of this section shall, within 14 days after the date on which the employee receives the notice, give to the employer the additional information, documentation, or assurance specified in the notice and required by any provision of sections 31 to 33 of this Act to be given to the employer.

35. Failure to notify employer—(1) Subject to section 68 of this Act, where an employee fails to give notice under section 31 (1) of this Act within the time required by section 31 (3) or section 33 of this Act, that employee shall not be entitled to take extended leave under this Act unless—

(a) That employee gives a written notice under section 31 (1) of this Act to his or her employer and a period of 3 months beginning with the date of the giving of that notice has expired; or

(b) The employer of that employee agrees that the employee may take extended leave under this Act.

(2) Nothing in subsection (1) of this section shall apply to an employee who gives an incomplete notice to that employee's employer within the time required by section 31 (3) or section 33 of this Act.

36. Obligation to notify employee—(1) Subject to subsection (2) of this section, every employer who receives a notice under section 31 (1) of this Act shall, within 21 days after the receipt of the notice, give to the employee who gave that notice a written notice in the prescribed form—

(a) Stating whether the employee is entitled to take parental leave; and

(b) Where an employer states that the employee is not entitled to take parental leave, stating the reasons why the employee is not so entitled; and

(c) Stating that, until the end of the employee's parental leave, the employee's position in the employment of the employer—

   (i) Can be kept open; or

   (ii) Cannot be kept open; and

(d) Where the employer states that the employee's position cannot be kept open, informing the employee—
(i) That the employee may dispute the employer’s statement that the employee’s position cannot be kept open; and

(ii) That the employer will, for the period of 26 weeks beginning with the day after the date on which the parental leave ends, give the employee preference over other applicants for any position which is vacant and which is substantially similar to the position held by the employee at the beginning of the parental leave; and

(e) Informing the employee of the substance of Parts I to III and of section 45 of this Act, and, in particular, of the employee’s rights and obligations under sections 11, 21, and 29 of this Act.

(2) Where an employer receives a notice that is an incomplete notice that employer shall, within 21 days after the date of the receipt by the employer of the additional information, documentation, or assurance specified in the notice given under section 34 (2) of this Act, give to the employee a notice complying with subsection (1) of this section.

(3) Where any employee receives a notice given under subsection (1) of this section or under subsection (1) of this section (as applied by subsection (2) of this section) and the employee disputes any statement given in that notice, that employee may invoke any procedure set out in Part VII of this Act.

Cf. 1980, No. 162, s. 15

37. Requirement where female employee wishes to commence maternity leave early—A female employee,—

(a) Who has given a notice that she wishes to take parental leave under this Act; and

(b) Who intends to exercise the option conferred by section 11 of this Act by beginning her maternity leave early,—

shall give to her employer not less than 21 days’ notice in writing of the day on which she wishes her maternity leave to begin.

Cf. 1980, No. 162, s. 10 (2)

38. Employer’s notice in relation to return to work and preference for appointment—Within 21 days after the beginning of an employee’s parental leave, the employer of the employee shall give to the employee written notice stating—
(a) The date on which the employee's parental leave will end; and

(b) Either—

(i) Where the employer is able to keep the employee's position open until the end of the employee's parental leave, the date on which, if the employee decides to return to work at the end of the parental leave, the employee will be required to return to work, being the date of the next working day after the date on which the employee's parental leave ends; or

(ii) In any other case, the period of 26 weeks during which the employer will give the employee preference over other applicants for any position which is vacant and which is substantially similar to the position held by the employee at the beginning of the employee's parental leave; and

(c) Where paragraph (b) (i) of this section applies, the employee's obligations under section 39 of this Act; and

(d) The employee's rights under section 45 of this Act.

Cf. 1980, No. 162, s. 17

39. Employee's notice in relation to return to work—

(1) Every employee who is on parental leave and whose position is being kept open by the employer, shall, not later than 21 days before the date on which the employee's parental leave ends, give to the employer written notice stating whether or not the employee will be returning to work at the end of the employee's parental leave.

(2) Where an employee chooses,—

(a) Pursuant to section 45 (1) (f) of this Act, to return to work before the date on which the employee is required to return to work at the end of the parental leave; or

(b) Pursuant to section 45 (1) (g) of this Act, to end any period of parental leave and begin the period of preference before the date on which the period of preference would otherwise begin,—

the employee shall give to the employer not less than 21 days' notice in writing of the date on which the employee intends to return to work or begin the period of preference, as the case may be.

Cf. 1980, No. 162, s. 18
PART V

RIGHTS AND OBLIGATIONS AFTER COMMENCEMENT OF PARENTAL LEAVE

40. Presumption that employee's position can be kept open in the case of first period of parental leave not exceeding 4 weeks—(1) Where an employee takes a continuous period of parental leave—

(a) That does not exceed 4 weeks (inclusive of any public or statutory holiday falling within the period); and

(b) That is the first period of parental leave taken by the employee in respect of the child; and

(c) Of which the employee's employer has had no less notice than the period of notice required by section 31 (3) or section 33 of this Act, as the case may be,—the employer shall be presumed, in any proceedings under this Act, to be able to keep open for the employee, until the end of that period of parental leave, the employee's position in the employment of the employer unless the employer proves that the employee's position cannot be kept open because of the occurrence of a redundancy situation.

