

OFFICE OF THE MINISTER FOR WORKPLACE RELATIONS AND SAFETY

The Chair
Cabinet Legislation Committee

Employment Standards Legislation Bill: accompanying regulations

Proposal

- 1 I propose that the Cabinet Legislation Committee authorise the submission of the following legislative instruments to the Executive Council:
 - a. *Parental Leave and Employment Protection Regulations 2016* (the PLEP regulations)
 - b. *Employment Relations (Infringement and Reminder Notices) Regulations 2016* (the IN regulations).

Policy

- 2 The Employment Standards Legislation Bill (the Bill), which has recently passed third reading, amends the following pieces of legislation:
 - a. *the Employment Relations Act 2000*
 - b. *the Holidays Act 2003*
 - c. *the Minimum Wage Act 1983*
 - d. *the Parental Leave and Employment Protection Act 1987*
 - e. *the Wages Protection Act 1983*.
- 3 The amendments to these Acts are due to commence on 1 April 2016 and the PLEP and IN regulations need to come into force by this date.
- 4 Both sets of regulations deal only with administrative and procedural matters and no new policy decisions were required for them.

PLEP regulations

- 5 The amendments to the *Parental Leave and Employment Protection Act* (the PLEP Act) extend coverage of the parental leave scheme to a wider group of 'primary carers' (other than just biological parents and formal adoptive parents) and to a wider group of employees (including those who work for multiple employers or who have recently changed employers).
- 6 The PLEP regulations are made under sections 33(c), 36 and 73 of the PLEP Act. They replace the Parental Leave and Employment Protection (Forms) Regulations 2002 to reflect these amendments.
- 7 The PLEP regulations set out the administrative and procedural matters that are necessary to support the operation of the parental leave scheme, such as:
 - a. the evidence, information and documentation required to support applications for primary carer leave and parental leave payments
 - b. the manner in which applications for parental leave payment must be made

- c. the manner in which applications for transfer of, or succession to, parental leave payments must be made and any information that must be provided in such an application
- d. the information and documentation required for an application for a preterm baby payment
- e. the form and content of the various notices and declarations required by the PLEP Act.

Evidence to support applications

- 8 In the original Cabinet paper seeking policy decisions to modernise the parental leave scheme, Cabinet agreed that the regulations would give effect to a verification process involving a statutory declaration for the groups of employees that the extended provisions will apply to [SOC Min (15) 3/1 refers].
- 9 In situations where the applicant is not the biological mother or her spouse or partner, the PLEP regulations provide for a hierarchy of evidence that is required to demonstrate that the applicant is the primary carer. Depending on the circumstances, this could be a court order or a letter from the Ministry of Social Development. If no formal evidence exists (such as might be the case in a whāngai arrangement) a statutory declaration from the applicant will be required verifying that they are the primary carer and have permanent primary responsibility for the child.
- 10 If the employee has worked for a single employer, then that employer will verify their hours and income, as is currently the case. Employees who have worked for more than one employer, and are relying on income from more than one employer to establish the amount of the parental leave payment, are required to provide a statutory declaration of their hours and income (as is currently the case for self-employed persons).
- 11 No other policy decisions were required for these regulations.

IN regulations

- 12 The amendments to the *Employment Relations Act* in part two of the Bill introduce an infringement notice regime for breaches of obligations in relation to record keeping. New section 235D (inserted by clause 110 of the Bill) requires that infringement notices must be in the prescribed form and reminder notices must contain the prescribed information. The IN regulations set out the forms for these notices and the information they must contain.
- 13 No policy decisions were required for these regulations.

