

BILL TO CLARIFY HOLIDAYS ACT AND PLEPA

Regulatory Systems (Workforce) Amendment Bill (No 2)

This Bill, which aims to amend the Employment Relations Act 2000, the Holidays Act 2003, and the Parental Leave and Employment Protection Act 1987, has passed its second reading in Parliament.

A few changes are worth noting. Among others, the Bill will:

- clarify the maximum penalty for a person involved in a breach of the Holidays Act
- clarify when the spouse or partner of a biological mother could become the primary carer of the biological mother's child for the purposes of a parental leave payment and primary carer leave.

Holidays Act penalty

The Holidays Act prescribes penalties for employers who fail to comply with certain provisions of the Act, and also for every person who is involved in the failure to comply. The maximum penalties are \$10,000 for employers who are individuals and \$20,000 for companies or corporates.

The amendment makes it clear that these penalties also apply to every person who is involved in the failure to comply.

Parental Leave and Employment Protection Act

The PLEPA specifies when the spouse or partner of a biological mother is considered a primary carer. The bill would insert a new section to provide that the spouse or partner could become the primary carer if all of the following apply:

- the child is under 1 year of age
- the spouse or partner has taken permanent primary responsibility for the child's welfare for any reason, such as the death of the biological mother
- when the spouse or partner took permanent primary responsibility for the child, the biological mother had either not applied for, or did not qualify for, a parental leave payment.

Another amendment would ensure that a spouse or partner who is a primary carer is not disqualified from a parental leave payment due to having taken partner's leave before becoming the primary carer.

The relevant section will now refer to "a person" (which would include self-employed individuals) rather than to "employee".

Applying for parental leave payments

The Bill clarifies that an employee who has become the primary carer can request a parental leave payment within a reasonable period after the employee became the primary carer. Specifically, applications should be made before, or within a reasonable period after, the earliest of the following:

- the date on which the person returns to work
- the date that is the first anniversary of the date on which the person became the primary carer in respect of the child.

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