



Modernising Parental Leave



**Changes to allow greater access
and increased flexibility**

Discussion
document



New Zealand Government

ISBN: 978-0-478-43321-0 (online)

ISBN: 978-0-478-43322-7 (print)

July 2014

©Crown Copyright 2014

The material contained in this report is subject to Crown copyright protection unless otherwise indicated. The Crown copyright protected material may be reproduced free of charge in any format or media without requiring specific permission. This is subject to the material being reproduced accurately and not being used in a derogatory manner or in a misleading context. Where the material is being published or issued to others, the source and copyright status should be acknowledged. The permission to reproduce Crown copyright protected material does not extend to any material in this report that is identified as being the copyright of a third party. Authorisation to reproduce such material should be obtained from the copyright holders.

Minister's foreword

For almost three decades, the *Parental Leave and Employment Protection Act 1987* (the Act) has enabled New Zealand parents to take leave from employment on the birth or adoption of their child.

Our parental leave scheme recognises that it is important for newborn development to have full-time personal care. The scheme enables new parents to take time away from work to provide such care, while ensuring that their jobs will still be there when they return. It also provides parents with some financial support in the early months of a child's life, recognising the extra pressures on families during this time. All of these things combined support the healthy development of our children, and improve short- and long-term outcomes for families and communities.

Today, around 26,000 parents access Government-funded paid parental leave every year. This is good news but some parents have been missing out because of the shortcomings of the Act, and more parents should be able to access the scheme. Given the changing nature of work, and the diverse make-up of modern parenting arrangements, I believe the Act needs to be updated to reflect these changes and enable more equitable and increased access to the payments.

As part of the 2014 Budget, the Government introduced legislation extending the duration of paid parental leave to 18 weeks over two years. I announced at that time that we would be consulting on ways to modernise the scheme to better reflect current work and family arrangements. This consultation paper sets out proposals that:

- › extend parental leave payments to people in less regular jobs, such as seasonal and casual workers, those with more than one employer, and people who have recently changed jobs
- › ensure primary carers providing permanent foster care akin to adoption, such as Home for Life parents, people who have parenting and/or guardianship orders, biological fathers, and grandparents caring for grandchildren, are eligible for paid parental leave providing they meet the work test criterion
- › allow employees to work limited hours or days and keep up skills development during their paid and unpaid leave period
- › allow workers who have been with their employer for more than six months but less than a year to be entitled to some form of unpaid leave.

I welcome your views on our proposals to ensure New Zealand's parental leave framework is able to better support Kiwi families.



Hon Simon Bridges
Minister of Labour

Contents

Minister's foreword	1
About this document	3
Purpose	3
How to have your say	3
Your submission may be made public	4
What happens next	4
Introduction	5
Background	7
<i>The Parental Leave and Employment Protection Act 1987</i>	7
Current provisions	7
Current issues in New Zealand – an overview	8
Proposals	9
Extending paid parental leave entitlement to less regular (or non-standard) employees and employees who have recently changed jobs or experienced gaps in employment	9
Recognising diverse family arrangements	12
Enabling employees to work limited days (Keeping in Touch days) during the paid parental leave period	14
Enabling employees to take the unpaid parental leave part-time and flexibly	16
Providing extended leave to parents who have been with their employer for at least six months (but less than 12)	17
Appendix 1: New Zealand Parental Leave Policy	18
Submission form	20

About this document

PURPOSE

As part of Budget 2014, the Government announced a package of measures designed to improve outcomes for children and families, and make it easier for parents to stay connected to the workforce. This specifically included passing changes to the Parental Leave and Employment Protection legislation extending paid parental leave to 16 weeks from 1 April 2015, and to 18 weeks from 1 April 2016. The Government also announced that it would be consulting on changes that were aimed at including more diverse work and family arrangements within the scheme and increasing its flexibility to better enable working parents to stay connected to the workforce.

This discussion document seeks feedback from stakeholders and employers and employees on the design of these proposals.

HOW TO HAVE YOUR SAY

You are invited to make a submission on this discussion document by **5pm on Monday, 25 August 2014.**

All the information you need to make a submission is available at:
www.mbie.govt.nz/about-us/consultation

You can:

- › complete your submission online
- › download a submission form, complete it and return it to us via email at:
employmentstandards@mbie.govt.nz
- › download and print off a submission form and post it to:

Employment Standards Policy Team
Discussion document submissions
Ministry of Business, Innovation and Employment
PO Box 3705
Wellington

YOUR SUBMISSION MAY BE MADE PUBLIC

The Ministry of Business, Innovation and Employment (the Ministry) intends to post all written submissions on the website at www.mbie.govt.nz, except for any material that may be defamatory. We will consider that you have consented to this unless you clearly specify otherwise in your submission.

All submissions are also subject to the *Official Information Act 1982*. Please set out clearly in your submission if you object to the release of any information in the submission, and in particular, which part (or parts) you consider should be withheld together with your reasons for withholding the information. The Ministry will take such objections into account when responding to requests under the *Official Information Act*.

Any personal information you supply to the Ministry in the course of making a submission will be used by the Ministry only in conjunction with the matters covered by this document. Please clearly indicate in your submission if you do not wish your name to be included in any summary of submissions that the Ministry may publish.