Timing and 28-day rule

- 14 The Bill passed third reading on 10 March. Submission of these two sets of regulations to Executive Council on Monday, 21 March is conditional on the Bill receiving Royal Assent prior to this date.
- 15 The amendments to employment legislation in the Bill commence on 1 April 2016. This date is designed to coincide with the extension of the period of parental leave payments from 16 to 18 weeks. I am therefore seeking a waiver of the 28-day rule:
 - a. so that these two sets of regulations can come into force by that same date

- b. on the grounds that the PLEP regulations confer a benefit on the public (as the extended parental leave scheme cannot operate without them) and the IN regulations only prescribe the necessary forms for labour inspectors to use and so have little or no effect on the public.
- 16 In the case of the PLEP regulations, Inland Revenue has indicated that they are comfortable with the time available to finalise their documentation relating to applications for parental leave payments.

Compliance

- 17 Both sets of regulations comply with each of the following:
- a. the principles of the Treaty of Waitangi
 - b. the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993
 - c. relevant international standards and obligations
 - d. the principles and guidelines set out in the Privacy Act 1993
 - e. the LAC Guidelines: Guidelines on Process and Content of Legislation.

Regulations Review Committee

- 18 There do not appear to be any grounds for the Regulations Review Committee to draw these regulations to the attention of the House under Standing Order 319.

Certification by Parliamentary Counsel

- 19 These regulations have been certified by Parliamentary Counsel Office as being in order for submission to Cabinet.

Regulatory Impact analysis

- 20 A Regulatory Impact Statement accompanied the original Cabinet paper seeking policy decisions to modernise the parental scheme, which included one recommendation relating to the PLEP regulations [SOC Min (15) 3/1 refers]. No other policy decisions were required for either set of regulations.

Publicity

- 21 I will not be undertaking any publicity specifically in relation to these regulations, but will be making a media statement when the Bill passes.

Consultation

- 22 Under section 73(3) of the PLEP Act, I am required to consult with any persons or organisations that I consider appropriate before recommending the making of the PLEP regulations. Consultation was undertaken with key stakeholders on the nature of the evidence and verification that the regulations prescribe.
- 23 The following government agencies have been consulted on this paper: Inland Revenue, The Treasury, State Services Commission, Ministry of Justice, Ministry of Social Development, Ministry of Health, Ministry for Women, the New Zealand Defence Force and the Accident Compensation Corporation. The Department of Prime Minister and Cabinet has been informed.

Recommendations

- 24 The Minister for Workplace Relations and Safety recommends that the Committee:
- 1 **Note** that the amendments to employment legislation in the Employment Standards Legislation Bill (the Bill) are due to come into force on 1 April 2016
 - 2 **Note** that, in order to fully implement the provisions in the Bill, the following sets of regulations need to come into force on the same date:
 - 2.1 *Parental Leave and Employment Protection Regulations 2016*
 - 2.2 *Employment Relations (Infringement and Reminder Notices) Regulations 2016*
 - 3 **Note** that section 73(3) of the *Parental Leave and Employment Protection Act 1987* requires the Minister to first consult with any persons or organisations that the Minister considers appropriate, having regard to the subject matter of the proposed regulations, before recommending the making of an Order in Council about parental leave payments under section 73(1) of that Act
 - 4 **Note** the advice of the Minister for Workplace Relations and Safety that the requirement in recommendation 3 has been met
 - 5 **Authorise**, subject to the Bill receiving Royal Assent, the submission to the Executive Council of the:
 - 5.1 *Parental Leave and Employment Protection Regulations 2016*
 - 5.2 *Employment Relations (Infringement and Reminder Notices) Regulations 2016*
 - 6 **Note** that a waiver of the 28-day rule is sought:
 - 6.1 So that these two sets of regulations can come into force by 1 April 2016 when the provisions of the Bill commence
 - 6.2 On the grounds that the parental leave regulations confer a benefit on the public (as the extended parental leave scheme cannot operate without them) and the infringement notice regulations only prescribe the necessary forms for labour inspectors to use and so have little or no effect on the public
 - 7 **Agree** to waive the 28-day rule so that both sets of regulations can come into force by 1 April 2016.

Hon Michael Woodhouse
Minister for Workplace Relations and Safety

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