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### **PAID PARENTAL LEAVE SCHEME SET TO COMMENCE ON 1 JANUARY 2011**

The federal government has passed the Paid Parental Leave Act 2010 (the 'Act'), providing for the first national government funded paid parental leave scheme in Australia set to take effect from 1 January 2011.

The legislation provides eligible employees 18 weeks paid leave at the national minimum wage rate, currently set at \$569.90 per week. These payments will apply to primary carers of children born or adopted on or after 1 January 2011, however, employees as of 1 October this year are able to make a claim for parental leave pay up to three months prior to the birth or adoption.

#### **Who is eligible to receive the payments?**

The scheme covers full time, part-time and casual employees, as well as contractors and the self-employed.

To be eligible to receive parental leave pay, the employee must:

1. have been employed for at least 10 months of the 13 months prior to the expected birth or adoption of the child without a break of more than 8 weeks between any 2 consecutive work days;
2. have worked at least 330 hours during the 10 month period stipulated above;
3. be the primary carer of a newborn child or newly adopted child;
4. be an Australian resident or the holder of a special category visa;
5. earn less than \$150,000 gross per year (to be indexed annually); and
6. not have returned to work.

The parental leave payments may be shared between members of the family alternating as the primary care giver.

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#### **About CCI Lawyers**

CCI Lawyers is a boutique workplace relations practice.

CCI Lawyers operates as an independently managed legal practice, providing legal services that are charged at competitive rates to employers across Australia.

CCI Lawyers is associated with the Victorian Employers' Chamber of Commerce and Industry ([VECCI](#)). Your business does not need to be a VECCI member to engage our services.

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Furthermore, employees with existing paid parental leave entitlements under an industrial instrument, including an employment contract will still be eligible to receive the government funded parental leave payments in addition to their entitlement under the industrial instrument. As such, employers will be required to honour their paid parental leave obligations under their contracts with their employees.

**Who is responsible for the payments?**

As mentioned above, the parental leave payments will be funded by the government but will be distributed by either the employer or the Family Assistance Office. Participation by employers in the scheme will be phased in, providing employers with the option of administering payments to eligible employees from 1 January 20 to 30 June 2011. Where an employer does not participate in the scheme during this period, the Family Assistance Office will make the payments directly to employees.

From 1 July 2011 onwards, however, employers will be required to administer payments to employees who have had at least 12 months continuous service prior to the expected date of the birth or, where a claim is made after the birth, the actual date of the birth (whichever is later). All other eligible employees will receive payments directly from the Family Assistance Office.

**What are the obligations of employers?**

The Act sets out certain obligations on employers in administering the payments to employees. These include:

1. providing a record of each payment made to employees;
2. keeping records of the funds received from the Family Assistance Office; and
3. notifying the Family Assistance Office if certain events happen. For example:
  - a. if the employee returns to work for the employer at any time from the birth to the end of the paid parental leave period; or
  - b. if the employee ceases to be employed by the employer before the end of the paid parental leave period.

Failure to meet the obligations set out in the Act can leave employers exposed to the risk of hefty penalties being imposed by the Courts. As such, it is important that employers are aware of their obligations under the Act and ensure compliance.