Employers' Handbook

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Introduction

Prepared by Business SA, the Employers' Handbook is a practical reference guide, providing an understanding of the day-to-day employment and general human resource issues to help manage your business and employees more effectively.

The Employers' Handbook provides an overview on various employment related matters to ensure your business is complying with current legislation and is meeting best practice methods, such as employment requirements, leave entitlements, termination of employment, health and safety, discrimination and education and training.

Various State and Federal legislation that affects such employment and workplace matters are covered throughout the Handbook and are referenced accordingly.

Workplace Relations Legislation

Due to the South Australian Government referring its industrial relations powers to the Federal Government on 1 January 2010, South Australian employers who were covered by the State Industrial Relations system (non-constitutional corporations) (with the exception of State Government enterprises, State public sector and the local government organisations) are now covered by the Federal workplace relations laws.

Therefore, where reference is made to workplace relations, the Handbook primarily focuses on those employers covered by the Federal workplace relations system and their workplace responsibilities, with minor commentary provided to employers under the State industrial relations system and appropriately noted.

The following businesses are covered under the Federal workplace relations system (*Fair Work Act 2009*):

- constitutional corporations;
- employers that have been transferred to the Federal workplace relations system through a State referral of industrial relations powers;
- the Commonwealth and its authorities;
- employers of maritime or waterside workers or flight crew officers; and
- all Victorian, Northern Territory, Australian Capital Territory, Christmas Island and Cocos (Keeling) Islands employers.

The following businesses are covered under the State industrial relations system (*Fair Work Act 1994)*:

- South Australian public sector agencies;
- South Australian local government sector employers; and
- South Australian government business enterprises.

The titles of the Federal and State workplace relations legislation are very similar. However, it is important to be able to differentiate the Federal and State legislation as they cover different jurisdictions and impose significantly different legislative requirements on employers. Therefore, throughout the Handbook, the Federal *Fair Work Act 2009* is known as the **'Federal Act'**, and the State *Fair Work Act 1994* is known as the **'State Act'**.

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Ascertaining whether a worker is an employee or a contractor is imperative because the status of such a person determines many of their rights and obligations, as well as the rights and obligations of the person/organisation they are performing the work for.

The common law distinguishes between a 'contract **of** service' and a 'contract **for** services'. An employee works under a contract of service and a contractor works under a contract for services.

2.6 Testing the Nature of the Relationship

It is a complex legal task to define the difference between an employee and an independent contractor. It should be understood that although it is not possible to provide definitive tests to ascertain the nature of a particular contract, the following guidelines outline the tests which are commonly used by the courts to determine whether an employment relationship exists.

2.6.1 The Control Test

The oldest and still the most important test of an employment relationship is the 'Control Test'. This test is based on the principle that an employer has the right to control an employee and to issue instructions as to how, when and by whom the job will be performed. The issue is actually whether or not the employer (or principal) has the lawful authority to give commands, not necessarily whether instructions are actually given on a continuing basis.

An independent contractor will be bound by the terms of their contract to perform certain duties; however, the discretion as to how, when and with what the job is performed will lie with the contractor.

The inherent problem with the Control Test is where there are specialised professional staff involved, as the issue of control is not nearly so easy to define.

2.6.2 The Integration Test

Another test that is accepted by the courts is the 'Integration Test' which involves an examination of the working relationship to determine whether or not the employee is part of an organisation or merely an agent engaged to perform a task independently of the organisation. An independent contractor will be one that is not an integral part of the business.

Indicators of integration include the use of company business cards, the wearing of company uniforms, the use of company cars and similar factors which signify that the worker is representing the company rather than their own business.

Each of these, and many other factors, indicate an employment relationship rather than an independent contracting relationship as they speak to the degree of the worker's integration. In addition, if the job is carried out exactly in the same way as it would be done by an employee on the premises, then it is another indication that an employment relationship may exist.

2.6.3 The Use of Weighted Indicia/Consistency Test

Another development has been that of the 'Indicia/Consistency Test', whereby the court examines all of the characteristics of the relationship to determine which characteristics are consistent with an employment relationship and which are consistent with an independent contractual relationship. Once this assessment has been made, the various indicia are weighted, or prioritised, such that the characteristics which indicate the degree of control are given the most weight.

