



Guide to Parental Leave and Personal Carer's Leave



Message from the Secretary

When you welcome a new baby, or a relative needs your help as a carer, you have to re-organise your life around these new responsibilities.

You need time to weigh up these decisions without needing to worry about work. This guide aims to provide clarity around your rights and entitlements regarding parental leave, adoption leave and personal carer's leave. Your union is committed to ensuring you have smooth transitions from work and back again. We are involved in the union movement's campaigns for better parental leave rights, including enhanced access to flexible work arrangements for carers.

We urge you to read this guide carefully, as it explains the rights and entitlements of members in all sectors. There is also a Q&A section on job sharing.

While you are on leave, it is important you maintain your IEU membership to ensure you can access advice when you need it and when planning to return to work. For example, there is a special parental leave membership rate.

If you have any further questions, do not hesitate to contact your IEU organizer. Call 02 8202 8900 or 1800 467 943.

I wish you and your family all the best in balancing your work and family life.

Mark Northam Secretary
IEUA NSW/ACT Branch

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Introduction

This guide provides an overview of the measures available to assist employees in combining work and family responsibilities, including rights to parental leave, part time work, and personal/carer's leave.

General entitlements that are provided for in the National Employment Standards under the Fair Work Act 2009 (Cth) ('the Act') apply to all employees whether or not you are also covered by an enterprise agreement. These entitlements are supplemented by provisions in enterprise agreements, which often provide more generous paid leave entitlements, than the minimum granted under the Act. This guide explores both the minimum entitlements and the provisions of the main enterprise agreements applying to employees in schools, the ELICOS sector and early childhood services in NSW and the ACT.

The Act provides a set of legal rights for full time, part time and long term casual employees in relation to unpaid parental leave.

In addition, the Act includes the 'right to request' to extend unpaid parental leave for a further period of up to 12 months. An employee has at any time a 'right to request' flexible working arrangements to care for a child who is school age or younger.

Further, the Act provides personal/carer's leave so employees can care for family members, and others for whom they are responsible, in cases of illness or unexpected emergency. More generous provisions are contained in enterprise agreements. Employees are protected from discrimination on the grounds of pregnancy and family or carer's responsibilities, subject to some exemptions. For example, it could be unlawful for an employer to deny an employee who is a parent with a young child a job or a promotion.

As there are significant differences in the agreement provisions applying in different workplaces, this guide should be treated as a general information guide only and not as a substitute to advice. Bear in mind that this guide was published in July 2021 and provisions in some agreements (and even legislative provisions) may vary after this date.

An updated version will be available online from the IEU website.

If you require more detailed information or specific advice about issues covered in this guide, or in relation to any other matters, do not hesitate to ring the Union on 02 8202 8900 or 1800 467 943.

Parental leave

The National Employment Standards contained in the Fair Work Act 2009 (Cth) provide for minimum entitlements for all employees to unpaid parental leave. Parental leave means:

- leave associated with the birth of a child of the employee or the employee's spouse or de facto partner, or
- leave associated with the placement of a child under 16 years with the employee for adoption.

In both the cases above, the employee has or will have responsibility for the care of the child. This section deals with the minimum entitlements as provided by the Act. However this is also relevant to paid leave to which an employee is entitled under an enterprise agreement, as in most cases, an employee is only entitled to paid leave under the enterprise agreement if he or she is entitled to unpaid parental leave under the Act.

Note: whether or not you are entitled to paid or unpaid parental leave is a different test to that which applies for entitlement under the Federal Government's Paid Parental Leave Scheme (PPL).

Minimum entitlements (unpaid leave)

What is the entitlement?

Under the Act, if eligible, you are entitled to a total of 12 months of unpaid parental leave in connection with the birth or adoption of a child.

Examples of parental leave include leave taken by a female employee such as maternity leave or adoption leave at the time of birth or adoption to care for a child and leave taken by a male employee at the time of birth or adoption of a child (up to eight weeks 'concurrent parental leave') or within 12 months of the birth or placement of a child in order to be the primary carer of the child.

In addition to the 12 months entitlement, the Act provides that employees may request their employer to extend their period of unpaid parental leave for a further continuous period of up to 12 months.

Who is eligible for leave?

You must have completed or will have completed at least 12 months of continuous service with your employer:

- a. as at the date of birth or expected date of birth, or in the case of adoption leave, at the date of placement or expected date of placement ('the relevant date'), or
- b. if your partner initially cares for the child from the date of birth or adoption, and the employee subsequently commences parental leave within 12 months of the birth or adoption, as at the date of commencement of your leave.

If you are a casual employee, you will only be entitled to unpaid parental leave (other than unpaid adoption leave) if you have been employed on a regular and systematic basis during a period of at least 12 months as at the relevant date and, but for the leave, has a reasonable expectation of continuing employment on a regular and systematic basis.

Note that any period of unpaid leave does not break continuity of service so, for example, if you have one period of maternity leave you will be eligible for a further period of unpaid maternity leave for a second child even if you do not return to work.

Where a school has been transferred from one employer to another, service with the first employer can still in some cases count towards eligibility for maternity leave with the second employer. If you are unsure whether or not you have 12 months of continuous service, call the IEU for advice.

When can I take the leave? Only one parent taking leave?

If your partner is not taking parental leave, then the leave must be taken in a single continuous period. For a mother who is pregnant, leave may start up to six weeks before the expected date of birth but must not start later than the date of birth of the child. In the case of adoption the leave must start on the day of placement of the child.

If you continue to work during the six week period prior to the expected date of birth, the employer may ask you to provide a medical certificate as to your fitness for work. In certain circumstances, the employer may require you to commence parental leave early.

Employee couples taking leave

If you are a member of an employee couple, you can each take up to 12 months of unpaid leave. However only 8 weeks of this may be taken concurrently, and in periods of no less than two weeks. Apart from concurrent leave, each member of an employee couple must take their leave in a single continuous period, with the second employee's leave commencing upon the conclusion of the period taken by the first member of the employee couple. Where a member of an employee couple makes a request to extend the period of unpaid leave for a further period of up to 12 months, that period will be reduced by any leave taken by the other member of the employee couple, and/ or will reduce the period that may be taken by that other member. In total the members of an employee couple are entitled to a maximum of 24 months of unpaid parental leave.

Flexible parental leave

Since November 2020, under the National Employment Standards, employees can take up to 30 days (six weeks) of their unpaid leave flexibly at any time within 24 months of a child's birth or adoption.

Flexible unpaid parental leave can be taken as:

a single continuous period of one day or longer separate periods of one day or longer each

An employee can take flexible unpaid parental leave on the same day their partner is on continuous unpaid parental leave. The two employees can only take a total of up to 8 weeks unpaid parental leave at the same time.

