

Payroll Tax Ruling PTA012

Exemption for Maternity, Paternity and Adoption Leave Pay

Version	Issued	Dates of Effect	
1	1 July 2009	From: 1 July 2009	To: Current

PREAMBLE

The *Payroll Tax Act* (the Act), which commenced on 1 July 2009, rewrites the *Pay-roll Tax Act* to largely harmonise it with the legislation of other states.

Section 53 and clause 19A of Schedule 2 to the Act exempt from payroll tax, wages paid or payable to employees on maternity leave, adoption leave or paternity leave.

The exemption:

1. applies to wages paid or payable to female employees taking maternity leave, male and female employees taking adoption leave and male employees taking paternity leave;
2. applies to all wages other than fringe benefits;
3. is limited to a maximum of 14 weeks pay;
4. applies irrespective of whether the leave is taken before or after the birth or adoption; and
5. must be supported by keeping relevant records.

The purpose of this Payroll Tax Ruling is to explain the application of the exemption for maternity, adoption and paternity leave pay and clarify the elements of the exemptions.

RULING

Definition of maternity leave (section 53(1)(a) of the Act)

Maternity leave is defined in the Act as leave given to a female employee in connection with her pregnancy or the birth of her child, other than annual leave, recreation leave, sick leave or similar leave.

Maternity leave may be taken during or after the pregnancy.

Example 1

In relation to the birth of her child, Mary took long service leave of 10 weeks, annual leave of 4 weeks and unpaid leave of 38 weeks. The wages paid for all the leave taken by Mary are taxable.

Example 2

In relation to the birth of her child, Mary took long service leave of ten weeks, annual leave of four weeks, paid maternity leave of 12 weeks and unpaid leave of 26 weeks. Only the wages for the 12 weeks maternity leave are exempt. Wages paid for the long service leave and annual leave are taxable.

Definition of adoption leave (section 53(1)(b) of the Act)

Adoption leave refers to leave given to an employee (male or female) in connection with the adoption of a child. The employee may take the adoption leave before or after the adoption of a child (section 53(2) of the Act). As with maternity and paternity leave, sick leave, recreation leave, annual leave or any similar leave taken in relation to the adoption is not exempt.

Example 3

John has taken paid adoption leave in 3 distinct parts, one week to familiarise himself with the adoption process, two weeks to go interstate/overseas to meet the child and a further three weeks after the child arrived in Darwin.

All six weeks are considered to be adoption leave. Consequently, wages paid for the six weeks leave are exempt.

Definition of paternity leave (clause 19A(1)(a) of Schedule 2 to the Act).

Paternity leave is defined as leave given to a male employee in connection with the pregnancy of a female carrying his unborn child or the birth of his child, other than annual leave, recreation leave, sick or similar leave.

Paternity leave may be taken during or after the pregnancy.

Example 4

In relation to the birth of his child, John took long service leave of ten weeks, annual leave of four weeks, paid paternity leave of 12 weeks and unpaid leave of 26 weeks. Only the wages paid for the 12 weeks' paternity leave are exempt. Wages paid for the long service leave and annual leave are taxable.

Types of wages that are exempt

Exempt wages include wages/salaries, employer superannuation contributions, allowances, bonuses and commissions. Fringe benefits provided to an employee on maternity or adoption leave are not exempt (section 53(5) of the Act).

Maximum entitlement

For any one pregnancy or adoption, the exemption is limited to wages for a maximum of 14 weeks full time leave for a full time employee or the equivalent amount if taken over a longer period e.g. 28 weeks leave being paid at half pay. In the case of a part-time employee, the exemption is limited to a maximum of 14 weeks leave paid at the applicable part-time rates of pay.

Example 4

Cathy is a part-time employee. She works three days a week at a rate (including employer superannuation contributions) of \$100 per day. The maximum amount of exempt wages that can be paid to Cathy is \$4200 (\$100 x 3 days x 14 weeks).

Example 5

ABC Pty Ltd has a policy of providing 12 weeks paid maternity leave. Stella, a full time employee elects to take the maternity leave over 24 weeks at half pay. Wages relating to this period are fully exempt.

Record Keeping

To claim the maternity leave exemption, an employer must obtain a medical certificate or statutory declaration from the employee. These documents must specify that the employee was pregnant or that the employee has given birth and the date of birth (section 54(1) of the Act).

To claim the exemption in relation to paternity leave, an employer must obtain a statutory declaration by the employee stating that a female is or was pregnant with his unborn child, or that the child has been born and the date of birth (clause 19A 96) of Schedule to the Act).

To claim the adoption leave exemption, an employer must obtain a statutory declaration from the employee stating that a child has been placed in the employee's custody pending the making of an adoption order or that an adoption order has been made or recognised in the employee's favour (section 54(2) of the Act).

The records substantiating a claim for the maternity and adoption leave exemption must be kept for five years (section 74 of the *Taxation Administration Act*).

Please note that rulings do not have the force of law. Each decision made by the Territory Revenue Office is made on the merits of each individual case, having regard to any relevant ruling. Commissioner's Guideline CG-GEN-001, which sets out information on the revenue publication system, is incorporated into and is to be read as one with this Ruling. All Circulars, Guidelines and Rulings are available from www.revenue.nt.gov.au.



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