



# Parental Leave and Employment Protection Amendment Act 2004

Public Act 2004 No 89  
Date of assent 8 November 2004  
Commencement see section 2

## Contents

1	Title		
2	Commencement		
	<b>Part 1</b>		
	<b>Amendments that come into force on 1 December 2004</b>		
3	Purpose of this Part		
4	Application of this Part		
5	Long Title		
6	Interpretation		
7	Interpretation: multiple employments		
8	New sections 2AB and 2AC inserted		
	2AB Interpretation: multiple employments of certain medi- cal practitioners		
	2AC Interpretation: multiple employments of teachers		
9	Entitlement of female employee to maternity leave		
10	Entitlement of adoptive mother to maternity leave		
11	Duration of maternity leave		
12	Entitlement of employee to part- ner's/paternity leave		
13	Entitlement of other adoptive parent to partner's/paternity leave		
14	New sections 19 to 19B substituted		
	19 Duration of part- ner's/paternity leave		
		19A Extension of part- ner's/paternity leave entitle- ments in certain circumstances	
		19B Extension of part- ner's/paternity leave of adop- tive parent	
		15 Duration of extended leave	
		16 Early ending and extension of parental leave	
		17 Role of Labour Inspectors	
		18 Purpose	
		19 Duration of parental leave payment	
		20 End of parental leave payment	
		21 Amount of parental leave payment	
		22 Eligibility criteria based on average hours of work and allowing for periods of authorised leave	
		23 Giving of notice: transitional provision	
		24 Regulations amended	
		<b>Part 2</b>	
		<b>Amendments that come into force on 1 December 2005</b>	
		25 Purpose of this Part	
		26 Application of this Part	
		27 Long Title	
		28 Duration of maternity leave	

29	Extension of partner's/paternity leave entitlements in certain circumstances	<b>Schedule 1</b> <b>Amendments to Parental Leave and Employment Protection Regulations 2002 that come into force on 1 December 2004</b>
30	Extension of partner's/paternity leave of adoptive parent	<b>Schedule 2</b> <b>Amendments to Parental Leave and Employment Protection Regulations 2002 that come into force on 1 December 2005</b>
31	Purpose	
32	Duration of parental leave payment	
33	End of parental leave payment	
34	Regulations amended	

**The Parliament of New Zealand enacts as follows:**

**1 Title**

- (1) This Act is the Parental Leave and Employment Protection Amendment Act 2004.
- (2) In this Act, the Parental Leave and Employment Protection Act 1987 is called "the principal Act".

**2 Commencement**

- (1) Sections 4, 8, 23, and 26 come into force on the day after the date on which this Act receives the Royal assent.
- (2) Part 2 (except for section 26) and Schedule 2 come into force on 1 December 2005.
- (3) The rest of this Act comes into force on 1 December 2004.

**Part 1**  
**Amendments that come into force on**  
**1 December 2004**

**3 Purpose of this Part**

The purpose of this Part is—

- (a) to clarify that the employment of a teacher in more than 1 State or integrated school (whether at the same time or consecutively) is 1 employment under the principal Act; and
- (b) to provide that the employment of certain medical practitioners by more than 1 district health board is 1 employment under the principal Act; and
- (c) to provide, for the period from 1 December 2004 to 30 November 2005, an entitlement to 13 weeks of maternity leave and parental leave payments for employees

who have worked for their employer for at least an average of 10 hours a week for the immediately preceding 6 months; however these employees are not entitled to extended leave; and

- (d) to provide an entitlement to 1 week of unpaid partner's/paternity leave for employees who have worked for their employer for at least an average of 10 hours a week for the immediately preceding 6 months; however these employees are not entitled to extended leave; and
- (e) to allow extended partner's/paternity leave for the period of parental leave payments for certain employees who have worked for their employer for at least an average of 10 hours a week for the immediately preceding 6 months; and
- (f) to increase, for the period from 1 December 2004 to 30 November 2005, the duration of parental leave payments from 12 to 13 weeks.