An employee's entitlement to unpaid parental leave, except for flexible unpaid parental leave, will end on the first day that the employee takes flexible unpaid parental leave. Once an employee takes flexible unpaid parental leave, they can't later take a period of continuous unpaid parental leave. This means that if an employee is planning on taking a period of continuous unpaid parental leave they should do so before they take any flexible unpaid parental leave.

Minimum entitlements (unpaid leave)

How do I apply for leave?

1. You need to give your employer written notice of your intention to take leave - at least 10 weeks before commencing the leave (or if this is not possible, as soon as practicable, which may be after the leave has commenced). The notice must specify the intended start and end dates of the leave.
2. At least four weeks before the intended start of leave provided in point 1, you must confirm the intended start and end dates of the leave or advise of any changes to these dates, unless it is not possible to do so.
3. If required by your employer, you must give the employer evidence that would satisfy a reasonable person of the date of birth, or expected date of birth. The employer may require that this evidence is a medical certificate. In the case of adoption you must give evidence that would satisfy a reasonable person of the expected day of placement or actual day of placement and that the child will be or is at the date of placement, under the age of 16 years.
4. These notices must have been provided in order for you to be eligible for parental leave and other entitlements under the Act, such as the right to a transfer to a safe job. In particular, the provision of notice in writing is essential — therefore you should always confirm any verbal advice in writing to the principal, director, bursar or other senior member of staff.

What happens if I don't comply with these notices?

A failure to give notice will abate your entitlement to parental leave. However, if there are extenuating circumstances, you may be able to give notice of less than 10 weeks, if you give it as soon as you can, which could be after the leave has commenced. For example, if the baby was born earlier than expected or a placement occurred unexpectedly, in the case of adoption. You must still give the notice, although late, and provide any evidence required by the employer.

Can I start unpaid maternity leave whenever I choose?

As set out above, maternity leave may commence up to six weeks before the expected date of birth but no later than the date of birth of the child. Note that the commencement date specified in the Act may differ from provisions in enterprise agreements relating to commencement of paid maternity leave. In addition if you are employed in a 'January 1' school (that is, an independent school where the school year commences on 1 January not the beginning of term) you should seek advice from the IEU about the period of leave you are seeking to ensure you understand when you will be paid over the January holidays.

Can I extend parental leave?

If you have applied for parental leave that is less than the available parental leave period of 12 months, you may extend the leave up to the full period of available parental leave (which includes parental leave taken by you or your partner). You need to give written notice to your employer at least four weeks before the end date of the original leave period and advise your employer of the new end date of the leave. You have a right to do this once only but may do so more than once by agreement with your employer.

In addition to the available parental leave period of 12 months, you may request an extension for a further period of up to 12 months immediately following the end of the available parental leave period. The request must be in writing and provided to the employer at least four weeks before the end of the first 12 months of leave. The total period of parental leave cannot extend beyond 24 months after the birth or day of placement of the child. The employer must respond as soon as practicable and not later than 21 days after the request and can only refuse on reasonable business grounds. These grounds must be specified in writing.

Notwithstanding the provisions in the Act, some employers may agree to a further short period of unpaid leave beyond the 24 months if the new return date is at the beginning of a school year or to coordinate with term start dates.

Minimum entitlements (unpaid leave)

Can I take other paid leave while on parental leave?

You are not prevented from taking any other kind of paid leave whilst on parental leave. For example, if you are entitled to long service leave you may take it within the period of the statutory 52 weeks unpaid parental leave (together with any paid parental leave to which you are entitled under your enterprise agreement or the government PPL scheme).

The period of paid leave taken does not break continuity of the period of unpaid parental leave. However while on parental leave, you are not entitled to sick leave or any payment related to community service leave.

Am I entitled to sick leave when I am pregnant?

If you are unfit for work and still have sick leave available, you can access your ordinary personal leave entitlements. Pregnancy is not considered as an illness or injury, however pregnancy-related illnesses or injuries should be accepted as valid reasons for accessing your sick leave. Note that if you are not fit for work in the six weeks prior to birth, then the employer may, after taking certain steps, seek that you start unpaid parental leave.



Can I shorten the period of leave?

Once your leave has started, you may only reduce the period of parental leave by agreement with the employer. If circumstances occur whereby you may need to cancel your parental leave, you can contact the IEU for assistance. If you cease to have responsibility for care of the child, then special provisions apply where the employer may issue written notice for your return to work.

What if my current job isn't safe for me?

If you are pregnant and able to provide evidence to satisfy a reasonable person that you are fit for work, but you are unable to continue in your current position for a particular period because of illness or risks arising out of the pregnancy or because of hazards associated with the position, the employer must transfer you to an appropriate safe job that is available.

If the employer does not have a safe job available, then you are entitled to either paid or unpaid 'no safe job leave'. If this applies to you, contact the IEU for specific advice.

Can I work during parental leave?

You can perform work during parental leave, however if you are seeking employment from another employer, you may need to seek your current employer's permission to seek other employment. Often, this requirement is stipulated in letters of appointment including casual employment. Even if such provision is not contained in your letter of appointment, under common law you cannot undertake work inconsistent with your main job during parental leave. This means you could not accept another job (even if part time) with a different employer while on leave if this would prevent you resuming your own job or if there was some form of conflict with your main job.

If you are interested in returning to work with your current employer on a limited part time or temporary basis but do not want to give up your right to return to your full time job at a later date, you should ensure that there is a clear written agreement about this with your employer. You should seek assistance from your IEU Organiser to ensure that your rights are protected.

Subject to 'Keeping in Touch' provisions, undertaking any paid work between the date of birth or adoption and the end of the 18 week parental leave period may affect your entitlements under the PPL.

Minimum entitlements (unpaid leave)

Does parental leave count as service?

Unpaid parental leave does not count as service for accrual of leave, increments or any other purpose, except in relation to eligibility for a further period of unpaid parental leave or in relation to your right to request flexible working arrangements. Parental leave does not break continuity of service. Unpaid parental leave will not count as service for the purpose of the work test for eligibility for the PPL.

In accordance with the provisions of new EAs for NSW and ACT Catholic systemic schools, after 1 January 2020 up to 12 months of unpaid parental leave will count as service for teachers and principals for salary progression.

In almost all NSW and ACT Catholic schools, paid maternity leave now counts as service for accrual of entitlements and salary progression for support staff, teachers, principals and advisers. However in non Catholic independent schools a maternity allowance is paid which does not count as service for progression or accrual of entitlements except for the purposes of annual leave.