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2.1 The Recruitment Process

"Recruitment" can be defined as the process of sourcing prospective employees and encouraging desirable and suitably qualified persons to seek employment with an organisation. In order to achieve this objective, it is necessary for the employer to clearly establish in their own mind the specific requirements and responsibilities of the position. This approach allows for a thorough examination of applicants in order to determine if they can meet the demands of the position.

The recruitment process itself is critical and needs to be carefully managed to ensure the best possible outcome in selecting the appropriate person for the vacant position. Preparation and collection of the necessary information for each stage of the process, as listed below, is fundamental in ensuring the successful recruitment of a new employee.

Employers should ensure that the recruitment and selection process does not unlawfully discriminate against any potential or current employee.

Use of the 'Merit Principle' throughout the recruitment and selection process will assist in minimising the chances of an aggrieved applicant filing a claim for alleged discrimination based on one of the listed factors.

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The key stages in the process include:

- Position Analysis.
- Position Descriptions and Person Specifications.
- Updating policies and procedures.
- Advertising.
- Identifying other sources of potential applicants.
- Recruitment and selection strategies.
- Assessment and selection training.

Each of these individual areas are examined in more detail below.

2.1.1 Position Analysis

It is essential that the employer has an understanding of exactly what the intention of the position is in order to be able to specify what characteristics, skills, qualifications and experience potential employees should have in order to be able to fulfil the requirements of the position. This function is made easier if there are existing Position Descriptions that can be reviewed for accuracy and relevance.

Whether a formal and/or accurate Position Description exists or not, it is recommended that a Position Analysis is conducted and that position requirements and specifications are established prior to sourcing applicants and/or advertising.

A **"Position Analysis"** is a process of identifying duties, responsibilities and expected outcomes of a position and the skills, knowledge, training and abilities to adequately perform these duties.

The Position Analysis may be a formal or informal process, but should be structured to answer a set of basic questions which are:

- What are the duties involved in the position?
- How will those duties of the position be carried out?
- Will there be a completion date for the position or is it ongoing?
- Is this position necessary or not?

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2.1 Workplace Relations Legislative Record Keeping Requirements

The Federal Fair Work Regulations 2009 (the Regulations) prescribe the following record keeping requirements that employers in the Federal workplace relations system must comply with:

- records must be kept in English;
- they must be in a legible form that is readily accessible to a Fair Work Inspector;
- a copy of a record must be made available to an employee, a former employee and/or a Fair Work Inspector for inspection and copying and an employer must give reasonable assistance to such persons in the conduct of an interview about those records;
- employers must not alter a record, or allow a record to be altered;
- employers must correct any error in a record as soon as they become aware of it and any correction to a record must record the nature of the error with the correction;
- an employer must not make, or make use of, an entry in any record, if the employer does so knowing that the entry is false or misleading;
- an employer must transfer to a new employer all records concerning transferring employees upon the transfer of business; and
- an employer must keep an employment record for seven (7) years.

The Regulations also have requirements in relation to time frames for the production of these records for inspection. Part 3 - Retention and Inspection of Employment Records of this Chapter sets out the requirements in more detail should there be a request or demand to produce these records for inspection.

It is strongly advised that professional assistance be obtained in the event of such a request or demand being received.

2.1.1 Specific Records

In order to comply with the requirements of various legislative and industrial instruments (such as awards and agreements) and in order to enable a complete history of the employment relationship to be known, it is recommended that for each person employed, a specific employee record should be established, which should include the following information:

- the name of the employee;
- the name and Australian Business Number (if any) of the employer;
- the employee's address and contact number in case of emergencies;
- the employee's classification;
- whether the employee's employment is full-time or part-time;
- the employee's age (only where required for correct payment of wages);
- if the employer and the employee have agreed in writing to an averaging of the employee's hours of work, the employer must keep a copy of that agreement;
- the employee's date of commencement and termination;
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1.1 Introduction

There are various forms of leave entitlements, some legislated entitlements being provided by Federal workplace relations legislation and other legislated entitlements being provided by State and Territory legislation. Further, leave entitlements in excess of the legislated minimum may be provided through company policies or enterprise agreements.

This Chapter provides an overview of the leave entitlements under the Federal *Fair Work Act 2009*, together with an outline of additional leave entitlements that businesses may elect to provide as part of their human resource practices.