#### **4 Application of this Part**

- (1) This Part applies to an employee who takes parental leave from his or her employment in respect of a child if—
  - (a) the expected date of delivery of the child is on or after 1 December 2004; or
  - (b) the child is born on or after 1 December 2004; or
  - (c) in the case of adoption, the date on which the employee or the employee's spouse, with a view to adoption, assumes the care of the child, is on or after 1 December 2004.
- (2) An employee to whom this Part applies may, before 1 December 2004,—
  - (a) give notice of a wish to take parental leave (under section 23 if applicable) in which case the employee may begin his or her parental leave before 1 December 2004 as if this Part were already in force; and
  - (b) take special leave in accordance with section 15 of the principal Act; and
  - (c) apply for a parental leave payment under Part 7A of the principal Act as if this Part were already in force.

**5 Long Title**

The Long Title of the principal Act is amended by omitting the words “12 weeks”, and substituting the words “13 weeks”.

**6 Interpretation**

Section 2(3) of the principal Act is amended by adding the words “(or 6-month period, as the case may be)”.

**7 Interpretation: multiple employments**

The heading to section 2A of the principal Act is amended by adding the word “**generally**”.

**8 New sections 2AB and 2AC inserted**

The principal Act is amended by inserting, after section 2A, the following sections:

**“2AB Interpretation: multiple employments of certain medical practitioners**

“(1) This section applies to a medical practitioner who is an employee of a district health board and,—

“(a) is undertaking training that is described by the Minister by notice in the *Gazette* as training to which this section applies; and

“(b) in order to complete the training, is required to work for more than 1 district health board.

“(2) For the purposes of determining the entitlement of a medical practitioner to whom this section applies to rights and benefits in respect of parental leave and parental leave payment, if, during a 12-month period (or 6-month period, as the case may be), the medical practitioner is employed by more than 1 district health board consecutively, those employments must be treated as 1 employment.

“(3) A notice published under this section is a regulation for the purposes of the Regulations (Disallowance) Act 1989 but is not a regulation for the purposes of the Acts and Regulations Publication Act 1989.

“(4) This section overrides section 2A.

**“2AC Interpretation: multiple employments of teachers**

- “(1) For the purposes of determining the entitlement of a teacher to rights and benefits in respect of parental leave and parental leave payment, if, during a 12-month period (or 6-month period as the case may be), the teacher is employed by more than 1 Board of Trustees to work in more than 1 State school or integrated school (whether concurrently or consecutively), those employments must be treated as 1 employment.
- “(2) In subsection (1),—
- “Board of Trustees** means a Board of Trustees constituted under Part IX of the Education Act 1989
- “integrated school** has the same meaning as in section 145 of the Education Act 1989
- “State school** has the same meaning as in section 2(1) of the Education Act 1989
- “teacher** has the same meaning as in section 91A of the Education Act 1989.
- “(3) This section overrides section 2A.”

**9 Entitlement of female employee to maternity leave**

Section 7 of the principal Act is amended by repealing paragraph (b), and substituting the following paragraph:

- “(b) who, at the expected date of delivery, will have been in the employment of the same employer for at least an average of 10 hours a week over—
- “(i) the immediately preceding 12 months; or
- “(ii) the immediately preceding 6 months,—”.

**10 Entitlement of adoptive mother to maternity leave**

Section 8(1) of the principal Act is amended by repealing paragraph (b), and substituting the following paragraph:

- “(b) who, at the date on which she, with a view to adoption, first assumes the care of the child, will have been in the employment of the same employer for at least an average of 10 hours a week over—
- “(i) the immediately preceding 12 months; or
- “(ii) the immediately preceding 6 months,—”.

**11 Duration of maternity leave**

(1) Section 9 of the principal Act is amended by repealing subsection (1), and substituting the following subsection:

“(1) Subject to subsection (2), maternity leave must be taken in 1 continuous period not exceeding—

“(a) 14 weeks if section 7(b)(i) or section 8(1)(b)(i) applies to the employee; or

“(b) 13 weeks if section 7(b)(ii) or section 8(1)(b)(ii) applies to the employee.”

(2) Section 9 of the principal Act is amended by repealing subsection (3), and substituting the following subsection:

“(3) A period of maternity leave in excess of 13 or 14 weeks (as the case may be) taken by a female employee under subsection (2) is to be treated as maternity leave for the purposes of this Act, but must not be taken into account in assessing under section 26 any period of extended leave to which the female employee or her spouse may be entitled under this Act.”