Holiday pay for teachers in schools and preschools

Depending on when you start your parental leave, teachers in schools and preschools may be entitled to a pro rata payment of non-term time. When the payment is made and the amount of the payment will depend on the termination formula prescribed in the applicable award or enterprise agreement.

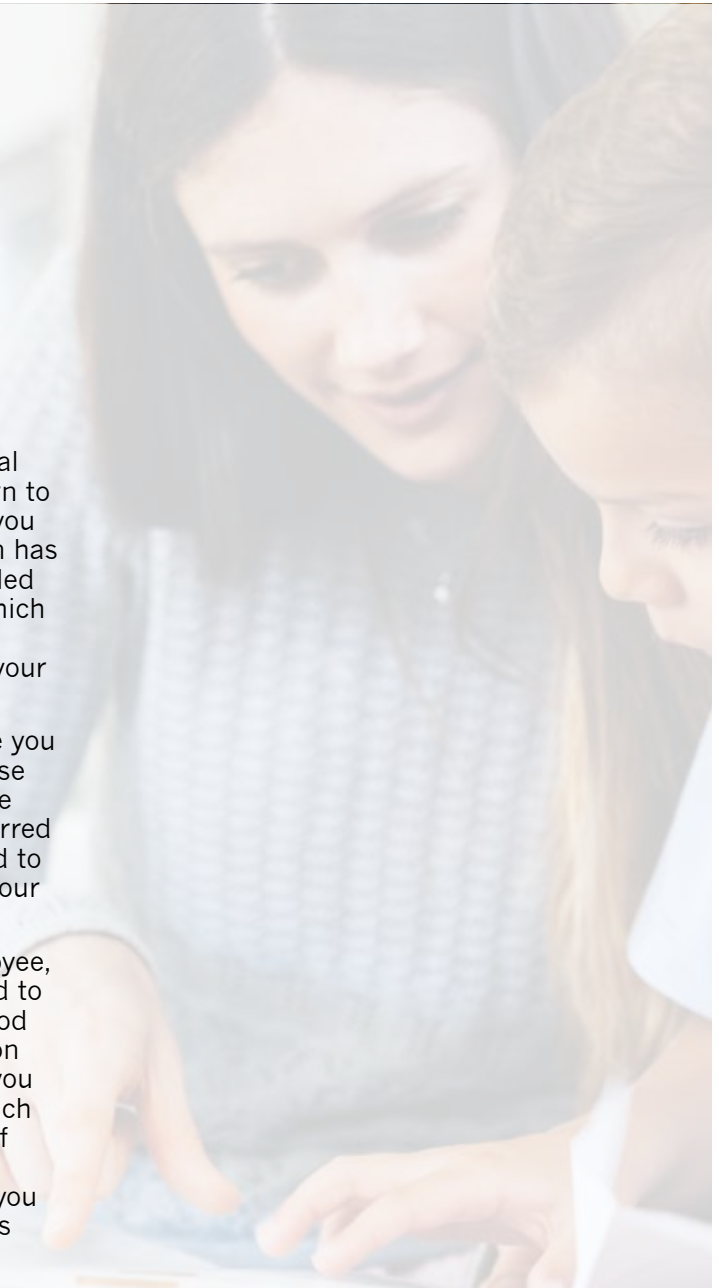
For example, if you take parental leave from the end of the year you should receive a payment the same as or equivalent to the holiday pay you would normally receive for the summer holiday. Alternatively, if you take parental leave in the middle of a school year which finishes in the next school year, you will be paid all your holidays that you are entitled to pro rata for the current school year when you go on leave.

Return to work

When you return from parental leave you are entitled to return to the position you held before you went on leave. If that position has been abolished, you are entitled to an available position for which you are qualified and suited nearest in pay and status to your former position.

If your duties changed before you went on parental leave because of the pregnancy (for example you went part time or transferred to a safe job), you are entitled to your former position before your duties changed.

If you are a temporary employee, you are generally only entitled to parental leave within the period of your appointment. Being on parental leave does not give you a right to return to a job if such right would not have existed if you were not on leave. Please contact the IEU for advice if you have questions about how this applies to you.



Minimum entitlements (unpaid leave)

Working towards Proficient accreditation while on parental leave

If you are taking a period of more than six months but fewer than five full years in duration, inform NESA. Do not rely on your employer to tell NESA on your behalf.

You can work on your paperwork for accreditation at Proficient whilst on leave, but you will need to be back from leave in order to submit your paperwork for accreditation with your Teacher Accreditation Authority.

The IEU runs workshops and information sessions about achieving Proficient accreditation. To find the latest listing of IEU PD, follow this link: <http://www.ieu.asn.au/event-list>

Maintaining accreditation while on parental leave

Remember to take leave from NESA as well as your employer. If you inform NESA of your intention to take a leave of absence before 29 January in a given year, you may be eligible to have the fee waived for the year. The date of your return from leave will affect the fee payable when you resume teaching.

If you are accredited at Proficient, Highly Accomplished or Lead, you can still complete professional development (of all types) while on a leave of absence from NESA. Continue logging into your NESA account and updating your PD as you go. There is no requirement for you to complete PD while on leave, but the option is available to you.

As NESA's policies are subject to frequent change, it is important to check its website regularly, ensure that your contact details are current with NESA, and to respond promptly to any correspondence you receive from NESA. To protect your accreditation, you should also ensure that your Working With Children Check (WWCC) is current.

You are welcome to contact the IEU for advice and support on NESA and WWCC issues.

Teacher Quality Institute (ACT): Maternity leave, overseas posting or sick leave

What are my options when I go on extended leave?

Paid leave requirements of are the same for all teachers regardless of employment circumstances. More information is available in the policies section on the TQI website.

Maintain your registration

- Complete the paid leave requirements of 20 hours per year and record on TQI portal. More information can be found in the PL FAQs in your TQ portal > Resources > Professional Learning page.
- If you can't meet the PL requirements you can request a PL variation plan and complete the additional PL requirements the following year. (100 hours of PL must be completed over 5 years if you choose to maintain your registration)
- You also need to ensure you have completed a minimum of 100 days of professional practice over five years if you hold full registration.
- You must also maintain current Working with Vulnerable People (WwVP) Registration and ensure you have updated your email on the portal to one you will access while on leave.

Lapse your Full registration

When you choose to apply again for registration, you must ensure you have a four-year qualification.

- If you hold Provisional registration, simply reapply.
- If you hold full registration and return to teaching under two years you can reapply for full registration. Contact TQI to get the online application link.
- If you apply after two years and did not achieve your full registration through a TQI school-based assessment, you will need your principal to provide a report that you taught at the Proficient level of the Standards at the time you lapsed and evidence that you taught 180 days in an Australian or New Zealand school in the five years before reapplying.