(2) For the purposes of determining under subsection (1) of this section whether an employer has had no less notice of a period of parental leave than the period of notice required by section 31 (3) or section 33 of this Act, as the case may be, it shall be sufficient if the employer had notice that a period of parental leave not exceeding 4 weeks would be taken by the employee, notwithstanding that the employer did not have the requisite notice of the exact date on which the period of parental leave would commence, and the exact date on which it would cease.

(3) The reference in subsection (1) of this section to the employee's position in the employment of the employer shall be a reference to the position ordinarily held by the employee, and shall not include any position to which the employee was temporarily transferred under section 16 of this Act.

41. Presumption that employee's position can be kept open in the case of other periods of parental leave—(1) Where an employee takes a period of parental leave (other than a period of parental leave referred to in section 40 of this Act) the employer shall be presumed in any proceedings under this Act, to be able to keep open for the employee, until the end of the employee's parental leave, the employee's position
in the employment of the employer unless the employer proves that the employee’s position cannot be kept open—

(a) Because a temporary replacement is not reasonably practicable due to the key position occupied within the employer’s enterprise by the employee; or

(b) Because of the occurrence of a redundancy situation.

(2) In determining whether or not a position is a key position for the purposes of subsection (1)(a) of this section, regard may be had, among other things, to—

(a) The size of the employer’s enterprise; and

(b) The training period or skills required in the job.

(3) The reference in subsection (1) of this section to the employee’s position in the employment of the employer shall be a reference to the position ordinarily held by the employee, and shall not include any position to which the employee was temporarily transferred under section 16 of this Act.

Cf. 1980, No. 162, s. 16

42. Employer’s obligations in respect of remuneration and holiday pay—(1) Subject to subsections (2) and (3) of this section, the employer of an employee who takes any form of parental leave in accordance with this Act shall not be obliged to pay that employee any remuneration for—

(a) Any period of the employee’s parental leave under this Act; or

(b) Any period during which the employee is entitled under this Act, following any period of parental leave, to preference in obtaining employment with the employer.

(2) Where an employee becomes entitled to any annual holiday on pay during—

(a) A period of parental leave under this Act; or

(b) A period of preference in obtaining employment; or

(c) The period of 12 months commencing with the date on which the employee returns to work after a period of parental leave under this Act or a period of preference in obtaining employment,—

the employee shall, notwithstanding anything in section 16 (4) of the Holidays Act 1981, be entitled to holiday pay for that holiday only at the rate of the employee’s average weekly earnings (as that term is defined in section 2 of the Holidays Act 1981) during the year in respect of which the employee has become entitled to the holiday.
(3) Where an employee is absent on parental leave at any time during the fortnight ending on the day on which any of the whole holidays referred to in section 24 (1) of the Holidays Act 1981 occurs, the employee shall, notwithstanding anything in section 25 or section 30 of that Act, be entitled to holiday pay for that holiday at an amount equal to one-tenth of the employee's wages for an ordinary working day multiplied by the figure obtained by adding together—

(a) The number of ordinary working days during the fortnight actually worked by the employee;

(b) The number of ordinary working days during the fortnight on which the employee was absent from employment due to any reason other than the taking of parental leave or being absent during a period of preference in obtaining employment under this Act.

Cf. 1980, No. 162, s. 7

48. **Continuity of employment**—Where an employee resumes service with the same employer at the end of a period of parental leave or while the employee is entitled, following parental leave, to preference in obtaining employment with the employee's employer—

(a) The employee's service, for the purpose of any rights and benefits that are conditional on unbroken service, shall not be broken—

(i) By the taking of parental leave; or

(ii) By the employee being without a position in the employer's service during part of the period of preference; or

(iii) By both; and

(b) Any period during which the employee was on parental leave and any period during which the employee was entitled, following parental leave, to preference in obtaining employment with the employer shall count,—

(i) Subject to section 42 of this Act, as time served under the employee's contract of employment (not being a contract of apprenticeship or a contract within the meaning of the Technicians Training Act 1967); and

(ii) Subject to section 44 of this Act, as service for the purpose of any superannuation scheme to which
the employee belongs in the employee's capacity as an employee of the employer.

Cf. 1980, No. 162, s. 22

44. Contributions to superannuation schemes—
Nothing in section 43 (b) (ii) of this Act shall—
(a) Entitle an employee to have any period counted as service for the purposes of a superannuation scheme if the employee is required to pay contributions in respect of that period and has not done so; or
(b) Relieve an employee from any obligation under a superannuation scheme to pay contributions in respect of any period during which the employee is on parental leave or during which the employee is entitled, following parental leave, to preference in obtaining employment with the employee's employer.