**12 Entitlement of employee to partner’s/paternity leave**

Section 17 of the principal Act is amended by repealing paragraph (c), and substituting the following paragraph:

“(c) who, at the expected date of delivery for that child, will have been in the employment of the same employer for at least an average of 10 hours a week over—

“(i) the immediately preceding 12 months; or

“(ii) the immediately preceding 6 months,—”.

**13 Entitlement of other adoptive parent to partner’s/paternity leave**

Section 18(1) of the principal Act is amended by repealing paragraph (b), and substituting the following paragraph:

“(b) who, at the date on which he or she, with a view to adoption, first assumes the care of the child, will have been in the employment of the same employer for at least an average of 10 hours a week over—

“(i) the immediately preceding 12 months; or

“(ii) the immediately preceding 6 months,—”.

**14 New sections 19 to 19B substituted**

The principal Act is amended by repealing section 19, and substituting the following sections:

**“19 Duration of partner’s/paternity leave**

Partner’s/paternity leave must be taken in 1 continuous period not exceeding—

- “(a) 2 weeks if section 17(c)(i) or section 18(1)(b)(i) applies to the employee; or
- “(b) 1 week if section 17(c)(ii) or section 18(1)(b)(ii) applies to the employee.

**“19A Extension of partner’s/paternity leave entitlements in certain circumstances**

“(1) This section applies if—

“(a) an employee (**employee A**) is entitled to—

- “(i) maternity leave under section 7(b) or section 8(1)(b); or
- “(ii) partner’s/paternity leave under section 18(1)(b); and

“(b) employee A’s spouse (**employee B**) is entitled to partner’s/paternity leave under section 17(c)(ii) or 18(1)(b)(ii); and

“(c) employee A transfers all or part of his or her entitlement to parental leave payments to employee B under section 71E.

“(2) Employee B’s entitlement to partner’s/paternity leave is extended so that it is the same as the period of parental leave payments transferred to him or her.

“(3) However, if section 7(b)(ii) or section 8(1)(b)(ii) or section 18(1)(b)(ii) applies to employee A, the total period formed by adding together maternity leave or partner’s/paternity leave taken by employee A and extended partner’s/paternity leave taken by employee B may not exceed 13 weeks.

“(4) The taking by employee B of partner’s/paternity leave under section 19 does not reduce the leave entitlements of either employee under subsection (3).

**“19B Extension of partner’s/paternity leave of adoptive parent**

- “(1) This section applies if section 18(1)(b)(ii) applies to an employee and he or she—
- “(a) assumes alone, with a view to adoption, the care of a child; or
  - “(b) is nominated as primarily entitled to a parental leave payment under section 71H.
- “(2) The employee’s entitlement to partner’s/paternity leave is the shorter of the following:
- “(a) 13 weeks (including any period of partner’s/paternity leave to which the employee is entitled under section 19):
  - “(b) if subsection (1)(b) applies, the period during which the employee receives the parental leave payment.”

**15 Duration of extended leave**

- (1) Section 26(1) of the principal Act is amended by omitting the expression “subsection (2)”, and substituting the words “subsections (2) and (4)”.
- (2) Section 26 of the principal Act is amended by repealing subsection (4), and substituting the following subsection:
- “(4) The taking by an employee of a period of partner’s/paternity leave affects the period of extended leave to which the employee and his or her spouse are entitled in accordance with this Act as follows:
  - “(a) the period is not reduced by the taking of partner’s/paternity leave referred to in section 19:
  - “(b) the period is reduced by the period of extended partner’s/paternity leave taken under section 19A or section 19B.”

**16 Early ending and extension of parental leave**

Section 45(4) of the principal Act is amended by repealing paragraph (b), and substituting the following paragraph:

- “(b) in the case of a period of partner’s/paternity leave, the duration of partner’s/paternity leave exceeds—
  - “(i) 2 weeks if section 17(c)(i) or section 18(1)(b)(i) applies to the employee; or



“(ii) 1 week if section 17(c)(ii) or section 18(1)(b)(ii) applies to the employee.”

## 17 Role of Labour Inspectors

Section 70A(1)(a) of the principal Act is amended by inserting, after the word “period”, the words “(or lesser period, as the case may be)”.