Please seek further advice from your employer regarding the need to be registered while on leave in relation to your employee entitlements.

Minimum entitlements (unpaid leave)

What if I become pregnant again while on maternity leave and need to take a second period of leave?

It is possible to have successive periods of unpaid maternity leave without returning to work. However, you may not be entitled to a second period of paid parental leave or allowance, subject to the precise circumstances and the wording of the relevant enterprise agreement.

If you become pregnant while on maternity leave, it is advisable to phone the IEU to discuss your situation and to ensure that your employment status and other rights (for example in negotiating an eventual return to work) are clarified.

Note also that you may not have an entitlement to paid leave for a second period of maternity leave under the PPL because of the work test. It is advisable to check meeting the work test.

Do I have a right to breastfeed/express after I return to work?

NSW, ACT and Commonwealth anti-discrimination legislation prohibit less favourable treatment of women because they are breastfeeding or expressing milk at work. For example, the NSW Anti-Discrimination Board factsheet on 'Pregnancy and Breastfeeding Discrimination' states:

"It is generally against the law to refuse to make arrangements to assist you to breastfeed at work, if these are reasonable. For example, it may be discrimination if:

- your employer does not provide you with suitable facilities for breastfeeding or expressing milk
- you are not allowed to organise your work breaks to facilitate breastfeeding or expressing milk
- your employer insists that you work night shift when other shifts are available that would allow you to continue breastfeeding, or
- you are told that you must wean your baby before you can return to work."

If you believe you have been discriminated against at the workplace, please contact the IEU for assistance.

Paid maternity and adoption entitlements

Catholic schools

What is the entitlement?

Pursuant to enterprise agreements negotiated by the union, teachers and support staff who are eligible for unpaid parental leave under the Fair Work Act are entitled to paid maternity and adoption leave for 14 weeks, paid at the rate you would have received had you not commenced parental leave. Note that only one adopting parent is entitled to payment of adoption leave. In the case of teachers, if you do not meet the 12 months prior service requirement with a diocese or Catholic independent school, but immediately prior to your current employment you were employed by another Catholic school, then most enterprise agreements provide that you will be deemed to meet the 12 months service requirement. Check your enterprise agreement for this provision for recognising prior service with another employer. If in doubt, please contact the IEU for clarification.

Are there rules about when I commence leave?

The enterprise agreements do not specify when teachers are required to start parental leave, but paid maternity leave will not be paid earlier than one term before the expected date of birth.

However, if you are absent because of illness or injury in the four weeks period preceding the birth, payment for that time of will be deducted from your paid maternity leave entitlement rather than sick leave.

(This was agreed by the Union as an alternative to a proposal that paid maternity leave had to commence in all cases four weeks before the date of birth.)

Corresponding provisions apply for adoption leave



How do school holidays affect paid maternity and adoption leave?

The general approach for teachers, subject to exceptions set out below, is that the 14 weeks is counted as continuous calendar weeks from the date of commencement of leave. However, if a teacher starts leave at the beginning of a school term, then the school holidays immediately before the leave do not count as part of the 14 weeks of paid parental leave and in all cases the first four weeks of the summer holidays are not counted as part of the 14 weeks parental leave. In other circumstances, school holidays falling within a period of paid maternity or adoption leave are subsumed within the 14 weeks and do not result in the paid leave being extended.

Support staff should ring the IEU for advice as more flexible rules apply.

Paid maternity and adoption entitlements

Independent schools

What is the entitlement?

Most enterprise agreements applying to teachers and support staff in NSW and ACT independent schools (including Catholic schools represented by the AIS) provide 14 weeks paid allowance together with a week's annual leave paid on the allowance payment. However Adventist schools generally provide 12 weeks paid allowance (only nine weeks for support staff) and the current CSA Multi-Enterprise Agreement for teachers provides for a total of 18 weeks paid maternity bonus, including the government payments under the PPL scheme.

Who is entitled to the paid leave or allowance?

If you apply for unpaid maternity leave and take unpaid leave (for a period equal to the paid component or longer) under the Fair Work Act provisions, then you are entitled to the payment, provided that most enterprise agreements have a minimum period of return to work required between successive periods of paid maternity leave.

If you are a temporary employee, you would be entitled to the payment provided you take the paid component within the period of your appointment. If you have a miscarriage or still birth after you commence leave, you may still be entitled to the payment.

For further information about the maternity allowance check the enterprise agreement that applies to your employment or please call the Union.

Early childhood centres

In general, teachers employed in early childhood services are not entitled to paid maternity leave in addition to what is provided through the PPL. However paid maternity leave does apply to early childhood teachers where there is an enterprise agreement negotiated by the union which provides for paid maternity leave including:

- Teachers employed by KU Children's Services (up to 14 weeks)
- Teachers employed by Goodstart (4 weeks from 1 March 2022; 6 weeks from 1 March 2024)
- Teachers employed by Mission Australia (now part of Goodstart) are initially covered by the Mission Australia Early Learning Enterprise Agreement until Goodstart's new Enterprise Agreement 2021 is approved by the Fair Work Commission in coming months; under the Goodstart agreement: (6 weeks; see point above).
- Teachers employed by the Catholic centres previously covered by the Teachers (Catholic Early Childhood Service Centres and Pre-Schools) (State) Award and now by the Modern Award (6 weeks)
- Teachers employed by UTS (return-to-work bonus of 9 weeks pay rather than parental leave).
- Teachers employed by Wollongong University Centres, Big Fat Smile (previously Illawarra Children's Services), Mission Australia.
- Teachers employed in Uniting Early Learning (14 weeks paid parental leave).
- Teachers employed in childcare centres attached to NSW hospitals (14 weeks if employed directly by the Local Health District; employees of community-based services located on hospital grounds are not included).
- Teachers employed in preschools attached to independent schools are entitled to an allowance in accordance with the applicable agreement. Similar arrangements generally (but not always) apply to teachers in long day care centres attached to schools.
- Teachers employed in University of Wollongong Centres who have completed 40 weeks of continuous paid service (12 weeks; can be taken as 24 weeks at half pay).
- Teachers employed by Big Fat Smile (previously Illawarra Children's Services) after 12 months of continuous service (6 weeks).

There are also a number of enterprise agreements for staff in standalone centres which have paid parental leave. Early childhood enterprise agreements can be found on our website: www.ieu.asn.au

ELICOS centres

Paid parental leave is contained in a small number of enterprise agreements applying to colleges offering English Language Intensive Courses for Overseas Students (ELICOS). The relevant colleges are: Navitas English Pty Ltd, Navitas English Services, UWS College, UNSW Foundation Studies, Insearch UTS, Embassy English and UOW College. Paid parental leave may be negotiated in enterprise agreements at other colleges in the future.