Cf. 1980, No. 162, s. 23

45. Early ending and extension of parental leave—
(1) Subject to compliance with section 39 (2) of this Act, an employee who is on parental leave may,—
(a) If the employee or the employee's spouse suffers a miscarriage; or
(b) If the child is stillborn or dies; or
(c) If the employee or the employee's spouse has consented to the adoption of the child and some other person has the care of the child with a view to its adoption; or
(d) If the employee ceases to have care of the child in respect of whom the parental leave is taken; or
(e) If the employer consents,—
choose—
(f) Where the employee's position is being kept open by the employer, to end the parental leave by returning to work before the date on which the employee is required to return to work at the end of the parental leave; or
(g) In any other case, to end the parental leave and begin the period of preference.

(2) Where a female employee is on maternity leave under section 7 of this Act, an employer may, in giving consent under subsection (1) (e) of this section, make it conditional on the female employee giving to the employer, before the female
employee ends her maternity leave under subsection (1)(f) or subsection (1)(g) of this section, a certificate from a registered medical practitioner to the effect that the female employee is fit to return to work.

(3) Subject to subsection (4) of this section, an employee who is on parental leave may, if the employer consents, extend the parental leave until a specified date which shall thereafter be the date on which the employee's parental leave will end.

(4) Without limiting any right of an employee to take a period of leave otherwise than by virtue of this Act, and subject to section 9(2) of this Act, nothing in subsection (3) of this section shall entitle an employee to extend any period of parental leave with the result that,—

(a) In the case of a period of maternity leave, the period of maternity leave exceeds 14 weeks:

(b) In the case of a period of paternity leave, the period of paternity leave exceeds 2 weeks:

(c) In the case of a period of extended leave, the period of extended leave, when aggregated with—

(i) All maternity leave (other than maternity leave in excess of 14 weeks taken under section 9(2) of this Act) and extended leave taken or proposed to be taken by the employee or the employee's spouse under this Act; and

(ii) All leave (excluding paternity leave) taken or proposed to be taken by the employee or the employee's spouse under any other Act or under any award, agreement, or contract of employment,—

exceeds 52 weeks.

Cf. 1980, No. 162, s. 19

46. Failure to return to work—If an employee who takes up parental leave and whose position is kept open by the employer—

(a) Fails, without good cause, to return to work at the end of that period of parental leave; or

(b) Informs the employer, before the end of that period of parental leave, that the employee has decided not to return to work at the end of the period of parental leave,—

the employee's employment shall, subject to any agreement between the employer and the employee, be deemed to have
been at an end as from the day on which the period of parental leave began.

Cf. 1980, No. 162, s. 20

47. Failure to accept employment—If an employee who has taken parental leave fails, without reasonable excuse, to take up, on the date specified by the employer or within 7 days thereafter, any position substantially similar to the position ordinarily held by the employee before taking parental leave that is offered to the employee by the employee’s employer during the period of 26 weeks beginning with the day after the date on which the period of parental leave ends, that employee’s employment shall be deemed to have been at an end as from the day on which the period of parental leave began.

Cf. 1980, No. 162, s. 21

48. Workers employed to replace employees on parental leave—Where a temporary employee is employed to replace an employee who is on parental leave, the employer shall, before employing the temporary employee, inform the temporary employee in writing—

(a) That the temporary employee is being employed on a temporary basis in the place of an employee who is on parental leave; and
(b) That the employee may return to work, in accordance with section 45 of this Act, before the date on which the employee is required to return to work at the end of the parental leave.

Cf. 1980, No. 162, s. 26

PART VI
PROTECTION OF EMPLOYMENT

49. Dismissal by reason of pregnancy or parental leave prohibited—(1) No employer shall terminate the employment of any employee—

(a) By reason of, in the case of a female employee,—
(i) Her pregnancy; or
(ii) Her state of health during her pregnancy, unless her state of health during her pregnancy is materially affected by causes not related to her pregnancy; or
(b) By reason of, in the case of any employee,—
(i) The employee indicating that the employee wishes to take parental leave under this Act or rights
and benefits in the nature of parental leave under any provision other than this Act; or
(ii) The employee assuming, with a view to adoption by the employee or by the employee and the employee's spouse jointly, the care of a child; or
(c) During the employee's absence on parental leave or during the period of 26 weeks beginning with the day after the date on which any period of parental leave ends.

(2) It shall not be a contravention of subsection (1) of this section for an employer to terminate the employment of an employee—
(a) With the employee's consent; or
(b) Where solely on account of—
   (i) The pregnancy of a female employee or the employee's spouse; or
   (ii) The employee assuming, with a view to adoption, the care of a child,—
the employee absents himself or herself from work (other than with the agreement of the employee's employer or in accordance with section 13 or section 14 of this Act) for any period which the employee is not entitled to take as leave by reason of any provision of this Act or any entitlement to parental leave contained in any provision other than this Act.