WHAT HAPPENS NEXT

The Ministry will analyse the submissions it receives. We will then report back to the Government on the submissions and use the feedback to inform the design of any changes to the legislation. At this stage, and subject to usual legislative processes, we expect that the changes to the legislation will be in place by 1 April 2016.

If you have any questions about any aspects of the submission process you can contact us at the email address above.

Introduction

In the first year of a child's life, particularly the first six months, it is important for newborn development to get full-time personal care and for parents to get support to manage budgetary and other pressures. Full-time care and monetary support can greatly assist with mothers/caregivers and children developing close bonds, breastfeeding for the first six months (which is the World Health Organisation's recommendation), and reducing parental and family stress, all of which improves short- and long-term child and society outcomes.

It is also important to encourage on-going attachment to the labour market, which has broad economic and social benefits.

Restrictions in New Zealand's parental leave legislation make it difficult for some working parents to stay connected to the workforce, and prevent some working parents from being eligible for the provisions.

As part of Budget 2014, the Government agreed to a package of measures to support newborns and their parents. This package is designed to reach a broad range of families and working arrangements in New Zealand and improve outcomes for children, while being fiscally responsible and recognising current economic conditions.

The Government passed legislation following the Budget announcements to increase the number of weeks paid parental leave is provided for, from 14 weeks currently, to 16 weeks as of 1 April 2015, and to 18 weeks as of 1 April 2016. At the same time, the Parental Tax Credit payable on the birth of a newborn was also increased from its current maximum of \$150 per week for eight weeks to a new maximum of \$220 per week for 10 weeks, with increased targeting towards lower and middle income families. This takes the total maximum payment to \$2,200 per newborn. The higher payments apply to babies born on or after 1 April 2015.

Further proposals relating to the *Parental Leave and Employment Protection Act 1987* (the Act) were also announced as part of Budget 2014. These include:

- › **Broadening eligibility for paid parental leave so it covers non-standard workers** (ie seasonal or casual workers, or workers with more than one employer) providing these workers, who tend to be low paid often with a long work history, and their families, with appropriate support and on-going attachment to work. This should benefit approximately 700-800 additional families.
- › **Extending eligibility for paid parental leave to other permanent care arrangements** (such as whāngai arrangements, Home for Life carers, non-parent carers with parenting and/or guardianship orders, and grandparents) to ensure children in different family arrangements in New Zealand get the necessary support they need, and remove some barriers for people wishing to undertake permanent care arrangements for children. This should benefit approximately 500-600 additional families.
- › **Introducing more flexibility into the parental leave legislation so that employees can undertake limited days of work and keep up skills development**, encouraging more effective labour market attachment to the benefit of employers and employees.

Specifically, there are five proposals outlined in the paper:

1. Extending paid parental leave entitlement to less regular or non-standard employees and employees who have recently changed jobs or experienced gaps in employment.
2. Extending paid parental leave and job protection entitlement to 'primary carers' (ie anyone who has the primary responsibility for the day-to-day care of the child on an ongoing and permanent basis).
3. Enabling employees to work limited days during the paid parental leave period without losing their entitlement to parental leave payments.
4. Enabling employees to take the unpaid parental leave part-time and flexibly.
5. Providing a period of unpaid leave to parents who have worked continuously with the same employer for at least six months.

We are seeking your views on these changes to inform the detailed design of these proposals. We would also like to know of any concerns you may have about them, and the impact and implications (positive or negative) you anticipate with each. If you have views on other measures that should be considered we would welcome those too.

A submission form is provided at the conclusion of the discussion paper to serve as a guide to your submission. However, you are not required to answer every question or to use the format provided. We have also attached a form seeking demographic information about submitters. We would be grateful if this information could also be completed and provided with your submission. Please note that this information will be held confidentially and used for statistical purposes only.

Submissions close at **5pm on Monday, 25 August 2014.**

Background

THE PARENTAL LEAVE AND EMPLOYMENT PROTECTION ACT 1987

Since its creation in 1987, the Act has provided an entitlement for women and their spouses/partners to take employment protected leave on the birth or adoption of a child. In 2002, the Act was amended to introduce the paid parental leave scheme and provided for 12 weeks of paid parental leave. This was extended to 14 weeks in 2004, and in 2006 the scheme was extended to the self-employed.

At the heart of parental leave policy is the intention to fairly share the costs of paid and unpaid parental leave across society between government, employers and families. Parental leave payments under the Act are funded by government. Specifically, the legislation aims to strike a balance between improving outcomes for parents and children by taking time away from work while encouraging employees to retain an attachment to work (including by encouraging employers to create an environment that facilitates such attachment).

The key objectives of the parental leave scheme are to:

- › improve health outcomes for both mother and child with a mother being able to recover from childbirth, bond with a new baby and return to work without negative consequences to her health and that of her child
- › provide income stability for families during a period of significant transition for families
- › recognise the vital role that secondary carers have within the family by providing improved support for fathers'/partners' access to and take-up of leave
- › achieve gender equity within the labour market with increased female labour force retention and the opportunity to return to paid work without disadvantage to position or pay.