Government paid parental leave scheme

From 1 January 2011 the federal government introduced a Paid Parental Leave scheme (PPL), which provides for payment of the minimum wage to a child's primary carer following the birth of a new baby or following adoption. The payment is made by your employer or the Australian Government directly in instalments at the gross amount of \$882.75 per week (as of 1 July 2023) for 20 weeks. This income is taxable.

Criteria to access the PPL Scheme

The criteria for eligibility for the payment are quite different from the criteria to access unpaid parental leave under the Fair Work Act or paid leave under enterprise agreements.

The criteria include the following:

- The claimant must meet the work test - that is have worked continuously for one or more employers for a period spanning at least 295 days (about 10 months) and performed at least 330 hours of work within the test period of 392 days (about 13 months) prior to the date of birth/adoption or expected date of birth.
- If you are working casually prior to the date of birth/adoption and wish to claim PPL you will need to add up the hours you have worked. Each day of casual service will be counted as a certain number of hours of work — you should check the figure provided by your employer. There cannot be more than eight weeks gap between any two working days, and paid leave counts as work.

Note that if you have a second period of maternity leave following a fairly short period back at work, you may not qualify for PPL for the second birth even though you may qualify for parental leave under the Act or an agreement.

On the other hand, the definition of continuous service in the work test is less restrictive for the purpose of PPL than to access parental leave generally

because you can work for more than one employer and there can be a gap of up to eight weeks between separate work engagements.

The income of the claimant must be not more than \$150,000 during the relevant year. A range of types of income, not just your salary as an employee, are included.

The claimant must meet the Australian residency test.

For full details on these criteria check the website

(<https://www.humanservices.gov.au/individuals/services/centrelink/parental-leave-pay>).

Can I work during PPL?

Usually no — the rules are quite explicit about the role of the primary carer during the 18 week period of the PPL. The claimant cannot return to work at all, including casual work, during the 20 week period, except to attend training or other 'keep in touch' activities if they have been negotiated for the period of up to 30 days of Flexible PPL. If you return to work during the 20 week period, however, the father of the child may be able to access the remainder of the 20 week benefit if he becomes the primary carer. The carer must also provide the majority of physical care of the child during the 20 weeks — that is relatives or a child care centre should not provide a substantial amount of care on a regular basis.

Government paid parental leave scheme

'Keeping in touch' days

Keeping in touch days allow an employee who is still on unpaid parental leave to go back to work for a few days.

This is a good way for employees who are caring for a baby or newly adopted child to stay up to date with their workplace, refresh their skills and assist their return to work.



Work on a keeping in touch day may include:

- Participating in a planning day
- Doing training or
- Attending a conference

There are some rules about the type of work that can be done on these days. Visit the Department of Human Services website for more information.

Number of keeping in touch days

An employee on unpaid parental leave gets 10 keeping in touch days. This doesn't affect their unpaid parental leave entitlement.

If the employee extends their period of unpaid parental leave beyond 12 months, they can take an additional 10 days.

When keeping in touch days can be worked

Keeping in touch days can be worked:

- as a part day
- one day at a time
- a few days at a time, or
- all at once.

A keeping in touch day can be worked at least 42 days after the birth of a child or adoption. It can only be earlier if the employee requests it. If a request is made, a keeping in touch day can't be worked earlier than 14 days after the birth or adoption. The employer and employee have to agree to the keeping in touch days. An employee doesn't have to use keeping in touch days if they don't wish to.

Payment for keeping in touch days

An employee gets their normal wage for each keeping in touch day or part day.

Can I still get the baby bonus?

The baby bonus is no longer available from the Australian Government. There are other potential payments that might be applicable, depending on your employment circumstances. For more information, it is recommended that you visit the Australian Government: Department of Human Services website (see resources section).

Which do I take first?

You can take PPL before, after or at the same time as other paid leave. Subject to provisions for a period of Flexible PPL of up to 30 days, PPL must not commence prior to birth and must finish no later than 12 months from the date of birth or placement of an adopted child. However, bear in mind that you cannot work between the date of birth/ placement and the end of the period of the PPL. You may also wish to look at the tax implications of your decision and whether your employer anticipates any delay in receiving payment from the government.

What about my union membership?

Any period of unpaid or governmental parental leave is in effect leave without pay and the Union has a nominal subscription rate to cover this.

When planning your leave, phone the Union and speak to one of the IEU

Membership staff to ensure you remain a financial member during your period of leave.

Parental leave: further questions



How does parental leave affect my teacher accreditation?

NESA (NSW): Working towards Proficient accreditation while on parental leave

Text: If you are taking a period of more than six months but fewer than five full years in duration, inform NESA. Do not rely on your employer to tell NESA on your behalf.

You can work on your paperwork for accreditation while on leave, if you have had sufficient teaching days to collect and annotate documentary evidence.

The IEU runs workshops and information sessions about achieving Proficient accreditation. To find the latest listing of IEU PD, follow this link: ieu.asn.au/event-list

Does parental leave affect superannuation?

Superannuation is not paid on payments received under the government - funded PPL scheme. If you are received paid parental leave from the employer, you may be entitled to receive superannuation on this amount. You may need to talk to a financial adviser about this. Note: If an employee is not receiving salary, most superannuation accounts become 'inactive' and the insurance cover lapses because the premium is not being paid. Some superannuation funds will allow you to continue insurance coverage by paying the premium in advance. If this cover is important to you, contact your fund for details before you go on leave.

What about if I am on a temporary contract?

Parental leave is leave from a job and requires a position to be in place to return to at the end of the leave period. This can be a difficulty if the proposed period of the parental leave exceeds the period of the temporary contract. If the proposed parental leave commences and concludes within the period of a temporary contract, for example, if there is a one-year contract with leave commencing at the beginning of Term 2 and a return to work at the beginning of Term 4, then the parental leave would be taken and paid as for a permanent employee if other relevant conditions have been met. There have been some instances where an employee has a series of temporary contracts and would have had a reasonable expectation of another temporary or permanent contract except for the pregnancy, where the IEU has been able to argue successfully that paid parental leave should apply as for permanent employees. Members on temporary contracts should seek advice from the IEU if they have inquiries about parental leave.

Flexible paid parental leave under the national Paid Parental Leave Scheme

Employees can take up to 30 days (six weeks) of their unpaid leave flexibly at any time within 24 months of a child's birth or adoption.

Under 2020 changes to the national Paid Parental Leave Scheme, flexible unpaid parental leave can be taken as a single continuous period of one day or longer separate periods of one day or longer each.