## 18 Purpose

Section 71A of the principal Act is amended by omitting the words “12 weeks”, and substituting the words “13 weeks”.

## 19 Duration of parental leave payment

- (1) Section 71J(a) of the principal Act is amended by omitting the words “12 weeks”, and substituting the words “13 weeks”.
- (2) Section 71J(b) of the principal Act is amended by omitting the words “12 weeks”, and substituting the words “13 weeks”.

## 20 End of parental leave payment

Section 71L(1)(a) of the principal Act is amended by omitting the words “12 weeks”, and substituting the words “13 weeks”.

## 21 Amount of parental leave payment

Section 71M(2) of the principal Act is amended by repealing the definition of **average weekly earnings**, and substituting the following definition:

“**average weekly earnings** is determined as follows:

“(a) for an employee to whom—

“(i) section 7(b)(i), 8(1)(b)(i), 17(c)(i), or 18(1)(b)(i) applies, it means one fifty-second of the employee’s gross earnings during the year ending with the expected date of delivery (or, in the case of adoption, the date on which the employee assumes the care of the child with a view to adoption):

“(ii) section 7(b)(ii), 8(1)(b)(ii), 17(c)(ii), or 18(1)(b)(ii) applies, it means one twenty-sixth of the employee’s gross earnings during the 6 months ending with the expected date of delivery

(or, in the case of adoption, the date on which the employee assumes the care of the child with a view to adoption):

- “(b) however, if section 72A also applies to the employee, the divisor of 52 (or 26 as the case may be) must be reduced by the number of complete weeks during which the employee was absent from work on leave without pay in a circumstance described in subsection (2) of that section”.

## **22 Eligibility criteria based on average hours of work and allowing for periods of authorised leave**

Section 72A(1) of the principal Act is amended by inserting, after the word “period”, the words “(or 6-month period, as the case may be)”.

## **23 Giving of notice: transitional provision**

- (1) This section applies to an employee who is entitled to parental leave as a result of the commencement of this Part and who is unable to give the notice required under—
- (a) section 31(1) of the principal Act because there is less than 3 months between the commencement of this Part and the expected date of delivery; or
  - (b) section 33(a) or (b) of the principal Act within 14 days of receiving the relevant notice or of the relevant order being made, because the notice was received or the order was made before the commencement of this Part.
- (2) An employee to whom this section applies:
- (a) is not required to give notice under section 31 or section 33 within the time periods referred to in those sections, but must give the notice as soon as practicable;
  - (b) may give notice under section 31 or 33 (as applicable) before the commencement of this Part as if this Part were already in force.

## **24 Regulations amended**

The Parental Leave and Employment Protection Regulations 2002 (SR 2002/98) are amended in the manner set out in Schedule 1.

## **Part 2**

### **Amendments that come into force on 1 December 2005**

#### **25 Purpose of this Part**

The purpose of this Part is to increase, from 1 December 2005,—

- (a) the duration of maternity leave from 13 to 14 weeks for employees who have worked for their employer for at least an average of 10 hours a week for the immediately preceding 6 months; however, these employees are not entitled to extended leave; and
- (b) the duration of parental leave payments from 13 to 14 weeks.

#### **26 Application of this Part**

(1) This Part applies to an employee who takes parental leave from his or her employment in respect of a child if—

- (a) the expected date of delivery of the child is on or after 1 December 2005; or
- (b) the child is born on or after 1 December 2005; or
- (c) in the case of adoption, the date on which the employee, or the employee's spouse, with a view to adoption, assumes the care of the child is on or after 1 December 2005.

(2) An employee to whom this Part applies may, before 1 December 2005,—

- (a) give notice of a wish to take parental leave (under section 23 if applicable) in which case the employee may begin his or her parental leave before 1 December 2005 as if this Part were already in force; and
- (b) apply for a parental leave payment under Part 7A of the principal Act as if this Part were already in force.

#### **27 Long Title**

The Long Title of the principal Act is amended by omitting the words “13 weeks”, and substituting the words “14 weeks”.

**28 Duration of maternity leave**

- (1) Section 9(1) of the principal Act is amended by repealing subsection (1), and substituting the following subsection:

“(1) Maternity leave must be taken in 1 continuous period not exceeding 14 weeks, subject to subsection (2).”