CURRENT PROVISIONS

Appendix 1 sets out the details of how the parental leave scheme currently works. We have set out below a high level summary of the key features of the scheme:

- › Employees with at least six months' continuous service with the same employer and people who have been self-employed for at least six months are entitled to 14 weeks of paid parental leave (the "paid parental leave").
 - › Some or all paid parental leave can be transferred to an eligible spouse/partner. We note that this is more flexible than most other countries. (However, in practice the number of transfers of paid parental leave has been consistently very low).
- › Employees with at least 12 months' continuous service with their employer are also entitled to up to 52 weeks of employment-protected unpaid parental leave (the "extended leave").
 - › Any paid parental leave taken is included within this 52 week period.
 - › This extended leave can be shared between eligible spouses/partners.
 - › In addition to the 52 weeks, up to two weeks of unpaid partner's/paternity leave is also available.

CURRENT ISSUES IN NEW ZEALAND – AN OVERVIEW

The nature of work and families has undergone significant change since the Act's inception in 1987. Women's participation in work is at an historic high and employment growth in the last two decades has been particularly high for mothers with young children. Diversity of employment arrangements has increased, for instance, casual work, short-term contracts, part-time work, and people with multiple jobs.

At the same time, family structures and parenting arrangements have become significantly more diverse. Women tend to have fewer children and at a later age, and families are more likely to experience a range of different forms and circumstances. The imperative for both parents to participate in paid work to maintain living standards is increasing, and New Zealand now has a high proportion of single-parent families by international standards (33 per cent, with most being female-led).

These changes have created a growing pressure for the legislation to respond to current realities and to be more flexible to better serve its objectives. Stakeholders, employers and employees are increasingly highlighting issues with the Act including the unfair exclusion of many working parents.

The following chapters set out some of the Government's proposals to address the changing nature of workplaces and families and as such, to better support families with newborns.

Proposals

EXTENDING PAID PARENTAL LEAVE ENTITLEMENT TO LESS REGULAR (OR NON-STANDARD) EMPLOYEES¹ AND EMPLOYEES WHO HAVE RECENTLY CHANGED JOBS OR EXPERIENCED GAPS IN EMPLOYMENT

Issues

Some employees are currently not eligible for paid parental leave because they have not worked for the same employer during the previous six months. Currently under the Act, employees' eligibility for parental leave and payments is based on *workplace* attachment, that is, employment in – and leave from – a particular job. An employee needs to have worked an average of 10 hours per week (the "10 hour test") for the same employer over a six or 12 month period (the "six month test").

Thus, a person may not be eligible for paid parental leave simply because they have worked for different employers over the preceding period. For example, less regular or non-standard workers, such as seasonal or casual workers, and/or workers who have experienced a gap in employment or changed employers, or workers with more than one employer, are less likely to be eligible for paid parental leave, despite often having a long work history. Approximately 15 per cent of the workforce is currently in some form of non-standard working arrangement.

EXAMPLE

Ana worked full time for 15 years as a meat grader for half the year and a fish processor for the other half. Because she had to change jobs within six months of her baby's due date she is not entitled to paid parental leave or job protection.

However, Emma started her new full-time job just over six months ago and is now eligible for paid parental leave and job protection.

The Act's lack of flexibility and strict eligibility criteria (relating to continuous employment with one employer prior to the baby's due date) not only discourages labour mobility but frequently causes employees to miss out on the necessary support payments and job protection.

An evaluation of parental leave showed that of the ineligible employed women surveyed, two-thirds were ineligible due to their tenure and one-third by the hours' criteria.² A range of labour market

¹ With respect to this work, "non-standard employees" includes casual, temporary, fixed term, and seasonal workers. Such workers may have multiple employments concurrently and/or consecutively, broken employment, and may not be employed immediately prior to the birth or adoption of a child.

² Department of Labour (2007) 'Parental leave in New Zealand 2005/2006 Evaluation'.

research also shows that Māori and Pacific mothers are over-represented in the types of jobs and employment arrangements that tend to exclude mothers from being eligible for parental leave.³ More disadvantaged mothers in general, in terms of household incomes and number of children to support, are over-represented amongst those missing out.⁴

This has a negative impact on economic growth as employed women who are ineligible for paid parental leave (who are more likely to be in lower paid employment) have lower rates for returning to work compared with women who take paid parental leave, and are more likely to leave the labour market.⁵

Proposal

To address these issues, it is proposed that the paid parental leave entitlement be extended to those who have recently changed jobs and to non-standard workers (ie casual, seasonal, and employees with more than one employer). Specifically, the proposal is to:

- › Extend parental leave payments to any person who is able to meet the eligibility requirements when taking into account that person's employment across multiple employers. For example:
 - › A full-time employee who has worked for Employer A for three months and then moved to Employer B for a further three months would now meet the six month test and be eligible to receive parental leave payments
 - › An employee who, on average, works six hours per week for employer A and five hours per week for Employer B (and has done so for more than six months) would now meet the 10 hour test and be eligible to receive parental leave payments
 - › An employee who does not meet both the 10 hour and the six month tests would not be eligible for parental leave payments.
- › Extend the maternity leave and extended leave provisions to any person who is able to meet the eligibility requirements when taking into account that person's employment across multiple employers. This, however, would be subject to the job still being available at the end of the leave period.
- › A person who has worked for two employers for two years at an average of 20 hours per week for both will be entitled to have both their jobs held for them for 52 weeks (and will be entitled to parental leave payments).
- › A temporary worker who has met the eligibility requirements, but whose term of employment ends four weeks after the date of birth, will only be entitled to have that job protected for four weeks (albeit they will still be entitled to the full amount of the parental leave payment).
 - › A person who has not met the six month test, however, would not be entitled to have their job held open for them.