Cf. 1980, No. 162, s. 27

50. Special defences relating to dismissal—Where—
(a) It is alleged in any proceedings under this Act that an employer has, in contravention of section 49 (1) of this Act, terminated the employment of an employee; and
(b) It is proved in those proceedings that the employer terminated the employee’s employment either—
   (i) During the employee's absence on parental leave; or
   (ii) During the period of 26 weeks beginning with the day after the date on which any period of the employee's parental leave ended,—
the defences set out in sections 51 and 52 of this Act shall be available to the employer.

Cf. 1980, No. 162, s. 28

51. Special defences relating to dismissal during parental leave—Where the termination is proved to have
taken place during the employee’s absence on parental leave, it shall be a defence for the employer to prove—

(a) That—

(i) In the case of a period of parental leave to which section 40 (1) of this Act applies, on the ground of the occurrence of a redundancy situation that occurred in the employer’s business after the employer gave the employee notice in terms of section 36 (1) (c) (i) of this Act, the employer was unable to keep the employee’s position open; or

(ii) In the case of other periods of parental leave, on the ground of circumstances (of the type referred to in section 41 of this Act) that occurred in the employer’s business after the employer gave the employee notice in terms of section 36 (1) (c) (i) of this Act, the employer was unable to keep the employee’s position open; and

(b) That the employer terminated the employee’s employment on account of a redundancy situation of such nature that there was no prospect of the employer being able to appoint the employee to a position which was vacant and which was substantially similar to the position held by the employee at the beginning of the employee’s parental leave; and

(c) That the employer had not, in the period commencing with the beginning of the employee’s parental leave and ending with the termination of the employee’s employment, prejudicially affected either the employee’s seniority or the employee’s superannuation rights.

Cf. 1980, No. 162, s. 29

52. Special defence relating to dismissal during the 26 weeks following parental leave—Where the termination of employment is proved to have taken place during the period of 26 weeks beginning with the day after the date on which any period of the employee’s parental leave ended, it shall be a defence for the employer to prove—

(a) The matters set out in paragraphs (b) and (c) of section 51 of this Act; and

(b) That, during the period between the end of the period of the employee’s parental leave and the termination of the employee’s employment, the employer had
(despite being prepared to accord the employee preference over other applicants) been unable to appoint the employee to a position which was vacant and which was substantially similar to the position held by the employee at the beginning of the employee's period of parental leave.

Cf. 1980, No. 162, s. 30

53. **Redundancy payments not affected**—Nothing in this Act shall affect any redundancy payment payable pursuant to the provisions of any Act or of any order, award, agreement, or contract of employment.

Cf. 1980, No. 162, s. 31

54. **Dismissal for cause not affected**—Nothing in this Act shall affect any right of an employer to dismiss an employee for a substantial reason not related to—

(a) The employee's or the employee's spouse's pregnancy; or

(b) The employee assuming, with a view to adoption by the employee or by the employee and the employee's spouse jointly, the care of a child; or

(c) The employee's rights under this Act.

Cf. 1980, No. 162, s. 32

**PART VII**

**Remedies Available to Employees**

55. **Interim order**—(1) Where any employee (not being a State employee) alleges that the employee's employer has, within the preceding 2 months and in contravention of section 49 (1) of this Act, terminated the employee's employment or given the employee notice terminating the employee's employment, the employee may apply *ex parte* to the Court for an interim order reinstating the employee in the employee's position or cancelling the notice terminating the employee's employment.

(2) Every application under subsection (1) of this section shall be heard by a Judge alone.

(3) Subject to subsection (4) of this section, every interim order made under subsection (1) of this section shall expire on a date to be specified in the order, being the later of—

(a) A date not later than 26 weeks after the date on which the order is made; or

(b) A date not later than 26 weeks after—

(i) The expected date of delivery; or
(ii) In the case of adoption, the date on which, with a view to adoption, the employee first assumes or expects to first assume the care of the child.

(4) An interim order made under subsection (1) of this section may be renewed by a Judge from time to time on the ex parte application of the employee in whose favour it was made if the Court is satisfied that the employee is taking reasonable steps to use the procedures available to the employee under sections 57 to 67 of this Act.

(5) The Registrar of the Court shall send a copy of the interim order and of every decision renewing the interim order to the employer by registered letter.

Cf. 1980, No. 162, s. 33

56. Parental leave complaints—(1) Where any employee (not being a State employee) alleges that the employee’s employer—

(a) Is not justified in stating, in the notice given to the employee under section 36 of this Act, that the employee is not entitled to take any period of parental leave or that the employee’s position cannot be kept open; or

(b) Has, in contravention of section 49 (1) of this Act, terminated the employee’s employment or given the employee notice terminating the employee’s employment; or

(c) Has taken other action that affects, to the employee’s disadvantage, the employee’s rights and benefits in respect of parental leave; or

(d) Has exercised, without reasonable justification, the powers conferred on the employer by section 14 or section 16 of this Act,—

that allegation shall be a parental leave complaint to which this section applies, and the employee may use, in respect of that parental leave complaint, the procedures provided in sections 57 to 67 of this Act.