- (2) Section 9(3) of the principal Act is amended by omitting the words “13 or 14 weeks (as the case may be)”, and substituting the words “14 weeks”.

**29 Extension of partner’s/paternity leave entitlements in certain circumstances**

Section 19A(3) of the principal Act is amended by omitting the words “13 weeks”, and substituting the words “14 weeks”.

**30 Extension of partner’s/paternity leave of adoptive parent**

Section 19B(2) of the principal Act is amended by omitting the words “13 weeks”, and substituting the words “14 weeks”.

**31 Purpose**

Section 71A of the principal Act is amended by omitting the words “13 weeks”, and substituting the words “14 weeks”.

**32 Duration of parental leave payment**

- (1) Section 71J(a) of the principal Act is amended by omitting the words “13 weeks”, and substituting the words “14 weeks”.
- (2) Section 71J(b) of the principal Act is amended by omitting the words “13 weeks”, and substituting the words “14 weeks”.

**33 End of parental leave payment**

Section 71L(1)(a) of the principal Act is amended by omitting the words “13 weeks”, and substituting the words “14 weeks”.

**34 Regulations amended**

The Parental Leave and Employment Protection Regulations 2002 (SR 2002/98) are amended in the manner set out in Schedule 2.

---

**Schedule 1**

s 24

**Amendments to Parental Leave and Employment  
Protection Regulations 2002 that come into force on  
1 December 2004****Regulation 8(1)(d)(iii)**

Omit the words “12 weeks” and substitute the words “13 weeks”.

**Regulation 9(2)(b)**

Omit the words “12 weeks” and substitute the words “13 weeks”.

**Regulation 9(2)(d)**

Repeal and substitute:

“(d) the greater of—

“(i) the mother’s ordinary weekly pay before the commencement of the parental leave; or

“(ii) her average weekly earnings during—

“(A) the year ending with the expected date of delivery (or, in the case of adoption, the date on which the employee assumes the care of the child with a view to adoption) for an employee to whom section 7(b)(i) or 8(1)(b)(i), applies; or

“(B) the 6 months ending with the expected date of delivery (or, in the case of adoption, the date on which the employee assumes the care of the child with a view to adoption), for an employee to whom section 7(b)(ii) or 8(1)(b)(ii) applies; and”.

**Regulation 12(2)(b)**

Omit the words “12 weeks” and substitute the words “13 weeks”.

**Regulation 12(2)(d)**

Repeal and substitute:

“(d) the greater of—

“(i) the spouse’s ordinary weekly pay before the commencement of the parental leave; or

“(ii) the spouse’s average weekly earnings during—

“(A) the year ending with the expected date of delivery (or, in the case of adoption, the date on which the employee assumes the care of the child with a view to adoption),

**Regulation 12(2)(d)**—continued

- for an employee to whom section 17(c)(i) or 18(1)(b)(i) applies; or
- “(B) the 6 months ending with the expected date of delivery (or, in the case of adoption, the date on which the employee assumes the care of the child with a view to adoption), for an employee to whom section 17(c)(ii) or 18(1)(b)(ii) applies; and”.

**Schedule: Form 1**

Omit the second clause 2 option and substitute:

- 2 You are not entitled to take parental leave because—
- \* at the expected date of delivery of the child (*or at the date on which you, with a view to adoption, assume care of the child*) you will not have been employed for at least an average of 10 hours a week (including at least 1 hour in each week or 40 hours in each month) over—
    - the immediately preceding 12 months; or
    - the immediately preceding 6 months.
  - \* [*State reasons why employee is not entitled to take parental leave.*]

Omit the first sentence of the first unnumbered clause under the heading “**Information about parental leave under the Parental Leave and Employment Protection Act 1987**” and substitute:

Employees are eligible for—

- (a) up to 52 weeks’ parental leave from their employment with an employer if they will have worked for the same employer for at least 12 months for at least an average of 10 hours a week on the relevant date; or
- (b) up to 13 weeks’ parental leave from their employment with an employer if they have worked for the same employer for the immediately preceding 6 months for at least an average of 10 hours a week on the relevant date.