For clarity, we also propose that to access payment only, employees and the self-employed would need to have worked an average of at least 10 hours per week over *any* 26 weeks out of the 52 weeks immediately preceding the expected date of delivery/adoption.

3 Department of Labour (2007) 'Parental leave in New Zealand 2005/2006 Evaluation'.

4 Department of Labour (2007) 'Parental leave in New Zealand 2005/2006 Evaluation'.

5 Department of Labour (2007) 'Parental Leave in New Zealand: 2005/2006 Evaluation'.

Considerations

These proposals recognise that the workforce is becoming more mobile. They aim to shift the focus away from attachment to a single employer to attachment to the *workforce*. Workforce attachment can have long term benefits of reducing unemployment and underemployment and improving overall productivity. Workers who feel an attachment to the workforce are likely to be more engaged and committed in their work upon their return to work. This has immediate benefits for their current employer, but can also have flow on positive impacts on that person's future work.

However, this needs to be balanced against the impacts of such measures on ongoing business productivity. Specifically, where employees have been with firms for short periods of time, it may be unduly disruptive for a firm to hold a job open for that employee (especially where the firm has organised interim cover). The proposed extensions aim to facilitate attachment to the workforce, while minimising practices that may be disruptive to business development. Hence, it is proposed that the employee's job would not be protected unless they had been at the job for at least six months.

We note that the proposals to allow persons with multiple employers to have access to parental leave payments could require verification of length of service and salary information from previous employers that an employee is no longer working for. Since the applications for payment are made through the Inland Revenue Department, we could consider using tax information to verify employment information for paid parental leave purposes, where necessary.

Alternative Approach

There could also be other ways of establishing appropriate criteria. Australia's 2011 parental leave scheme includes part-time, casual, seasonal, contract, and self-employed workers. The Australian framework sets out a work test that the potential parent must meet. This requires that potential parents worked for at least 10 of the 13 months before the birth or adoption of the child, and worked for at least 330 hours in that 10 month period (just over one day a week), with no more than an eight week gap between two consecutive working days. A 'working day' is a day that a person has worked for at least one hour. This includes periods of paid leave but not periods of unpaid leave.

QUESTIONS

1. Do you think the scope of the extension of the paid parental leave scheme covers the right workers? Or, do you think it is too broad?
2. Do you see an advantage with the Australian model and, if so, why?
3. Do you think there are other ways of establishing appropriate criteria? Can you identify alternative options to address the circumstances of non-standard workers?
4. What would be the implications of this for your working arrangements or your organisation?
5. What other issues might the Government need to take account of in the detailed design of this option?

RECOGNISING DIVERSE FAMILY ARRANGEMENTS

Issues

Currently, the Act covers eligible birth mothers or parents who adopt under the *Adoption Act 1955*.⁶

Family structures and parenting arrangements have become significantly more diverse since the Act's inception, and parents and caregivers are increasingly more likely to have informal care arrangements. A third of New Zealand families are now single-parent families, and custody and guardianship arrangements are more prevalent than formal adoption, and preferred by the State.

The Act's provisions around adoption are also difficult to interpret and can lead to inconsistent treatment of applications, and the need for cases to be reviewed by the Employment Relations Authority.

Grandparents caring for grandchildren, biological fathers, and those who are caring for a child on a permanent basis, by way of a whāngai arrangement or a Home for Life arrangement, are all excluded from the scheme.

EXAMPLE

Helen is keen to take on the permanent care of a newborn baby who would otherwise be under state care. Under current provisions her work history would entitle her to paid parental leave if she was formally adopting but she has no current legal arrangements for the care of this baby. Helen needs to be available to become this baby's primary carer now. She has only two weeks of annual holidays and is having to reconsider whether she goes ahead with the care arrangement because she cannot afford to take a period of unpaid leave in order to care for and bond with the new baby.

Proposal

It is proposed that eligibility for parental leave payments and the relevant leave provisions (including extended leave) be extended to 'primary carers', to be defined under the Act. This change would make it clear that anyone, whether or not they are a parent of the child, is eligible *if they have the primary responsibility for the day-to-day care of the child on an ongoing or permanent basis*⁷, subject to meeting the eligibility criteria. The change would mirror the adoption provisions in the Act and apply to those taking on permanent care of children under the age of six. It would apply to people, whether or not they are a member of the child's family, so long as they were a primary carer (ie had primary responsibility for the day-to-day care of the child on an ongoing or permanent basis). This would include, for example, those people who:

- › assumed responsibility for a child pre or post a court order, such as parenting and/or guardianship orders (including Home for Life carers⁸)
- › entered into a whāngai arrangement
- › entered into other informal arrangements where a nominated caregiver fits the definition of a 'primary carer'.

Employees would need to sign a statutory declaration, and provide evidence as appropriate, indicating that he or she has primary responsibility for the day-to-day care of the child on an ongoing or permanent basis.

6 Part or all of the leave can be transferred to a partner/spouse if they are also eligible (although this has only occurred in less than one per cent of cases since the scheme's inception).

