



Policy Title: **PARENTAL LEAVE & FLEXIBLE WORKING ARRANGEMENTS POLICY**

Policy Type: **HUMAN RESOURCES**
 (Statutory, Financial, Administrative, Human Resources)

Policy Number: **HR023**

Approved by Council	Last Review	Current Review	Next Review
	19 May 2020	18 May 2021	17 May 2022
	Resolution #	Resolution #	Resolution #
	20.6632	21.6948	
Approved by CEO/Director:	Bernie McCarthy – CEO	 Signature.	
Effective Date	18 May 2021		
Implementation Department		Officer Position	
Corporate Services		Human Resources Manager	
Revision Number:	Document Management File #.		
4.0			

1. Policy Background/Scope

Aurukun Shire Council provides parental leave in accordance with the relevant legislation.

'Parental Leave' is a general term that encompasses long parental leave, short parental leave, short adoption leave and long adoption leave, the purpose of which is to enable an eligible employee to take time off work to provide care and support to a child.

This policy applies to employees of Aurukun Shire Council. It does not form part of any employee's contract of employment.

2. Definitions

"adoption leave" means short adoption leave or long adoption leave.

"appropriate safe job" is a job that has the same ordinary hours of work as the employee's present position, or a different number of hours, as agreed to by the employee.

"child" includes an adopted child, stepchild, an ex-nuptial child and an adult child.

"de facto partner" means a person who, although not legally married to the employee, lives with the employee in a relationship as a couple on a genuine domestic basis (whether the employee and the person are of the same sex or difference sexes) and includes a former de facto partner of the employee.

"default event" means a child being born before the expected date, a pregnancy otherwise terminating before the expected date, a child being placed for adoption before the expected placement date or another reason that is reasonable in the circumstances.

"employee couple" means two employees who are spouses or de facto partners of each other.

"immediate Family" means:

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

"long adoption leave" means leave taken by an employee to enable the employee to be the primary care giver of an adopted child.

"long parental leave" means maternity leave or leave taken by an employee's whose spouse has given birth which leave is to enable the employee to be the child's primary caregiver.

"maternity leave" means ordinary maternity leave which is available to be taken by a female employee in respect of the birth or expected birth of her child.

"parental leave" means long parental leave, short parental leave or adoption leave.

"short adoption leave" means leave taken by an employee at the time of placement of an adopted child with the employee for up to 3 weeks.

“**short parental leave**” is leave taken by an employee in connection with either the birth of a child of the employee’s spouse either at the time of the birth of the child or, on the other termination of the pregnancy for up to 3 weeks.

“**spouse**” includes a former spouse, a de facto partner or a former de facto **partner**.

“**traditional adoption**” includes the transfer children under Indigenous custom and is to be read as for “**adoption leave**”

3. Eligibility for Parental Leave

An employee, other than a casual employee, will be eligible to take unpaid parental leave if the employee has (or will have) completed at least 12 months’ continuous service with Aurukun Shire Council immediately before:

- (a) the date of birth of the child, or expected date of birth (for leave other than adoption leave); or
- (b) the day of placement of the child, or expected day of placement (for adoption leave).

With respect to periods of parental leave which exceed three (3) weeks, the employee must be the primary care giver for the child in order to be eligible for parental leave.

For employees accessing adoption leave, the child must, at the day of placement or expected day of placement:

- (a) be under 16;
- (b) not have lived continuously with the employee for at least 6 months; and
- (c) not be a child of the employee’s spouse or de facto partner.

Casual Employees

A casual employee will be eligible to take unpaid parental leave if the employee has been (or will be) employed by Aurukun Shire Council:

- (a) on a regular and systematic basis for a sequence of periods of employment during a period of at least 12 months prior to the taking of parental leave; and
- (b) would have a reasonable expectation of employment by Aurukun Shire Council on a regular and systematic basis but for the birth, the expected birth, the placement or the expected placement.

Eligibility for all employees, is also subject to employees meeting the relevant documentation requirements outlined below.