An employee can take flexible unpaid parental leave on the same day their partner is on continuous unpaid parental leave. The two employees can only take a total of up to eight weeks unpaid parental leave at the same time.

An employee's entitlement to unpaid parental leave, except for flexible unpaid parental leave, will end on the first day that the employee takes flexible unpaid parental leave. Once an employee takes flexible unpaid parental leave, they can't later take a period of continuous unpaid parental leave. This means that if an employee is planning on taking a period of continuous unpaid parental leave, they should do so before they take any flexible unpaid parental leave.

Unpaid leave under the Fair Work Act

Pursuant to the *Fair Work Act* 2009 (Cth), a father is entitled to unpaid parental leave if he is responsible for the care of a child following the birth of a child of the employee or of the employee's spouse or de facto partner or following an adoption.

As previously noted, where parents of a child are members of an 'employee couple', each employee may take up to 12 months of unpaid leave under the Act. However, only eight weeks of this may be taken concurrently, and in periods of no less than two weeks.

Apart from concurrent leave, each member of an employee couple must take their leave in a single continuous period, with the second employee's leave commencing upon the conclusion of the single continuous period taken by the first member of the employee couple.

Where a member of an employee couple makes a request to extend the period of unpaid leave for a further period of up to 12 months, that period will be reduced by any leave taken by the other member of the employee couple, and/or will reduce the period that may be taken by the other member. In total the members of an employee couple are entitled to a maximum of 24 months of unpaid parental leave.

Parental leave for fathers/partners

While the Act refers to 'employee couple' leave, some enterprise agreements previously refer to, and some still refer to, paternity leave for fathers.

Paid leave under enterprise agreements

Enterprise agreements applying to employees in schools in NSW and the ACT permit an employee who is not the primary carer, to access a short period of paid leave at the time of birth or adoption.

Employees under the NSW/ACT Catholic systemic schools' Enterprise Agreement (EA) are entitled to a day of paid leave on either the day of the birth or the day of taking the child home (or the day of placement in cases of adoption). Such employees can also access paid paternity leave of 'one continuous period not exceeding two weeks' as carer's leave in the four-week period either side of the birth, or after the date of placement in a case of adoption. The first week of any such leave is paid by the employer, the second week is deducted from entitlements to personal carer's leave. Four weeks written notice of the intention to take this leave must be given to the employer.

Teachers and support staff in Catholic independent schools covered by a NSW Teachers (Catholic Independent Schools) EA can take paid paternity leave of 'one continuous period not exceeding two weeks' in the four week period adjacent to the birth. (This is in addition to the one day of paid leave on the day of the birth or taking the baby home, or the date of placement in the case of adoption.) Four weeks written notice of the intention to take this leave must be given to the employer. Employees will be entitled to take such parental leave in the four weeks before the date, or expected date, of

birth of the child and not later than four weeks after the birth of the child, provided that the employer may, in exceptional circumstances, request the employee take leave at a time outside the period specified in this paragraph. If the employee chooses to agree to the employer's request, such agreement will be recorded in writing.

Teachers and support staff in NSW independent schools are generally able to apply for two weeks of Paid Concurrent Parental Leave (which counts as service) in circumstances where they take concurrent unpaid leave under the Act. It is necessary to give 10 weeks written notice and to comply with the same notice provisions as for maternity leave. Such paid leave commences on either the date of birth, the date of taking the baby home, or the date of placement in the case of adoption.

In the early childhood sector, a teacher employed by SDN Children's Services is entitled to one day of paid leave on the day his spouse gives birth or leaves hospital following the birth. Teachers in KU Children's Services are entitled to two weeks paid paternity leave. Other enterprise agreements for early childhood teachers also provide that teachers may use one day of their personal leave to attend the birth of a child or the day their spouse leaves hospital. Some paid paternity leave is available in both Insearch Ltd. and Illawarra Technology Corporation Certified Agreements. See your enterprise agreement for more details.

From January 2013, the Federal Government introduced a two-week PPL scheme for 'dads and partners' who do not access a paid employer leave benefit.

Personal carer's leave

Entitlements under the NES

Provisions for personal/carer's leave in the National Employment Standards (NES), contained in the Act, allow you to access your sick leave entitlements (also described as personal/carers leave) contained in the NES to provide care and support for another person for whom they are responsible, when that person is ill or injured or requires care due to an unexpected emergency. The Act also provides two days of unpaid carer's leave for each permissible occasion where immediate family or household member needs care or support as above. The leave is available in respect of a member of the employee's immediate family or household and the Act defines immediate family as including:

- a spouse, de facto partner, child, parent, grandparent, grandchild, or sibling of the employee, or
- a child, parent, grandparent, grandchild, or sibling of a spouse or de facto partner of the employee.

This is a broader definition than applies under some enterprise agreements and always exists as an entitlement for employees, independent of the wording of enterprise agreements or employer policies.

The National Employment Standards now also provide for two days of paid compassionate leave in the situation of a life threatening illness or injury that is not debited from sick or personal carer's leave.

Catholic schools

Subject to the provisions of the 2020 Enterprise Agreement, in NSW and ACT Catholic systemic schools, teachers and general employees are able to access all of their current and accrued entitlements to care for an ill or injured family member, for a domestic violence situation, or where such person requires care due to an unexpected emergency.

In the EAs for teachers and general employees in NSW and ACT schools, there is a provision for paid compassionate

leave - three days on the death of a member of the household or family in addition to the two days in the case of serious illness.

A new provision exists in the Catholic systemic EA for 'special leave' of one day per year for family commitments (such as a graduation or a wedding). This day does not accrue if not used.

Independent schools

Enterprise agreements applying to employees in independent schools (including a small number of Catholic Independent schools) provide an entitlement to carer's leave in the same circumstances as apply under the NES for the care and support of members of their immediate family or members of their household with the addition of care because of domestic violence. Immediate family members include persons included within the definition for the NES (see left). A provision exists in the independent enterprise agreements for 'special leave' of one day per year for family commitments (such as a graduation or a wedding). This day does not accrue if not used.

Most enterprise agreements applying to support staff and operational staff (including maintenance and outdoor staff) provide that employees may take all current and accrued sick leave for the purpose of carer's leave, as well as having access to unpaid leave, annual leave, time off in lieu of overtime and make up time. Enterprise agreements applying to Christian schools in the ACT limit access to 10 days of carer's leave in a school year. Note that this cannot prevent an employee taking more than 10 days if he or she would have an entitlement under the NES to take the leave. Refer to the relevant agreement and employer policies for further details on entitlements.