Omit the third unnumbered clause.

Omit from the fourth unnumbered clause the words “Maternity leave must be taken in 1 continuous period not exceeding 14 weeks. Maternity leave” and substitute:

**Schedule: Form 1**—continued*Entitlements for employees on the basis of 12 months' service*

Maternity leave, partner's/paternity leave, and extended leave is available to employees who have worked for the same employer for at least an average of 10 hours a week over the immediately preceding 12 months. Maternity and extended leave amount to 52 weeks, which may be shared by the spouses in the child's first year. This period of 52 weeks may be exceeded as follows:

- (a) a mother may start her maternity leave early if directed to do so by her lead maternity carer or by her employer:
- (b) partner's/paternity leave of up to 2 weeks is available.

Maternity leave must be taken in 1 continuous period not exceeding 14 weeks.

*Entitlements for employees on the basis of 6 months' service*

Maternity leave and partner's/paternity leave is available to employees who have worked for the same employer for at least an average of 10 hours a week over the immediately preceding 6 months. Maternity leave of 13 weeks, if available, may be exceeded if the mother is directed to start her maternity leave early by her lead maternity carer or by her employer. 1 week's partner's/paternity leave is also available.

Maternity leave must be taken in 1 continuous period not exceeding 13 weeks.

However, if an employee who qualifies for parental leave on the basis of 6 months' service transfers the entitlement to parental leave payments to her spouse, and her spouse also qualifies on the basis of 6 months' service, the total amount of leave that may be taken by both spouses is 13 weeks (excluding any period of partner's/paternity leave).

*Commencement of maternity leave*

Maternity leave for all employees (whether they qualify on the basis of 6 or 12 months' service)

Repeal the first sentence of the unnumbered clause under the heading "*Partner's/paternity leave*" and substitute:

Partner's/paternity leave can be taken by the spouse for 1 continuous period not exceeding—

- (a) 2 weeks if he or she has worked for the same employer for the immediately preceding 12 months for at least an average of 10 hours per week; or

**Schedule: Form 1**—continued

- (b) 1 week if he or she has worked for the same employer for the immediately preceding 6 months for at least an average of 10 hours per week.

If a mother transfers parental leave payments to an eligible spouse who qualifies for parental leave on the basis of 6 months' service with the same employer, the spouse's partner's/paternity leave is increased by the number of weeks' payment that is transferred to him or her by the mother (but it may not exceed 13 weeks, excluding any period of partner's/paternity leave taken).

An employee who qualifies for parental leave on the basis of 6 months' service and who is entitled to partner's/paternity leave may have his or her leave extended if he or she—

- (a) assumes alone, with a view to adoption, the care of a child; or  
(b) is nominated as primarily entitled to a parental leave payment.

The period of partner's/paternity leave is then the shorter of 13 weeks or the period during which the employee receives the parental leave payments.

Omit the first sentence of the first unnumbered clause under the heading "*Extended leave*" and substitute:

Extended leave is available only to employees who have worked for the same employer for 12 months for at least an average of 10 hours a week.

Extended leave may be taken by the mother and the mother's spouse.

---



**Schedule 2**

s 34

**Amendments to Parental Leave and Employment  
Protection Regulations 2002 that come into force on  
1 December 2005****Regulation 8(1)(d)(iii)**

Omit the words “13 weeks” and substitute the words “14 weeks”.

**Regulation 9(2)(b)**

Omit the words “13 weeks” and substitute the words “14 weeks”.

**Regulation 12(2)(b)**

Omit the words “13 weeks” and substitute the words “14 weeks”.

**Schedule: Form 1**Omit from the text after the heading “**Information about parental leave under the Parental Leave and Employment Protection Act 1987**” the words “13 weeks’ ” and “13 weeks” wherever they occur and substitute in each case “14 weeks’ ” and “14 weeks”.

---

**Legislative history**

17 May 2004	Introduction (Bill 136–1)
26 May 2004	First reading and referral to Social Services Committee
9 August 2004	Reported from Social Services Committee (Bill 136–2)
21 October 2004	Second reading
2 November 2004	Committee of the whole House (Bill 136–3)
3 November 2004	Third reading
8 November 2004	Royal assent

---

This Act is administered in the Department of Labour.