7 This is the definition used in the Income Tax Act 2007 that determines eligibility for the Parental Tax Credit.

8 This definition will include when the child is placed with a primary carer while still in the custody of the Chief Executive of the Ministry of Social Development under the Children, Young Persons, and Their Families Act 1989. That is, Home for Life carers – whānau or non-whānau – either pre or post a court order, such as a parenting and/or guardianship order, being applied for. (ie permanent care by arrangement, even when the State holds custody of the child.)

In Australia, a person is a primary carer of a child for the purposes of the Australian paid parental leave scheme if “the child is in that person’s care and that person meets the child’s physical needs more than anyone else”. This is usually the birth mother of a newborn or the initial primary carer of an adopted child, but can include any other carers that meet the definition.

Considerations

There may be some risk that people may seek to have permanent care arrangements for children solely to access parental leave payments (or to obtain extended leave). We do not consider that this is likely to be a significant risk given that employees will need to undertake full responsibility for care of the child. In most cases, this process would be subject to either judicial (or in some cases, Child, Youth and Family’s) supervision or would be with the biological parent’s consent. Given the high threshold that would need to be met to assume primary care of a child, we think that there is a low likelihood that people may seek to have permanent care arrangements for children *solely* to access parental leave payments.

This change is likely to affect a relatively small number of employees as we understand that the majority of carers in these arrangements are full-time carers and would not have the work history (being an average of 10 hours of work over the past six or 12 months) to qualify for *paid parental leave*. It would, however, significantly enhance the equity aspects of the legislation and respond to stakeholder concerns. As such, we expect that impact on employers would be minimal.

QUESTIONS CONT...

6. Do you think the extension of the scheme to primary carers is too broad?
Would you prefer a list of specific parenting arrangements?
7. Are there other parenting arrangements, other than those listed above that you think should also be considered?
8. Do you have any comments or suggestions on defining ‘primary carer’ and/or issues regarding verification?

ENABLING EMPLOYEES TO WORK LIMITED DAYS (KEEPING IN TOUCH DAYS) DURING THE PAID PARENTAL LEAVE PERIOD

Issues

Under the Act, if an employee returns to work during the paid parental leave period for any length of time, that person loses their entitlement to parental leave payments. This has occurred where mothers visit their workplace for a few hours on a one-off basis (to complete a handover, for example) and get paid for those few hours. If the mother was clearly not working as part of her visit to the workplace (for example, if the mother had attended work for a social event and was not paid for such attendance) then she would not lose her entitlement.

In this respect, the Act fails to promote attachment to work or encourage employees to maintain skills. Limited attachment to work can be beneficial for both the employer and the employee and might include keeping up skills development.

EXAMPLE

Nancy was taking paid parental leave but was asked by her employer to come in to the office for two hours and help her replacement find some files. Because she returned to the workforce, she became ineligible for paid parental leave and payments ceased.

EXAMPLE

Jane works for a small IT consultancy firm that's about to undertake training on a new IT design system. Jane, who has just started her paid parental leave, is willing to return for the two day course as she's a couple of weeks off her due date. If she doesn't do the training, and scheduled update sessions over the course of the year, she will not be able to operate the new system and is worried that her skills will be outdated and of limited value to her employer on her return to work. But if she does do the training, she will lose her entitlement to her remaining paid parental leave payments and job protection.

United Kingdom's Keeping in Touch Days

The United Kingdom introduced Keeping in Touch Days in 2007 to enable employees to work up to 10 days during their nine month statutory maternity pay and leave period without losing their entitlements. This approach gives employees and employers sufficient flexibility, without allowing an excessive amount of work during a protected period of leave, and helps to ease the transition back to work.

Under the United Kingdom provision, most employees cannot work during the two weeks immediately after a child is born and an employer is not entitled to "require" an employee to work. Both the employer and the employee must agree about whether he or she works any Keeping in Touch Days, how many will be worked, when they will be worked and how much the worker will be paid. Neither party is obliged to agree to these days being worked. Employers and employees must also agree about the type of work that the worker does. The rate of pay is a matter for agreement, but an employee must be paid at least the National Minimum Wage.

Proposal

The proposal is to create a scheme for New Zealand that is fundamentally the same as the arrangements in the United Kingdom. It is proposed that this would only apply to the statutory maternity leave period and not the extended leave period (ie the first 14 weeks under the current law, becoming 16 weeks on 1 April 2015 and 18 weeks on 1 April 2016). Employees would be able to work up to five days without losing any of their paid parental leave (equating to roughly one day in every four weeks). These days may only be worked after the first four weeks of the birth of the baby. Both the employer and employee must agree to the terms of work, and neither party would be obliged to agree. Any work undertaken would be subject to all the usual statutory protections (including minimum wage, holidays and sick leave entitlements). We would expect, however, that in light of the employer's and employee's duty of good faith, employees will return to work on broadly the same terms and conditions that they were on immediately before they went on leave.

This would see employees being able to work limited days if they choose (and being paid for those days of work), whilst retaining their parental leave payment, to enhance choice and workplace attachment.

Considerations

Allowing greater flexibility to enable employees to maintain a level of contact with their workplace may also support the transition between parental leave and a return to work and enable employers to maintain contact with their employees during this time. As this could only be implemented through agreement between employers and employees, employers will be able to manage any associated costs of the proposal.