Personal carer's leave



Unexpected personal emergency

In Catholic systemic schools, the 2020 Enterprise Agreement provides access to personal carer's leave for an 'unexpected personal emergency'. This is defined as a circumstance that is unplanned, due to circumstances beyond the employee's control and is of an urgent and serious nature that requires the urgent attendance of the employee. The urgent circumstance must be of such a nature that it cannot be arranged outside of work time (such as dealing with storm damage to a home.) The previous Catholic sector Pressing Domestic Necessity maximum of five days has been removed. Some ACT independent schools also provide access of up to one day's discretionary family leave per annum.

Early childhood service centres

Some teachers are employed under the Modern Award and are entitled to carer's leave in accordance with the NES as set out on the previous page. Teachers employed under enterprise agreements negotiated by the IEU generally have a greater quantum of sick leave and can access all sick leave for the purpose of carer's leave. Employees may also access unpaid leave, annual leave, time off in lieu of overtime, make up time or rostered days off for family purposes.

Teachers working in centres attached to or operated by independent schools should refer to the relevant enterprise agreement covering teachers at their school.

Other employees

Employees employed under a modern award are entitled to carer's leave in accordance with the NES as set out above. If you are covered by an Enterprise agreement, you should refer to the enterprise agreement to check if there are any additional entitlements.

Job share and part time

Anti-discrimination legislation, such as the Sex Discrimination Act 1984 (Cth), the Anti-Discrimination Act 1977 (NSW) and Discrimination Act 1991 (ACT) and the Fair Work Act 2009 (Cth), renders it unlawful for employers to directly discriminate or treat employees less favorably because of family responsibilities.

For the purposes of requesting for flexible working arrangements, the effect of the legislation has been that there is an onus on an employer who rejects an application for a flexible working arrangement to reasonably justify the refusal. The legislation extends to caring for immediate family members, not just children, defined in a broad way to include spouses, grandchildren and others. However, note that you do not have an absolute right to work part time and the arrangements may need to be negotiated between you and your employer. You may also need to make suggestions to assist the employer in identifying other staff who are available for a job share for example. Also be prepared to be flexible about the number of days you are available to work, because the school may have to accommodate your request as well as requests from other staff.

If you are seeking part time work following a period of parental leave, it is always desirable to locate any relevant employer policies and apply as early as possible. If you are intending to return to work at the beginning of a year for example, try to apply early in Term 3 the previous year so the school has as much notice as possible (and less excuse to reject the request).

If the employer refuses your request or does not respond in writing within 21 days, you should immediately contact the IEU as a delay often signals that the school is reluctant to agree to your request. The sooner we can follow the matter up, the greater the chance of a successful outcome.

There are new provisions under the Fair Work Act, and reflected in EAs, which require genuine discussion of a request and explanation of possible alternative options.

As well as the general provisions of the Fair Work Act, enterprise agreements may contain more specific provisions about the right to request part time work because of carer responsibilities.

If you have an issue with your request for flexible working arrangements, you may be able to notify a dispute pursuant to your enterprise agreement in the Fair Work Commission. Alternatively, an employee may lodge a complaint about a breach of the legislation to the Anti-Discrimination Board in NSW or to the Human Rights and Discrimination Commissioner in the ACT or the Australian Human Rights Commission.

Please contact the IEU if your request for flexible working arrangements has been unreasonably refused by your employer.

Working part time because of carer's responsibilities

A right to request flexible working arrangements under the NES

Pursuant to the provisions of the Fair Work Act, you may request a change in working arrangements. You are not entitled to make the request unless you have completed at least 12 months of continuous service immediately prior to making the request.

The request must be in writing and set out the change sought and the reasons. The employer must respond in writing within 21 days, indicating whether the request is agreed and if not, the reasons for the refusal. The employer may only refuse the request on reasonable business grounds.

These expanded provisions include situations where you are:

- a parent (has responsibility for the care) of a child - school age or younger.
- a carer (within the meaning of the Carer Recognition Act 2010 (Cth)).
- have a disability.
- aged 55 or older.
- are experiencing violence from a member of your family.
- provides care/support to a member of their immediate family or household who is experiencing domestic violence.

Note that this request may be made at any time, not just after a period of parental leave. It can be used, for example, by staff who wish to care for older parents.

Most Catholic dioceses and some independent schools have policies in place which set out their processes and practices in relation to the 'right to request' provision of the Act.

Checking your superannuation

Most members carry various types of insurance with their superannuation fund. Often this includes life insurance, total and permanent disability insurance and Income protection Insurance (sometimes called Salary Continuance). While the amount of cover can usually be varied at any time certain life events such as the birth of a child may trigger a fast track opportunity to increase cover without onerous paperwork, medicals or waiting periods. In most cases however you have to act fairly promptly usually within 90 days of your baby's birth so it is worth adding these things to your 'getting ready for baby list'. Call your Superannuation Fund or visit their website to find out more.



A right to request flexible working arrangements under agreements

In addition to entitlements under the NES, almost all IEU enterprise agreements for employees in schools provide that an employee may request to return from parental leave on a part time basis to care for a child.

Enterprise agreements applying to independent schools state that the request and the response must be in writing and provided that the request is genuinely based on the employee's parental responsibilities, the employer may only refuse the request based on reasonable grounds related to the effect on the workplace or the school's business.

Such grounds might include cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service. The request should be made as early as possible before an employee is due to return from parental leave. Similar provisions exist in enterprise agreements applying to Catholic schools.

These entitlements are similar to the provisions applying under the NES and anti-discrimination legislation, but have the advantage that a breach of the agreement clause may be treated as a dispute and notified to Fair Work Commission.



10 FAQs about part time work, job share and flexible working arrangements

1. What is the difference between part time work and job share?

A part time employee (often defined in the enterprise agreement) is engaged to work regular hours each week which are less than normal hours for a full time employee. Job share is a workplace administrative arrangement that allows two employees to share one permanent position, which is usually full-time; in some cases the right to one of the positions is dependent on the continuance of the shared arrangement.

2. Do I have an absolute right to work part time or job share?

Legislation and Enterprise Agreements provide certain entitlements in relation to part time work if the request to work part time is because of parental or carer's responsibilities or some other circumstances as defined under the Fair Work Act, including expanded "right to request" provisions introduced in July 2013. These expanded provisions include where the employee:

- a. is a parent (has responsibility for the care) of a child – school age or younger
- b. is a carer (within the meaning of the Carer Recognition Act 2010(Cth))
- c. has a disability
- d. is 55 or older
- e. is experiencing violence from a member of the employee's family
- f. provides care/support to a member of their immediate family or household who is experiencing domestic violence.