(2) A parental leave complaint to which this section applies shall not be made—

(a) After the expiration of 26 weeks from the date on which the subject-matter of the complaint arose; or

(b) After the expiration of 26 weeks from—

(i) The expected date of delivery; or
(ii) In the case of adoption, the date on which the employee, with a view to adoption, first assumed the care of the child; or

(c) After the expiration of 8 weeks from the expiry of any period of parental leave taken by the employee,— whichever is the later.

(3) The procedures provided in sections 57 to 67 of this Act may be used before or after the making of an interim order under section 55 of this Act.

(4) A parental leave complaint to which this section applies is not a personal grievance within the meaning of section 210 of the Labour Relations Act 1987 and the procedure required by section 215 of that Act to be included in every registered award or agreement shall not be used for dealing with a parental leave complaint to which this section applies.

Cf. 1980, No. 162, s. 34

57. Procedures for settlement of parental leave complaints—(1) The procedures for the settlement of a parental leave complaint shall be in accordance with this section and sections 58 to 67 of this Act.

(2) As soon as practicable after a parental leave complaint arises, the employee shall submit the complaint to the employee’s immediate supervisor, affording the immediate supervisor an opportunity to remedy the cause of the complaint, the intent being that it is desirable, if the circumstances permit it, to settle the complaint rapidly and as near as possible to the point of origin.

(3) Where any such attempt at settlement has failed, or where the complaint is of such a nature that a direct discussion between the employee and the employee’s immediate supervisor would be inappropriate, the employee shall either—

(a) Notify the branch secretary or secretary or a duly authorised representative of any union to which the employee belongs or could belong; or

(b) Where the employee elects to act on his or her own behalf or to appoint an agent or barrister or solicitor to act on his or her behalf, forthwith take the matter up, or arrange for that agent, barrister, or solicitor, as the case may be, to take up the matter on his or her behalf, with the employer or the representative of the employer.

(4) Where the person notified under subsection (3) (a) of this section considers that there is some substance in the parental
leave complaint, that person shall forthwith take the matter up with the employer or the representative of the employer.

(5) If the matter is not disposed of in discussion with the employer or the representative of the employer, the complaint shall be reduced to writing in a statement setting out all the facts relied on. The statement shall establish the nature of the employee's complaint, and of the issues, for all subsequent consideration of the case.

Cf. 1980, No. 162, s. 35

58. Procedure where representative of union acts—
(1) Where a representative of the union acts for the employee, the written statement shall be referred to a complaint committee consisting of—

(a) An equal number of representatives (not exceeding 3) nominated respectively by the union and the employer; and

(b) A chairperson, who shall be—

(i) Mutually agreed upon by the parties; or

(ii) If there is no such agreement, either a mediator or a person appointed by a mediator.

(2) The employer and the union shall each have the right to be assisted or represented before a complaint committee by an employers' or employees' organisation or an agent or a barrister or solicitor.

Cf. 1980, No. 162, s. 36

59. Procedure where employee acts on own behalf or appoints agent, barrister, or solicitor to act on employee's behalf—
(1) Where an employee elects to act on his or her own behalf, or appoints an agent or barrister or solicitor to act on his or her behalf, the matter shall be referred to a complaint committee consisting of—

(a) The employee and the employer; and

(b) A chairperson who shall be—

(i) Mutually agreed upon by the parties; or

(ii) If there is no such agreement, either a mediator or a person appointed by a mediator.

(2) The employee and the employer may each be represented on the committee or before the committee by—

(a) An agent; or

(b) A barrister or solicitor.

Cf. 1980, No. 162, s. 37
60. Decisions—(1) A decision reached by a majority of a complaint committee (not including the chairperson) constituted pursuant to section 58 or section 59 of this Act shall be the decision of the committee; but if the members of the committee (other than the chairperson) are equally divided in opinion, the chairperson may either—

(a) Make a decision, which shall then be the decision of the committee; or

(b) Refer the complaint forthwith to the Labour Court for settlement.

(2) Subject to the right of appeal conferred by section 61 of this Act, the decision of a complaint committee shall be binding on the parties to the complaint.

Cf. 1980, No. 162, s. 39

61. Appeals to Labour Court in respect of decision of complaint committee—(1) Where the decision of a complaint committee is a decision of the chairperson, any party may appeal to the Labour Court against that decision or any part of it.

(2) The appellant shall, within 21 days after the date on which the decision of the committee has been made known to the appellant,—

(a) Give to every other party; and

(b) Lodge with the Registrar of the Labour Court,—

a written notice of appeal, specifying the decision or the part of the decision to which the appeal relates.

(3) The Labour Court, after inquiring fully into the matter and considering all representations made by or on behalf of the parties, may make a decision by way of a final settlement which shall, subject to section 62 of this Act, be binding on the parties.

(4) The jurisdiction conferred on the Labour Court by this Part of this Act, or by the provisions of any award or agreement, to hear and determine any parental leave complaint shall be exercised by a Judge sitting with 2 panel members.