We also note that this proposal could be used to allow a parent to receive both wages for work and parental leave payments. This may create some incentives for workers to 'keep in touch' for financial reasons rather than for attachment to the workforce. We do not think this is a significant concern given the limited number of days an employee will be able to 'keep in touch' and, as such, any financial gain will be limited.

QUESTIONS CONT...

9. Are there any particular features of the UK scheme that would create particular difficulties in the New Zealand environment?
10. Under what circumstances would working limited days be beneficial? What would be the benefits? What would be the disadvantages?
11. Is one day per four weeks sufficient? If not, what would be appropriate and why?
12. What would be the potential impact of such Keeping in Touch Days on you or your organisation?

ENABLING EMPLOYEES TO TAKE THE UNPAID PARENTAL LEAVE PART-TIME AND FLEXIBLY

Issues

Currently, all forms of parental leave available to employees (both paid and unpaid) must be taken full-time and in one continuous block. There are no provisions under the Act for leave to be taken on a part-time basis. The unpaid leave (up to 52 weeks, less any paid parental leave taken) must be taken continuously. The unpaid leave can be shared between parents where they are both eligible, either at the same time or consecutively. The right to this leave ends when the child is one year old or one year after the employee has assumed the care of a child they intend to adopt. On returning to work, an employee forfeits any remaining parental leave entitlement. For example, where a parent returns to work after six months' leave for financial reasons and wishes to work for another two months, that parent will no longer be entitled to take the remaining four months of extended leave.

Proposal

It is proposed that employees be able to take any remaining extended leave within the 52 week period where they may have temporarily returned to work. The remaining leave will only be able to be taken by mutual agreement between the employer and employee. The employee may also choose to take the remainder of their leave on a part-time basis. For example, an employee who returns to work for two months after six months on parental leave will be able to take the remaining four months of extended unpaid leave, or to work the remaining weeks on a part-time basis.

This does not propose to allow an employee to take the remainder of the leave once the 52 week period has expired. Nor does this propose to confer a *right* for an employee to take the remainder of the leave.

Considerations

The aim of this proposal is to allow employers and employees to come to arrangements that best suit their needs, while encouraging an attachment to the workforce. Currently, many parents may be discouraged from returning to the workforce within the first year (even for short periods of time) for fear of losing their entitlements to extended leave.

Compliance costs for employers would be minimal as the option would be a voluntary one and work would be agreed by both employers and employees.

We would welcome your views on how the extended leave provisions could be extended where an employee returns to work before the expiry of the relevant leave period.

QUESTIONS CONT...

13. Do you support the proposal that employees, with the agreement of the employer, be able to take any remaining extended leave within the 52 week period where they may have temporarily returned to work? If so, why? If not, why not?

PROVIDING EXTENDED LEAVE TO PARENTS WHO HAVE BEEN WITH THEIR EMPLOYER FOR AT LEAST SIX MONTHS (BUT LESS THAN 12)

Issues

Existing parental leave entitlements mean that women who have been with their employer for at least six months (but less than 12 months) may access only 14 weeks' paid parental leave (currently), but not any extended unpaid leave.

Research shows that the right to leave with job security reduces the average period of time that mothers remain outside the labour market. If women leave the labour market, in the absence of a longer period of employment protected leave, it can be more difficult for them to get back into work, potentially eroding marketable skills, damaging future career paths and lowering lifetime earnings. These effects can have a negative impact on families, New Zealand's labour market and economic growth.

The Department of Labour's evaluation of parental leave found that most mothers were returning to work by the time the baby was six months old, due to financial pressure, but wanted to return to work when the baby was 12 months old.

Proposal

It is proposed that extended unpaid leave could be made available to parents who have been with their employer for at least six months (but less than 12 months) as a pro rata amount of unpaid leave according to length of service. For example, a person who had been with their employer for seven months would be entitled to seven months of unpaid leave. If a person had been with the employer for less than six months they would not be entitled to unpaid leave.

Considerations

The impact on employers could vary and would need to be carefully considered. Whilst research shows that employment protected leave provides clear benefits to the employer in terms of staff retention, there is also evidence that, for small and medium enterprises, managing temporary replacements is difficult. In addition employers may need to build new systems to be able to identify the employee's entitlement. We would be interested in any information employers could provide us about any challenges your business could face in implementing these arrangements.

Alternative Option

An alternative way of designing the proposal could be that all employees in this group (who have worked more than six months for their employer but less than 12 months) be entitled to a standard six months extended unpaid leave period (less any paid parental leave taken).

QUESTIONS CONT...

14. Do you support the option of making unpaid leave available to parents who have been with their employer for at least six months (but less than 12 months) as a pro rata amount of unpaid leave according to length of service? Are there specific challenges your business may face in implementing this arrangement?
15. If not, do you prefer the alternative option of a blanket six months unpaid leave period for every employee who has been with their employer for at least six months (but less than 12 months)? If so, why? If not, why not?
16. What might be the impact of such a change on employees, employers, small, medium or large enterprises?

Appendix 1: New Zealand Parental Leave Policy

Paid parental leave – employees

Fourteen weeks of employment protected paid parental leave is currently available to eligible parents. To be eligible for paid parental leave, employees must have worked continuously with the same employer for an average of at least 10 hours a week (including at least one hour in every week or 40 hours in every month) in the six or 12 months immediately before the baby's expected due date or the date the employee has first assumed the care of a child they intend to adopt. Self-employed parents must have been self-employed for at least six months for an average of 10 hours a week in the six or 12 months immediately before the baby's expected due date, or the date the self-employed person first assumed the care of a child they intend to adopt.