4. Period of Parental Leave - The 12 Month Limit

Except as noted below, the amount of parental leave that an eligible employee is entitled to take is 12 months (**the Guarantee Period**), less any leave taken as outlined below:

- (a) any period of leave that the employee has taken concurrently with the other member of the employee couple employed by Council;
- (b) any period of parental leave taken by the employee’s spouse;
- (c) any period of maternity leave the employee has been required to take under the “Timing of Parental Leave” section of this Policy;

- (d) any period of paid leave the employee has taken while taking unpaid parental leave.

(called the “**Deducted Leave**”)

Continuous Period

With the exception of special maternity leave and concurrent leave, any parental leave taken must be taken in one continuous period.

5. Parental Leave with Other Leave

Personal Leave may not be used during a period of unpaid parental leave. An employee who fits the definitions for Unpaid Special maternity Leave at Section 15 may make an application for Personal Leave. This application must be addressed to the employees supervisor in written form and be submitted together with a medical certificate outlining the period of the absence. Online requests will not be accepted.

An employee may apply to take any annual or long service leave to which they are entitled instead of or together with the unpaid parental leave. This will not adjust the total period of unpaid parental leave which remains at 12 months.

6. Extending Unpaid Parental Leave within the Guarantee Period

An employee who initially applied for a period of less than the Guarantee Period may extend once, without requiring the consent of Aurukun Shire Council, the period of unpaid parental leave by giving Aurukun Shire Council written notice of the extension at least 14 days, before the start of the parental leave, or if the parental leave has started, before the parental leave ends (***the First Extension***).

The notice must specify the new end date for the First Extension. The total period of leave, including the First Extension and all Deducted Leave, must not total more than 12 months.

During the Guarantee Period, if an employee wishes to extend their period of parental leave after the First Extension, they may do so only with ASC’s consent.

7. Extending Unpaid Parental Leave for up to an Additional 12 Months After the Expiration of the Guaranteed Period

An employee may request that their period of unpaid parental leave be extended for up to an additional 12 months following the expiry of the Guarantee Period or in the case of short parental leave and short adoption leave, can request an extension of that type of leave for up to 8 weeks (***the Extended Leave Period***).

In order to request an extension past the Guarantee Period, the employee must submit the request in writing to Aurukun Shire Council at least 4 weeks before the end of the Guarantee Period. That request must include any particulars nominated by Aurukun Shire Council.

Employees should be aware that Aurukun Shire Council does not have to grant the request for the Extended Leave Period. Aurukun Shire Council is entitled to refuse the request on reasonable business grounds. If Aurukun Shire Council refuses the request, it will write to the employee detailing the reasons for the refusal.

A member of an employee couple who wishes to request the Extended Leave Period must also specify in their request:

- (a) the length of the proposed extension;

- (b) the amount of unpaid parental leave that the other member of the employee couple has taken up to the time of making the request;
- (c) the amount of time that the other member proposes to take after submission of the request;
- (d) that they will be the primary care giver of the child during the Extended Leave Period;
- (e) that the amount of Extended Leave Period for the couple will not exceed 12 months.

8. Reducing Unpaid Parental Leave

If Aurukun Shire Council agrees, an employee whose period of unpaid parental leave has started may reduce the period of unpaid parental leave he or she takes.

9. Timing of Parental Leave

Maternity leave

Maternity leave for a female employee who is pregnant may start up to 6 weeks before the expected date of birth of the child. Otherwise, the employee's leave must not start later than the day of the birth of the child, or immediately after the parental leave of their spouse.

Aurukun Shire Council may require a pregnant employee to commence birth-related leave as soon as practicable up to 6 weeks before the expected date of birth once certain steps are followed. These steps are:

- (a) ASC has asked the employee to provide a medical certificate or other evidence that would satisfy a reasonable person stating:
 - (i) that the employee is fit for work, and
 - (ii) that it is advisable for the employee to continue working, considering illnesses or risks arising out of the pregnancy or hazards connected with the position.
- (b) And
 - (i) the employee has not provided the medical evidence within 7 days after the request; or
 - (ii) the employee has provided the medical evidence, but the evidence states that it is inadvisable for her to continue in her present position during the stated risk period, and there is no safe job available to transfer the employee to.