Cf. 1980, No. 162, s. 40

62. Appeals to Court of Appeal on question of law—

(1) Where any party to any proceedings under this Act is dissatisfied with any decision of the Labour Court (other than a decision on the construction of any award or agreement) as being erroneous in point of law, that party may appeal to the
Court of Appeal by way of case stated for the opinion of that Court on a question of law only.

(2) The provisions of Part IV of the Summary Proceedings Act 1957 (except sections 113 to 122, 124 to 128, 130 to 132, and 136 to 144), so far as they relate to appeals by way of case stated on questions of law only, shall apply, so far as they are applicable and with the necessary modifications, to every appeal under this section. In the application of those provisions, they shall be read as if—

(a) Every reference to a District Court were a reference to the Labour Court:

(b) Every reference to a District Court Judge or Justice or Justices were a reference to a Judge of the Labour Court:

(c) Every reference to the Registrar of the District Court were a reference to the Registrar of the Labour Court:

(d) Every reference to the High Court or to the Registrar of the High Court were a reference to the Court of Appeal or, as the case may be, to the Registrar of the Court of Appeal:

(e) Every reference to the respondent were a reference to each of the other parties to the proceedings before the Labour Court other than the appellant.

(3) Every such appeal shall be made by giving notice of appeal within 28 days after the date of the issue of the decision to which the appeal relates.

(4) In its determination of any appeal, the Court of Appeal may confirm, modify, or reverse the decision appealed against or any part of that decision.

(5) Notice of appeal shall not operate as a stay of proceedings in respect of the decision to which the appeal relates unless the Labour Court or the Court of Appeal so orders.

(6) The determination of the Court of Appeal on any appeal under this section shall be final and conclusive.

68. Court of Appeal may refer appeals back for reconsideration—(1) Notwithstanding anything in section 62 of this Act, the Court of Appeal may, in any case, instead of determining any appeal under that section, direct the Labour Court to reconsider, either generally or in respect of any specified matters, the whole or any specified part of the matter to which the appeal relates.

(2) In giving any direction under this section, the Court of Appeal shall—
(a) Advise the Labour Court of its reasons for so doing; and
(b) Give the Labour Court such directions as it thinks just as
to the rehearing or reconsideration or otherwise of
the whole or any part of the matter that is referred
back for reconsideration.

(3) In reconsidering the matter so referred back, the Labour
Court shall have regard to the Court of Appeal’s reasons for
giving a direction under subsection (1) of this section and to the
Court of Appeal’s directions under subsection (2) of this section.

64. Duty to promote settlement—It shall be the duty of
every party to a parental leave complaint—
(a) To promote the settlement of the complaint under the
procedures provided in sections 57 to 67 of this Act; and
(b) To abstain from any action that might impede the
effective functioning of the procedures.

Cf. 1980, No. 162, s. 41

65. Remedies—in the case of any alleged breach of any of
the provisions of this Act, any decision made under section 60
or section 61 (3) or section 63 (3) of this Act may, if it includes a
finding that any of the provisions of this Act have been
breached by the employer, provide for any one or more of the
following:
(a) The reinstatement of the employee in the employee’s
former position or in a position not less advantageous
to the employee:
(b) The reimbursement to the employee of a sum equal to
the whole or any part of any wages lost by the
employee:
(c) The payment to the employee of compensation by the
employer.

Cf. 1980, No. 162, s. 42

66. Reinstatement to be primary remedy—(1) Where—
(a) The remedies sought by or on behalf of an employee in
respect of a parental leave complaint include
reinstatement (as described in section 65 (a) of this
Act); and
(b) It is determined that the employee did have a parental
leave complaint,—
the complaint committee or the Labour Court shall, whether or
not it provides for any of the other remedies provided for in
section 65 of this Act, provide, wherever practicable, for reinstatement in accordance with section 65 (a) of this Act.

(2) Where the remedy of reinstatement is provided by a complaint committee or the Labour Court, the employee shall be reinstated immediately or on such date as is specified by the committee or the Labour Court and, notwithstanding any appeal against the determination of the committee or the Labour Court, the provisions for reinstatement shall remain in full force pending the determination of the appeal.

67. Power to refer complaint to Labour Court—Where an employee is unable to get a parental leave complaint dealt with or dealt with promptly because of a failure on the part of any other person to act or to act promptly in accordance with the procedure applicable under any of the provisions of sections 57 to 59 of this Act, the employee may, with the leave of the Labour Court, refer the complaint to that Court for settlement under section 61 (3) of this Act and that section shall apply accordingly.

Cf. 1980, No. 162, s. 43

68. Non-compliance with formal requirements—(1) Where anything is omitted to be done or cannot be done at the time required by or under this Act, or is done before or after that time, or is otherwise irregularly done in matter of form, the irregularity shall not render void the proceeding or document in which or in respect of which the irregularity occurred; but the proceeding or the document may be set aside, either wholly or in part, as irregular, or amended, or otherwise dealt with in such manner or on such terms (if any) as the Labour Court or a complaint committee thinks just.