At present, however, these are "rights to request" – not absolute rights. An employer must respond in writing within 21 days to a request for a flexible arrangement. Employers can only refuse a flexible arrangement where they can demonstrate "reasonable business grounds" for declining the application. As previously noted, however, there are now provisions which require an employer to explore possible alternative options if the original request is not accepted.

3. Is part time/job share employment secure?

In theory, permanent part time teachers and support staff have similar legal and industrial protections as full time employees. In practice, however, in some positions part time employees may experience changes in their hours from year to year. This is less likely to occur in a job share position and in particular in a primary school job share where two teachers are sharing the one class. Even in a job share situation, however, it is often the case that one employee 'owns the job' and retains a right to return to full time work – in this case the security of the second employee, the job share partner, will depend on the continuance of the job share. Job share is usually also subject to review from time to time as per employer policy.

4. How does a job share operate? How long can a job share last?

Job share assumes that each member of the partnership is responsible for all duties required of the position on the days on which she or he works and in addition liaises with the other member of the partnership concerning overall responsibilities. Job share may be achieved by the employment of a temporary employee for the second part of the job share (usually when the first employee retains the right to return to a full time position) or it may be achieved through the sharing of one position by two permanent employees.

The IEU has been successful in negotiating part time/job share policies and procedures (often called flexible work arrangements) with most diocesan employers and with some independent schools. There are also facilitative clauses in most enterprise agreements covering early childhood teachers. Job share may be accessed as a short term arrangement (e.g. one or two years) while the first employee who 'owns the job' maintains the right to return to a full time position at the conclusion of the arrangement. Job share may continue for longer but may necessitate the first employee relinquishing their full time employment status and accepting a permanent part time position. Many successful job shares have continued for periods of 10 years or more but are usually renewed annually.

5. How do I apply to work part time or in a job share?

If you are specifically interested in a job share arrangement, you should check whether your employer has a job share policy (most Catholic dioceses do and they can usually be found on the employer or the IEU website) and follow the procedure set out in the policy. It is important that you apply as early as possible if you wish to work part time. Please contact the IEU at any stage for advice and particularly if you do not receive a positive response within 21 days of lodging your written request for part time work.

6. What is the impact on my entitlements of working part-time / job share?

In general, entitlements will accrue on a pro rata basis, but there are some differences in the method of calculation of long service leave between enterprise agreements. If your employment is terminated while you are part time, severance entitlements such as redundancy pay will be calculated on your part time rate. If you take a further period of parental leave and you have not returned to full time work, then normally the paid leave will be calculated on the part time rate. Members should contact the IEU to clarify the effect of part time employment on their long service leave or on any other entitlements, including the work test of the national Paid Parental Leave scheme.

7. What is the impact of part time work on progression up the salary scale for teachers?

Under enterprise agreements and federal 'modern awards', incremental progression is based on completion of years of full time service and part time service is counted pro rata.

8. What is the impact of maternity leave during the period of a job share arrangement?

Most job share agreements state that a job share arrangement will terminate if one of the partners takes an extended period of leave. The remaining

partner may be offered the full time position or another job share arrangement negotiated for the duration of the maternity leave. The partner who has taken maternity leave may be able to re-negotiate a return to the original job share or another suitable arrangement. It is always wise to identify who 'owns the job' at the outset of the job share arrangement and to clarify the underpinning employment status of each of the job share partners in writing.

9. Is there a limit to the number of job shares that can exist in a school/centre?

An arbitrary limit would be contrary to the carer's responsibilities provisions of NSW and ACT anti discrimination legislation, the provisions of the Fair Work Act and enterprise agreements referred to above, as each application to work part time because of carer's responsibilities must be considered on its merits. However, in some circumstances an employer may be able to argue that the existing number of part time work arrangements may be a relevant factor in considering whether the latest request can be accommodated.

10. Can I be forced to attend meetings or professional development on days on which I don't normally work?

Enterprise agreements applying to teachers in Catholic schools state a part time teacher should not be required to attend on a day on which they are not teaching, except to attend occasional school activities as may be reasonably required (unless they are compensated for the additional day worked). In addition, enterprise agreements specify that face teaching should be scheduled on a number of days generally consistent with the teaching load of the part time teacher, provided that the Principal has sufficient flexibility to ensure that the needs of pupils are met.

Some Catholic dioceses advise principals that part time and job share teachers should be paid for their attendance at significant professional development on days that they are not normally at school.

This issue can be more contentious in independent schools, particularly in relation to attendance at professional development days scheduled on a day

the part time teacher is not required to attend. In some cases, schools will request part time teachers to attend a particular professional development day and whether or not this is reasonable will depend both on the teacher's availability (for example the teacher may have another part time job if the day is during term time or unavoidable caring commitments) and the other non teaching duties (such as co-curricular or other PD days already attended) performed by the teacher in the course of the year, compared to full time teachers. If the attendance means that the part time teacher is doing more than a fair share of the non-teaching duties required of full time teachers, based on a teaching load, then enterprise agreements applying in independent schools state that the teacher is entitled to payment at casual rates for the day. Please contact the IEU for further advice on this issue, preferably as early as possible before the scheduled activity.

Support staff must be paid for attending meetings or PD held at times for which they are not normally paid. Time in lieu may be negotiated as per enterprise agreement provisions.

Please note that this information is of a general nature and is based upon legislation and industrial instruments in place at the date of writing.

Members are encouraged to contact the IEU to discuss parental leave, work and family issues or for assistance in negotiating part time, job share or other flexible arrangements. For more information, please phone (02) 8202 8900 or 1800 467943 or access the IEU website at www.ieu.asn.au

Useful links

Independent Education Union of Australia NSW/ACT Branch

www.ieu.asn.au

Independent Education Union of Australia

www.ieu.org.au

Unions NSW

www.unionsnsw.org.au

Unions ACT

www.unionsact.org.au

ACTU

www.actu.org.au

www.australianunions.org.au

Women NSW

www.women.nsw.gov.au

NSW Anti-Discrimination Board

www.antidiscrimination.justice.nsw.gov.au

ACT Human Rights Commission

www.hrc.act.gov.au

Australian Human Rights Commission

www.humanrights.gov.au

Workplace Gender Equality Agency

www.wgea.gov.au

Fair Work Commission

www.fwc.gov.au

Fair Work Ombudsman

www.fairwork.gov.au/leave

www.fairwork.gov.au/pay

www.humanservices.gov.au

Federal Department of Human Services

Federal Department of Families, Housing,

Community Services and Indigenous Affairs

www.fahcsia.gov.au

Family Assistance Office

www.familyassist.gov.au/family-assistance-payments/paid-parental-leave-scheme

Breastfeeding Friendly Workplace

www.breastfeeding.asn.au