Adoption leave

Any employee who applies for and is granted unpaid adoption-related leave must, as a condition of the leave, start the leave on the day of the placement of the child. However, if the other member of the employee couple has responsibility for the care of the child from the day of the placement, the employee may take the unpaid adoption related leave from the date their partner's leave finishes.

An employee may also access up to 2 days' unpaid pre-adoption leave if required to attend an interview or an examination in order to obtain approval for the adoption and the employee cannot take some other form of leave.

10. Concurrent Leave

If an employee wishes to take a period of leave at the same time as their spouse, that concurrent period must not be for more than 8 weeks from the date of birth (for leave other than adoption leave) or the day of placement (for adoption leave) (i.e. short parental leave and short adoption leave).

Employees must give 10 weeks' notice of their intention to take concurrent parental leave and the concurrent leave is deducted from the total entitlement to unpaid parental leave.

ASC may extend the period of short parental leave at its discretion.

11. Notice and Evidence

An employee who wishes to take parental leave must submit a Parental Leave Form to Aurukun Shire Council to provide notice of the intention to take parental leave and the intended start date and end dates of the leave at least 10 weeks before starting the leave.

For leave other than adoption leave, an employee is also required to confirm the intended start and end dates of the leave at least 4 weeks before the intended start date, along with any changes to the dates.

For adoption leave, an employee is also required to confirm the intended start and end dates of the leave at least 14 days before the intended start date, along with any changes to the dates.

Aurukun Shire Council will consider the request and whether the employee is eligible for leave and will, advise the employee whether the request is granted or declined.

At the time an employee submits a request for parental leave, they must give Aurukun Shire Council:

- (a) a doctor's certificate confirming the employee is pregnant and the expected date of birth - for leave other than adoption leave;
- (b) provide a statement from an adoption agency of the expected placement date- for adoption leave;
- (c) provide evidence that the child is an eligible child for the purposes of adoption leave;
- (d) provide a statutory declaration stating the period of any parental leave sought by the employee's spouse employed by Council;
- (e) if the leave is long parental leave or long adoption leave then the statutory declaration must also state the employee is seeking to be the child's primary caregiver.

An employee will not fail to comply with the above requirements if the failure was caused by a default event and the employee gives ASC notice of the period of leave within 2 weeks after the birth / placement and a doctor's certificate stating the date on which the child was born.

If any of the information provided by an employee who applies for parental leave changes, the employee must notify ASC of the change within 2 weeks.

12. Ending Unpaid Parental Leave

An employee who takes parental leave should be aware that Aurukun Shire Council may give the employee 4 weeks' notice directing the employee to return to work if the employee ceases to be the primary care giver of the child.

A period of parental leave can also be ended in other circumstances, for example, where the pregnancy does not come to term.

13. Unpaid Special Maternity Leave

Special Maternity Leave is leave taken by a female employee because, before she starts maternity leave, she is suffering from a pregnancy related illness or her pregnancy ended (other than by the birth of a living child) before the expected date of birth of the child.

Special Maternity Leave can arise during pregnancy (in circumstances of pregnancy-related illness) or at the end of pregnancy if the pregnancy ends other than by the birth of a living child.

An employee who wishes to apply for unpaid special maternity leave and/or paid sick leave should submit a request for Leave form together with a medical certificate outlining the period of the absence.

Special maternity leave taken does not affect an employee's entitlement to unpaid parental leave or the Guaranteed Period.

14. Transfer to a Safe Job

Aurukun Shire Council may direct a pregnant employee to provide medical information concerning her pregnancy to determine whether it is safe for the employee to perform her position and/or work during her pregnancy.

If an employee provides a medical certificate stating that she is unfit to work, she may be entitled to unpaid special maternity leave, as outlined above. Alternatively, Aurukun Shire Council will consider appropriate arrangements having regard to the particular circumstances.