(2) Without limiting the generality of subsection (1) of this section, any complaint committee or the Labour Court may, if it thinks just, on the application of an employee or an employer or any person acting on behalf of an employee or employer,—

(a) Amend or waive any error or defect in any notice required to be given by any provision of this Act:

(b) Extend the time within which anything is to or may be done.

Cf. 1980, No. 162, s. 44

69. Penalties—(1) In any proceedings under section 60 (1) (b) or section 63 or section 67 of this Act, the Labour Court
may, whether or not it grants a remedy under section 65 of this Act, impose on the employer a penalty not exceeding $1,000.

(2) Subject to any order made under subsection (3) of this section, every penalty imposed under subsection (1) of this section shall be paid into Court and not to the employee and shall then be paid by the Registrar of the Court into the Consolidated Account.

(3) The Court may order that the whole or any part of any penalty recovered shall be paid to the employee.

Cf. 1980, No. 162, s. 45

70. Enforcement of judgments—(1) A certificate under the hand of the Registrar of the Court, specifying the amount payable under any order for the payment of money made under this Act by the Court, and the persons by whom and to whom it is payable, may be filed in any District Court, and, subject to subsection (2) of this section, shall then be enforceable in the same manner as a judgment given by a District Court in an action for the recovery of a debt.

(2) No proceedings shall be taken under the Imprisonment for Debt Limitation Act 1908 against any person for failing or refusing to pay any penalty imposed on that person under this Act.

Cf. 1980, No. 162, s. 46

71. Procedures available to State employees—Nothing in this Act shall limit the procedures by which State employees may enforce their conditions of employment and those procedures may be used, where appropriate, to enforce the rights conferred on State employees by this Act.

Cf. 1980, No. 162, s. 47

PART VIII
Miscellaneous Provisions

72. Awards and agreements to address principal aspects of parental leave—(1) Subject to subsection (3) of this section, in registering an award or agreement under the Labour Relations Act 1987, the Arbitration Commission shall ensure that either—

(a) The award or agreement provides that this Act shall apply to every worker bound by the award or agreement; or

(b) Where the award or agreement entitles workers to any form of parental leave otherwise than in accordance
with this Act, the award or agreement addresses all of the following matters:

(i) The conditions of eligibility for any parental leave:

(ii) The duration of parental leave:

(iii) The degree of protection provided for the workers’ positions in the employment of the employer during and subsequent to any absence on parental leave:

(iv) Whether or not the employer is obliged to pay remuneration during the parental leave:

(v) The procedural requirements relating to parental leave.

(2) Subject to subsection (3) of this section, where any award or agreement registered by the Arbitration Commission pursuant to the Labour Relations Act 1987 does not address all of the matters referred to in subsection (1) (b) of this section—

(a) All of the provisions in that award or agreement relating to parental leave shall be of no effect; and

(b) The entitlement to parental leave of every worker bound by that award or agreement shall be determined in accordance with Parts I to V of this Act.

(3) Nothing in subsection (1) or subsection (2) of this section shall apply to an award or agreement in force immediately before the 1st day of October 1987 or registered at any time in the period beginning on the 1st day of October 1987 and ending on the 1st day of October 1988.

(4) Notwithstanding the provisions of section 33 of the Holidays Act 1981, any award or agreement registered by the Arbitration Commission may, in addressing the matter of holiday pay for workers taking any period of parental leave otherwise than in accordance with this Act, provide that such workers shall be entitled to holiday pay,—

(a) In respect of annual holidays, at the same rate as, or at a higher rate than, the rate referred to in section 42 (2) of this Act:

(b) In respect of public holidays, of the same amount as, or of a greater amount than, the amount referred to in section 42 (3) of this Act.

(5) For the purposes of this section, the “Arbitration Commission” means the Arbitration Commission constituted under the Labour Relations Act 1987.
73. **Regulations**—The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

(a) Prescribing forms for the purposes of this Act:

(b) Prescribing procedures and practices for the implementation of this Act:

(c) Providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for the due administration thereof.

Cf. 1980, No. 162, s. 48

74. **Repeal**—The Maternity Leave and Employment Protection Act 1980 is hereby repealed.

75. **Consequential amendments**—(1) The First Schedule to the Labour Department Act 1954 is hereby amended by omitting the item relating to the Maternity Leave and Employment Protection Act 1980.

(2) The First Schedule to the Labour Department Act 1954 is hereby further amended by inserting, in its appropriate alphabetical order, the following item:

“*The Parental Leave and Employment Protection Act 1987.*”

(3) Section 33 (1) of the Holidays Act 1981 is hereby amended by inserting, after the words “Except as otherwise expressly provided by this Act”, the words “or by section 42 or section 72 (4) of the Parental Leave and Employment Protection Act 1987”.

76. **Transitional provisions**—(1) Notwithstanding any provision to the contrary in this Act, nothing in section 7 or section 17 or section 23 of this Act shall entitle an employee to take any parental leave under this Act in respect of a child the expected date of delivery of whom is before the 1st day of January 1988.