Eligibility for paid parental leave is primarily determined through the birth mother. However, if their spouse/partner (including a same sex partner) fits the eligibility criteria the mother can transfer part or all of the leave to them. In the case of joint adoption, the spouse/partner can be nominated as the primary caregiver.

The maximum level of payment from 1 July 2014 will be \$504.10 per week before tax. Employees are entitled to the greater of their average weekly earnings or their ordinary weekly pay, up to the current maximum level of payment. A parental leave payment is payable to an employee for a period that begins on the date of commencement of his or her parental leave.

The minimum payment for self-employed from 1 July 2014 will be \$142.50. Self-employed are entitled to the greater of their average weekly earnings or the current minimum payment, up to the current maximum level of payment. A parental leave payment is payable to a self-employed person for a period that begins on the earliest of: the date the person commences parental leave; the date of confinement; or, in the case of adoption, the date on which the person assumes the care of the child with a view to adoption.

Maternity leave may start up to six weeks before the expected date of birth or adoption. In certain cases it can start earlier if directed by a doctor or midwife or, if an employer and employee agree, at any other time before the baby is due. Paid leave continues until the 14 weeks are complete. However, it may stop earlier if an employee transfers the payment, or part of the payment, to their

spouse/partner; returns to work before the end of the paid parental leave period; resigns from their job; is employed on a fixed-term agreement that expires during the paid parental leave period; or if the employee returns to work for any time during the parental leave period.

Partners/paternity leave

Unpaid leave of one week is available to spouses/partners with six months' eligible service and two weeks of unpaid leave is available to spouses/partners with 12 months' eligible service.

Extended leave

Employees who have worked continuously with the same employer for an average of at least 10 hours a week (including at least one hour in every week or 40 hours in every month) for 12 months or more are also entitled to up to 52 weeks of employment protected unpaid parental leave, less any maternity leave taken. Unpaid leave must be taken continuously and can be shared between parents where they are both eligible. Parents can take their leave at the same time or consecutively. An employee can finish their maternity or partner's/paternity leave, return to work, and then take extended leave later. The right to extended leave, however, ends when the child is one year old or one year after the employee has assumed the care of a child they have adopted or when the employee ceases to have care of the child.

Administration of the Parental Leave and Employment Protection Act 1987

The Ministry of Business, Innovation and Employment has primary responsibility for the administration of the legislation and for the provision of information in order to raise awareness of and promote the right to paid parental leave. Inland Revenue is responsible for the administration of applications, which includes approving or declining applications, and for the administration of payments to eligible parents. Under Section 71ZA of the *Parental Leave and Employment Protection Act 1987*, the Chief Executive of the Ministry has delegated these responsibilities to the Commissioner of Inland Revenue.

Fiscal cost

The total government expenditure on paid parental leave since the scheme began in 2002 reached \$1,323 million at the end of the 2013 financial year. Expenditure for the last full fiscal year, to June 2013, was \$165 million. The number of people receiving paid parental leave has levelled off over the last few years to around 2,000 per month and 26,000 a year. Self-employed applicants make up a small proportion of the scheme and have grown slightly to an average of 160 per month.

Submission form

Specific proposals: questions for consultation

The submission form that accompanies this document lists all the questions that have been asked in the discussion document. You can respond to as many (or as few) of these as you like. Feel free to make additional comments if you think that there are issues that the questions do not cover. Specific examples of what you think is working well, or could be improved would be welcome.

Thank you for taking the time to consider and respond to these important issues.

Please complete this form, identifying you or your organisation and return it by email or post no later than **5pm on Monday, 25 August 2014**.

If you are completing the questionnaire electronically, please feel free to expand the length of the spaces provided for your answers and to attach any supporting documents. If you are completing it on paper, please feel free to add other pages but make clear which question your answer refers to.

MODERNISING PARENTAL LEAVE: SUBMISSION FORM

Extending paid parental leave entitlement to less regular (or non-standard) employees and employees who have recently changed jobs or experienced gaps in employment

1. Do you think the scope of the extension of the paid parental leave scheme covers the right workers? Or, do you think it is too broad?

2. Do you see an advantage with the Australian model and, if so, why?

3. Do you think there are other ways of establishing appropriate criteria? Can you identify alternative options to address the circumstances of non-standard workers?

4. What would be the implications of this for your working arrangements or your organisation?

5. What other issues might the Government need to take account of in the detailed design of this option?

Recognising diverse family arrangements

6. Do you think the extension of the scheme to primary carers is too broad? Would you prefer a list of specific parenting arrangements?

7. Are there other parenting arrangements, other than those listed above that you think should also be considered?

8. Do you have any comments or suggestions on defining 'primary carer' and/or issues regarding verification?

Enabling employees to work limited days (Keeping in Touch days) during the paid parental leave period

9. Are there any particular features of the UK scheme that would create particular difficulties in the New Zealand environment?

10. Under what circumstances would working limited days be beneficial? What would be the benefits? What would be the disadvantages?