If an employee provides a medical certificate stating that she is fit to work, but that it is inadvisable for her to continue in her present position because of illness, or risks arising out of her pregnancy, or hazards connected with that position, Aurukun Shire Council:

- (a) may transfer the employee to a safe job if there is an appropriate safe job available. The employee's terms and conditions of employment will otherwise remain unchanged; or
- (b) may require the employee to take paid leave. The paid leave will cease at the end of the risk period in the medical certificate, when the employee gives birth, or when the pregnancy otherwise ends. This leave will be paid at the base rate of pay for the employee's ordinary hours in the risk period.

In the event that an employee who:

- (a) is not eligible to take a period of unpaid parental leave; and
- (b) is unable to perform their job; and
- (c) there is no 'safe job' to be transferred into;

then they will be entitled to take a period of unpaid 'no safe job' leave.

In the event that an employee who:

- (d) Has applied to be transferred into a safe job; and
- (e) is eligible to take a period of unpaid parental leave; and
- (f) is unable to perform their job; and
- (g) there is no 'safe job' to be transferred into;

then they will be entitled to a period of paid 'no safe job' leave.

In order to be entitled to transfer to a safe job and/or 'no safe job' leave (paid or unpaid) in these circumstances, the employee must comply with the documentation requirements outlined in at clause 15 of this Policy.

15. Parental Leave and Service

Any period of parental leave does not break an employee's continuity of service. However, a period of parental leave does not count as service for the calculation of entitlements and benefits. This includes calculation of redundancy entitlements; bonus payments and incentives, and accrual of leave.

16. Return to Work From Parental Leave

Upon return to work from parental leave, the employee is entitled to:

- (a) return to the position that they held immediately before going on parental leave; or
- (b) if the employee was promoted or voluntarily transferred to a new position during the period of parental leave, be employed in the new position; or
- (c) if, before commencing parental leave, the employee began working part time because of her pregnancy (or because of his spouse or de facto partner's pregnancy) or was transferred to a safe job because of her pregnancy, to the position the employee held immediately before working part time or being transferred to a safe job; or
- (d) if that position no longer exists, an available position for which the employee is qualified and suited nearest in status and pay to the pre-parental leave position.

17. Right to Request Flexible Working Arrangements

An employee that has returned from parental leave may request in writing a flexible working arrangement.

You are entitled to make a request if you're a full time employee, have worked for Aurukun Shire Council for at least 12 months, and are:

- A parent, or have responsibility for the care of a child who is school age or younger;
- A carer (under the Carer Recognition Act 2010);
- A person with a disability;
- Aged 55 years or older;
- Experiencing family or domestic violence;
- Providing care or support for a family member, or member of your household, affected by family or domestic violence.

Aurukun Shire Council will consider the request and respond in writing within 21 days to advise the employee of the outcome of the request. However, this can be refused on the basis of reasonable business grounds and Aurukun Shire Council must provide a written response outlining reasons for the refusal.

Flexible working arrangements may take any form but typically relate to the hours of work and arrangements for the performance of work including examples such as the timing of meal breaks, span of hours, a temporary or permanent shift to part-time employment or working from home arrangements.

18. Replacement Employees

Aurukun Shire Council may engage a temporary replacement for an employee who is on parental leave. The replacement employee will be advised that the engagement to do that work is temporary and advised of the employee's right to return to their former position.

19. Contact During Leave

Aurukun Shire Council may be required to consult with employees whilst they are on parental leave about significant work matters that directly impact on them. It is therefore important that an employee informs Aurukun Shire Council of their contact details no less than 2 weeks before the commencement of leave and as and when those details change during the period of parental leave.

20. Obligations During Leave

The employee must not engage in any conduct during the period of parental leave which is inconsistent with the employee's contract of employment or their general employee obligations to Aurukun Shire Council. This includes but is not limited to engaging in other employment and using or disclosing confidential information.

Employees can also obtain further guidance regarding their entitlements to parental leave and obligations to Aurukun Shire Council during any period of parental leave from Human Resources.

21. Forms

The forms referred to in this Policy can be obtained from Human Resources.

22. Related Documentation

Queensland Local Government Industry Awards – State 2017

Queensland Industrial Relations Act 2016