(2) Notwithstanding any provision to the contrary in this Act, nothing in section 8 or section 18 or section 24 of this Act shall entitle an employee to take any parental leave under this Act in respect of a child of whom the employee assumed care before the 1st day of January 1988 with a view to adoption by that employee or by that employee and that employee’s spouse jointly.

77. **Savings provisions**—(1) Notwithstanding the repeal of the Maternity Leave and Employment Protection Act 1980 by
section 74 of this Act a female employee shall be entitled after the commencement of this Act to take maternity leave in accordance with that Act in respect of a child—

(a) The expected date of delivery of whom is on or after the 1st day of October 1987 but before the 1st day of January 1988; or

(b) Of whom the employee assumes care on or after the 1st day of October 1987 but before the 1st day of January 1988 with a view to adoption by that employee or by that employee and that employee’s spouse jointly,—

and the female employee shall be entitled to the same rights and benefits as the rights and benefits to which the female employee would have been entitled if the maternity leave had been taken before the repeal of the Maternity Leave and Employment Protection Act 1980.

(2) The repeal of the Maternity Leave and Employment Protection Act 1980 by section 74 of this Act shall not affect, reduce, or extinguish—

(a) Any rights or entitlements conferred, or any obligations imposed, by that Act on a female employee who—

(i) Is on maternity leave under that Act on the 1st day of October 1987; or

(ii) Is absent on the 1st day of October 1987 during a period of preference in obtaining employment in the employment of that employee’s employer following any period of maternity leave taken under that Act; or

(iii) Commences, after the 1st day of October 1987, maternity leave under that Act in accordance with subsection (1) of this section:

(b) Any obligations imposed, or any rights conferred, by that Act on an employer of a female employee referred to in paragraph (a) of this subsection.

(3) All matters and proceedings—

(a) Commenced before the repeal of the Maternity Leave and Employment Protection Act 1980:

(b) Commenced after the repeal of the Maternity Leave and Employment Protection Act 1980 in relation to—

(i) The rights, entitlements, or obligations of any female employee to whom subsection (2) (a) of this section relates; or

(ii) The obligations or rights of any employer to whom subsection (2) (b) of this section relates,—
may be continued and determined in accordance with the provisions of the Maternity Leave and Employment Protection Act 1980.

SCHEDULE

Section 2 (2)

CHANGE OF EMPLOYER

1. If a trade or business or an undertaking (whether or not it is an undertaking established by or under an Act) is transferred from one person to another (whether before or after the date of the commencement of this Act),—
   (a) The period of employment of an employee in the trade or business or undertaking at the time of the transfer shall count as a period of employment with the transferee; and
   (b) The transfer shall not break the continuity of the period of employment of any employee in the trade or business or undertaking; and
   (c) Any employer who employed any employee in the trade or business or undertaking at any time before the transfer and the transferee shall be deemed, in relation to the employee, to be the same employer.

2. If by or under any Act, whether passed before or after the date of the commencement of this Act, a contract of employment between any body corporate and an employee is modified and some other body corporate is substituted as the employer,—
   (a) The employee's period of employment at the time when the substitution takes effect shall count as a period of employment with the second-mentioned body corporate; and
   (b) The substitution shall not break the continuity of the period of employment of the employee; and
   (c) The first-mentioned body corporate and the second-mentioned body corporate shall be deemed, in relation to the employee, to be the same employer.

3. If on the death of an employer an employee is taken into the employment of the personal representatives or trustees of the deceased (whether before or after the commencement of this Act),—
   (a) The employee's period of employment at the time of the death shall count as a period of employment with the employer's personal representatives or trustees; and
   (b) The death shall not break the continuity of the period of employment of the employee; and
   (c) The employer and the employer's personal representatives or trustees shall be deemed, in relation to the employee, to be the same employer.

4. If there is a change (whether before or after the commencement of this Act) in the partners, personal representatives, or trustees who employ any employee,—
   (a) The employee's period of employment at the time of the change shall count as a period of employment with the partners, personal representatives, or trustees after the change; and
   (b) The change shall not break the continuity of the period of employment of the employee; and
(c) The partners, personal representatives, or trustees who employed the employee before the change and the partners, personal representatives, or trustees who employ the employee after the change shall be deemed, in relation to the employee, to be the same employers.

5. If (whether before or after the commencement of this Act) an employee of an employer is taken into the employment of another employer who, at the time when the employee enters that other employer's employment is an associated employer of the first-mentioned employer,—

(a) The employee’s period of employment at that time shall count as a period of employment with the associated employer; and

(b) The taking of the employee into the employment of the associated employer shall not break the continuity of the period of employment; and

(c) The first-mentioned employer and the associated employer shall be deemed, in relation to the employee, to be the same employer.

6. For the purposes of clause 5 of this Schedule, any 2 employers are to be treated as associated if one is a company of which the other (directly or indirectly) has control, or if both are companies of which a third person (directly or indirectly) has control; and the expression “associated employer” shall be construed accordingly.

This Act is administered in the Department of Labour.