11. Is one day per four weeks sufficient? If not, what would be appropriate and why?

12. What would be the potential impact of such Keeping in Touch Days on you or your organisation?

Enabling employees to take the unpaid parental leave part-time and flexibly

13. Do you support the proposal that employees, with the agreement of the employer, be able to take any remaining extended leave within the 52 week period where they may have temporarily returned to work? If so, why? If not, why not?

Providing extended leave to parents who have been with their employer for at least six months (but less than 12)

14. Do you support the option of making unpaid leave available to parents who have been with their employer for at least six months (but less than 12 months) as a pro rata amount of unpaid leave according to length of service? Are there specific challenges your business may face in implementing this arrangement?

15. If not, do you prefer the alternative option of a blanket six months unpaid leave period for every employee who has been with their employer for at least six months (but less than 12 months)? If so, why? If not, why not?

16. What might be the impact of such a change on employees, employers, small, medium or large enterprises?

Modernising Parental Leave

The questions in this submission form are the same questions found in the discussion document. The questions are prompts only, designed to help you focus your response when you make your submission. You do not have to answer every one of these questions and are free to make comments that do not directly respond to any of the questions in the document.

See page 3 in the discussion document for information about how to make a submission. The deadline for submission is **5pm on Monday, 25 August 2014**.

We also ask you for a few personal details below. These will help us analyse the submissions we receive. You do not have to provide any information you do not want to. To place a check mark in any of the grey boxes, double click on the box and click 'checked'.

ABOUT YOU

1. Full name

2. Are you making this submission as an individual or on behalf of an organisation?

Individual Organisation

Name of organisation:

3. Respondent category

Employer

Employee

Employer Association

Other (please specify):

Union

Other worker representative

Community organisation

4. Which type of industry are you an employer or employee in?

- | | |
|---------------------------------------------------------------------|--------------------------------------------------------------------------|
| <input type="checkbox"/> Agriculture, Forestry and Fishing | <input type="checkbox"/> Financial and Insurance Services |
| <input type="checkbox"/> Mining | <input type="checkbox"/> Rental, Hiring and Real Estate Services |
| <input type="checkbox"/> Manufacturing | <input type="checkbox"/> Professional, Scientific and Technical Services |
| <input type="checkbox"/> Electricity, Gas, Water and Waste Services | <input type="checkbox"/> Administrative and Support Services |
| <input type="checkbox"/> Construction | <input type="checkbox"/> Public Administration and Safety |
| <input type="checkbox"/> Wholesale Trade | <input type="checkbox"/> Education and Training |
| <input type="checkbox"/> Retail Trade | <input type="checkbox"/> Health Care and Social Assistance |
| <input type="checkbox"/> Accommodation and Food Services | <input type="checkbox"/> Arts and Recreation Services |
| <input type="checkbox"/> Transport, Postal and Warehousing | <input type="checkbox"/> Other services |
| <input type="checkbox"/> Information Media and Telecommunications | |

If you think these categories do not reflect your industry sector, please specify your sector here:

5. Region

- | | |
|----------------------------------------|--------------------------------------------|
| <input type="checkbox"/> Northland | <input type="checkbox"/> Manawatu-Wanganui |
| <input type="checkbox"/> Whangarei | <input type="checkbox"/> Wellington |
| <input type="checkbox"/> Auckland | <input type="checkbox"/> Marlborough |
| <input type="checkbox"/> Waikato | <input type="checkbox"/> Nelson |
| <input type="checkbox"/> Bay of Plenty | <input type="checkbox"/> West Coast |
| <input type="checkbox"/> Gisborne | <input type="checkbox"/> Canterbury |
| <input type="checkbox"/> Hawke's Bay | <input type="checkbox"/> Otago |
| <input type="checkbox"/> Taranaki | <input type="checkbox"/> Southland |

6. Size of business that you are an employer or employee in

- | | |
|------------------------------------------|------------------------------------------|
| <input type="checkbox"/> Self-employed | <input type="checkbox"/> 20-49 employees |
| <input type="checkbox"/> 1-5 employees | <input type="checkbox"/> 50-99 employees |
| <input type="checkbox"/> 6-9 employees | <input type="checkbox"/> 100+ employees |
| <input type="checkbox"/> 10-19 employees | |

7. Gender

- Male Female Other

8. Age

- | | |
|--------------------------------|--------------------------------|
| <input type="checkbox"/> 15-24 | <input type="checkbox"/> 55-64 |
| <input type="checkbox"/> 25-34 | <input type="checkbox"/> 65+ |
| <input type="checkbox"/> 35-44 | |
| <input type="checkbox"/> 45-54 | |

9. Ethnicity

 NZ European Other European Māori Asian Pacific Island Other (please specify)

10. Contact details

Phone number:

Email address:

USE OF INFORMATION

The Ministry is collecting contact information so that we can follow up with a submitter if any submission needs clarification. Remember, you do not have to provide any of the information above that you do not want to.

The Ministry may wish to publish submissions and the names of submitters on its website.

If you do not want either your name or submission published, please indicate below:

 I do not give my permission for my submission to be published online I do not give my permission for my name to be listed online, either in a list of submitters or as part of any summary of submissions

Your submission may also be requested under the *Official Information Act 1982*. If you object to part or all of your submission being made available, the Ministry will take this into account when responding to requests under this Act.

 I would like the following parts of my submission to be withheld and for these reasons:

