



UNSW Student Life

Parental Leave and related entitlements Policy

Responsible Officer	HR Manager
Approved by	CEO/Executive Committee
Approval Date	November 2017
Next Review	November 2019 or when necessary
Associated Documents	Flexible Working Arrangements Policy Your guide to Parental Leave

1. Scope and purpose

The purpose of this Policy is to provide guidance on Arc's Parental Leave framework. It also sets out the roles and responsibilities of managers and employees in relation to Parental Leave and related entitlements.

Arc treats pregnant employees, and employees with parental or carer responsibilities in a fair and equal manner. This policy applies to eligible employees as further defined. Arc recognises that discrimination on the basis of sexual orientation, sex or marital status is against the law. Accordingly, Parental Leave is provided to everyone who is eligible regardless their sex, marital status and sexual orientation.

2. Definitions

An 'employee couple' is where two employees (not necessarily of the same employer) are in a spousal or de facto relationship.

The 'child of a person' is defined by the Family Law Act 1975 as someone who is a person's biological, adopted or step child.

An employee's 'de facto partner' is defined as a person who, although not legally married to the employee, lives with them in a relationship as a couple on a genuine domestic basis.

The 'reasonable business grounds' for refusing a request may include:

- the effect on the workplace (e.g. the impact on finances, efficiency, productivity, customer service)
- the inability to manage the workload among existing staff
- the inability to recruit a replacement employee.

3. Parental Leave as per National Employment Standards

Parental Leave provisions include birth-related leave and adoption-related leave. Each eligible member of an employee couple may take a separate period of up to 12 months of Unpaid Parental Leave. However, if only one person is taking leave, or if one member of an employee couple wishes to take more than 12 months leave, the employee may request a further period of up to 12 months.

Parental leave is only available to employees who have or will have responsibility for the care of a child. The leave must be associated with:

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

All employees are eligible for Unpaid Parental Leave if they have completed at least 12 months of continuous service with Arc. This includes casual employees, but only if:

- they have been employed by Arc on a regular and systematic basis for a sequence of periods over at least 12 months
- had it not been for the birth (or expected birth) or adoption (or expected adoption) of a child, they would have a reasonable expectation of continuing employment with Arc on a regular and systematic basis.

In circumstances where an employee is ineligible for Parental Leave under NES, Arc may consider granting a period of other leave (such as accrued annual leave or unpaid leave). That other leave is not classified as Parental Leave for any purposes.

3.1 One employee taking Unpaid Parental Leave

The following rules apply where one employee (or only one member of an employee couple) takes leave:

- Leave must be taken in a single continuous period (paid leave, such as Arc Paid Parental Leave or Annual Leave, may be taken at the same time).
- In the case of a pregnant employee, leave can start up to six weeks before the expected date of birth, or earlier if Arc and employee agree. If the employee is not giving birth to the child, leave starts on the date of birth or placement of the child.
- Leave may start at any time within 12 months after the birth or placement of the child if:
 - the employee has a spouse or de facto partner who is not an employee, and
 - the spouse or de facto partner has responsibility for the care of the child.

3.2 Both members of an employee couple taking Unpaid Parental Leave

The following rules apply to an employee couple if both employees take Unpaid Parental Leave:

- The employees are entitled to no more than 24 months of leave between them, which generally must be taken separately in a single continuous period.
- If the employee who takes leave first is pregnant or gives birth, they may start their leave up to 6 weeks before the expected date of birth, or earlier if Arc and employee agree.
- If the employee who takes leave first is not pregnant, their leave must start on the date of birth or placement of a child.
- Both employees of an employee couple may take leave at the same time for a maximum period of 8 weeks. This leave must be taken within 12 months of the birth or adoption of a child. The concurrent leave may be taken in separate periods. Each period must be no shorter than 2 weeks unless the employer agrees.
- Concurrent leave is Unpaid Parental Leave and is deducted from an employee's Unpaid Parental Leave entitlement of 12 months.
- Paid leave, such as Arc Paid Parental Leave and Annual leave, may be taken at the same time as Unpaid Parental Leave.

3.3 Extending Unpaid Parental Leave

An employee taking 12 months Unpaid Parental Leave may request an extension of a further 12 months leave (up to 24 months in total), unless they are a member of an employee couple and the other member has already taken 12 months of leave.

The request must be in writing and given to Arc at least four weeks before the end of the employee's initial period of parental leave. Arc must respond in writing within 21 days, stating whether they grant or refuse the request. Arc may only refuse if the employee has been given a reasonable opportunity to discuss their request, and there are reasonable business grounds to do so. The reasoning must be detailed in writing.

3.4 Six weeks before the birth rule

A pregnant employee wanting to work the six weeks before birth must provide a medical certificate containing a statement from their doctor that they are fit for work. Arc will require the employee to start their parental leave as soon as possible if the employee:

- fails to provide the requested medical certificate within seven days of the request or
- provides a certificate within seven days stating that they are not fit for work.

This form of directed leave runs until the end of the pregnancy or until the planned leave was due to start, and is deducted from the employee's unpaid parental leave entitlement. It is exempt from the rules about when the leave must start, that it be taken in a continuous period, and notice requirements.

3.5 Notice and evidence requirements

An employee is not entitled to take Unpaid Parental Leave unless they:

- inform Arc of their intention to take unpaid parental leave by giving at least 10 weeks written notice (unless it is not possible to do so)
- specify the intended start and end dates of the leave
- at least four weeks before the intended start date:
- confirm the intended start and end dates or
- advise Arc of any changes to the intended start and end dates (unless it is not possible to do so).

An employee must provide evidence that would satisfy a reasonable person of the actual or expected date of birth of a child (e.g. a medical certificate), or the day or expected day of placement of a child under 16.

3.6 Entitlements on Unpaid Parental Leave

Unpaid Parental Leave taken will not break an employee's continuity of service with Arc. However, any period of Unpaid Parental Leave will not be counted as service for the accrual of any employee related entitlements or benefits such as annual leave, personal leave and redundancy calculations. Employees are not entitled to payment for Personal Leave, Arc Paid Days or Public Holidays during Parental Leave.

During unpaid leave all standard employer superannuation contributions will cease. However, an employee can choose to make voluntary contributions to the plan.

4. Other entitlements related to Parental Leave

4.1 Where there is a stillbirth or infant death

An eligible pregnant employee can reduce or cancel their period of unpaid birth-related Parental Leave if their pregnancy ends due to their child being stillborn, or if their child dies after birth. Under these circumstances, if the pregnant employee is not fit for work, she may be entitled to paid personal leave or unpaid special maternity leave.

4.2 Unpaid special maternity leave

An eligible pregnant employee is entitled to take unpaid special maternity leave if the employee is not fit for work because of:

- a pregnancy-related illness, or
- the pregnancy ends, not in the birth of a living child, within 28 weeks of the expected date of birth.

The entitlement to unpaid parental leave is not reduced by the amount of any unpaid special maternity leave taken by the employee while they are pregnant.

4.3 Transfer to a safe job or 'no safe job leave'

A pregnant employee has an entitlement to be transferred to an 'appropriate safe job'. An 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 ordinary hours agreed to by the employee.

This entitlement applies if the employee has provided evidence (e.g. a medical certificate) that would satisfy a reasonable person that they are fit for work, but that it is inadvisable for them to continue in their present position during a period because of:

- illness or risks arising out of the pregnancy or
- hazards connected with that position.

Arc will pay the employee at their full rate of pay for the position they were in before the transfer and for the hours they work during the risk period.

If there is no appropriate safe job available, and the employee is entitled to unpaid parental leave then the employee is entitled to take paid 'no safe job leave' for the risk period, and be paid at their base rate of pay for ordinary hours of work during the risk period.

If there is no appropriate safe job available, and the employee is not entitled to unpaid parental leave then the employee is entitled to take unpaid 'no safe job leave' for the risk period.
The no safe job leave ends when the period of unpaid parental leave starts.

4.4 Consultation requirements on Unpaid Parental Leave

Arc must take all reasonable steps to give the employee on Unpaid Parental Leave the information about (and an opportunity to discuss) the effect of any decisions having a significant effect on the status, pay or location of their pre-parental leave position.

4.5 Return to work guarantee

An employee is guaranteed to return to work immediately following a period of Unpaid Parental Leave, entitling them to:

- their pre-parental leave position, or
- if that position no longer exists, an available position for which they are qualified and suited, which is nearest in status and pay to their pre-parental leave position.

4.6 Keeping in touch days

A keeping in touch day is when an employee performs work for the employer on a day or part of a day while on a period of approved leave. Such a day (or part of a day) will be considered a keeping in touch day if:

- the purpose of performing work is to enable the employee to keep in touch with their employment (this will also assist when the employee returns to work once their leave has ended)
- both the employee and the employer consent to the employee performing specific work on that day
- the day is not within 42 days of the date of birth or placement of the child to which the period of leave relates (if requested by the employer)
- the day is not within 14 days of the date of birth or placement of the child to which the period of leave relates (if requested by the employee)
- the employee has not already performed 10 days of work during the period of leave that were keeping in touch days.

A staff member does not have to use all of the 10 days and the days do not need to be used all at once.

An employee who performs work on a keeping in touch day is entitled to payment in accordance with the relevant contract of employment.

Managers should make reasonable contact with staff during their Parental Leave period, for example, to update them on what is happening at work, promotion opportunities or to discuss their return to work. This contact is separate to Keeping in Touch days.

4.7 Unpaid pre-adoption leave

All employees (regardless of their length of service) are entitled to up to two days of unpaid pre-adoption leave to attend any interviews or examinations required for the adoption of a child.

This leave may be taken as:

- a single continuous period of up to two days or
- any separate periods to which the employee and employer agree.

5. Australian Government Paid Parental Leave scheme

Employees may also have an entitlement to the Australian Government Paid Parental Leave scheme that provides government-funded Parental Leave Pay, and Dad and Partner Pay at the National Minimum Wage. For more information about government-funded paid parental leave, employees can visit the Department of Human Services' website at www.humanservices.gov.au or call them on 13 61 50.

Staff who are eligible for Arc's Paid Parental Leave may receive the Government's Paid Parental Leave pay in addition to any Arc's Parental Leave payment. The Government's payments do not attract any entitlements and are not considered for leave accrual, workers compensation or superannuation. The payments are subject to tax. The Government's Parental Leave pay may be paid before, after, or at the same time as Arc's Paid Parental Leave.

6. Arc's Paid Parental Leave

- 6.1 Permanent staff members who have completed 12 or more months of continuous service (as described in Arc's Collective Agreement) and qualify for the Unpaid Parental Leave are entitled to 12 weeks of Arc's Paid Parental Leave. The weekly amount will be paid at employee's current hourly rate for an average number of hours worked each week during 12 months preceding the taking of leave (if the employee worked 38 hours for 6 months and 20 hours for another 6, their weekly pay on Paid Parental Leave will be for 29 hours a week).
- 6.2 Eligible long-term casual staff members (as defined in point 3 of this policy) who have completed 12 or more months of continuous service and qualify for the Unpaid Parental Leave will be entitled to 12 weeks Arc's Paid Parental Leave at the rate and hours calculated by using the weekly average for the 12-month period directly before the Parental Leave period commences.
- 6.3 Fixed-term staff members (other than casual employees) who have completed 12 or more months of continuous service and qualify for the Unpaid Parental Leave are entitled to 12 weeks of Paid Parental Leave calculated as per point 6.1. If their contract nominally expires before the end of the Parental Leave they will be only paid a part of their entitlement (up to the end of their employment).
- 6.4 Where both parents are employed by Arc, paid leave may be shared between them to a total of 12 weeks or paid to one employee only and will be paid to the staff member who is the primary care giver at any given time.
- 6.5 Paid parental leave is inclusive of public holidays and will be counted as service for the purpose of the accrual of entitlements. Employees may elect to receive their Paid Parental Leave at half pay in accordance with the existing pay cycle for twice the duration of the paid parental leave. The annual and personal leave will accrue at the proportionate rate of the entitlement during that period.
- 6.6 During Paid Parental Leave, the employer superannuation contribution will continue as normal.

7. Arc's Partner's Leave

- 7.1 Permanent staff members who have completed 12 or more months of continuous service and whose partner is pregnant or going to be a primary carer of the adopted child, will be entitled to a maximum of two weeks paid Partner's Leave at the time of the birth or adoption of the child provided they are not taking the Arc's Paid Parental Leave.
- 7.2 The weekly pay will be calculated following the same principle as described in point 6.1.

- 7.3 Partner's Leave must be taken immediately before or after the time of the birth or adoption of the child. In any case, the entitlement to Partner's Leave expires after 3 months from the birth/adoption of the child.

8. Anti-discrimination clause

While on Parental Leave (paid or unpaid) the employee continues to enjoy protection from discrimination. This includes protection from discriminatory treatment in recruitment, promotion or other aspects of employment.

9. Return to work after Parental Leave

- 9.1 A staff member may not return to work within the six-week period directly after giving birth.
- 9.2 Relevant Manager will contact the staff member prior their return to work from Parental Leave to discuss the employee plans to manage their return and any accommodations that Arc may be able to make e.g. flexible working arrangement.
- 9.3 A staff member has the right to their former position if they resume duty within a period up to the child's second birthday. If a staff member's previous position no longer exists, the staff member is entitled to return to an available position for which they are qualified and that is nearest in status and pay to their previous position.
- 9.4 Nursing mothers will be provided the opportunity to take additional breaks for expressing and storing breast milk and to breastfeed if the child is in nearby care. This should be discussed and agreed with the manager of the employee.

Version	Date	Author	Approval	Sections modified	Details of amendments
1.0	28/01/2014	HR Manager	CEO /Executive Committee	N/A	This is a new policy
2.0	October 2017	HR Manager	CEO /Executive Committee	All	Giving the policy a different structure to differentiate between NES, DHS and Arc entitlements. Including Parental Leave related entitlements.