The Chapter focuses on national system employers, that is, constitutional corporations and private sector employers referred to the Federal workplace relations system, and covered by the Federal *Fair Work Act 2009*.

1.2 Leave Entitlements Under National Employment Standards

Under the Federal *Fair Work Act 2009*, all employees in the Federal workplace relations system (commonly referred to as 'national system employees'), award-covered as well as award-free, high-income as well as low-income employees, are covered by the National Employment Standards (NES) which are ten (10) legislated minimum conditions of employment.

In relation to leave, under the NES, employees may be entitled to the following:

- annual leave;
- personal/carer's leave;
- compassionate leave;
- parental leave;
- long service leave; and
- community service leave.

Modern Awards, enterprise agreements, Division 2B State Instruments or employment contracts cannot provide entitlements that are less beneficial to the employee than those provided in the NES, but may provide entitlements that are more generous to the employee than those provided in the NES or include terms dealing with the machinery/operational issues of the NES. For example, a Modern Award or enterprise agreement may increase the amount of annual leave or specify when payment for annual leave must be made.

1.3 Long Service Leave

Long service leave is commonly provided by State or Territory long service leave legislation. In South Australia, employees may be entitled to long service leave after ten (10) years of continuous service under the *Long Service Leave 1987*. However, employees in the building and construction industry in South Australia may be entitled to long service leave under the Construction Industry *Long Service Leave Act 1987*.

Further, under the National Employment Standards (NES) contained in the Federal *Fair Work Act 2009*, long service leave is a transitional entitlement, pending development of a uniform national long service leave standard with the States and Territories. The NES preserves long service leave entitlements (referred to as 'applicable award-derived long service leave terms') in pre-modernised awards (i.e. Pre-Reform Federal Awards and Transitional Awards).

[For more information on long service leave, refer to Chapter 6 - Long Service Leave].

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The implied conditions of employment (i.e. duties) can be summarised as follows:

Employee's Duties

- Duty to obey lawful commands of the employer.
- Duty to display due care and skill in the performance of the work.
- Duty of fidelity.
- Duty of confidentiality.

Employer's Duties

- Duty to pay fair and reasonable wages.
- Duty to provide work whilst the employee is employed.
- Duty to take all reasonable care to avoid risk of injury to the employee.
- Duty to not destroy the trust and confidence between employer and employee.
- Duty to pay reasonable expenses.

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2.3 Procedural Fairness

"Procedural fairness" is about ensuring that the process by which the employment was terminated was fair and applied in a consistent manner and that the person making the decision acts on the evidence, having considered mitigating factors and the employee's response before making a decision.

The termination process would not be viewed as being consistent with procedural fairness if it appeared that the decision to terminate the employment would had been made before the employee had been given a chance to respond and/or that similar performance or conduct by other employees has been condoned or treated as less serious.

If an unfair dismissal claim is lodged by an employee, in assessing the termination was 'harsh, unjust or unreasonable', the criteria based on the notion of procedural fairness will be taken into account by Fair Work Australia.

Therefore, the termination procedure should incorporate the following points to ensure compliance with the notation of procedural fairness:

- the employment shall not be terminated unless there is a valid reason related to the employee's performance or conduct (including its effect on the safety and welfare of other employees);
- the employee must be notified of the reason;
- the employer should ensure that the employee has received the appropriate work instructions and training to adequately understand their duties and responsibilities;
- the employer should ensure that the appropriate standard of work performance and conduct required has been clearly advised to the employee in writing;
- the employee must be given an opportunity to respond to allegations of unsatisfactory performance or conduct, including serious and wilful misconduct;
- the employee is entitled to bring a support person to a disciplinary interview;
- if the circumstances are suspicious, unclear or contested, a thorough investigation must be conducted in an unbiased manner and, if appropriate, witness statements taken to verify the reasons that are relied upon;

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2.1 Introduction

In South Australia, the majority of employers are bound by the provisions of the *Long Service Leave Act 1987* and the *Long Service Leave Regulations 2002*. The Act came into operation on 1 January 1988, covering areas of administration, coverage, calculation of entitlements, record keeping obligations and increased penalties for offences committed.

In 1997, further changes were made in the form of the *Long Service Leave (Miscellaneous) Amendment Act 1997*, with the option of 'cashing out' by agreement between the employer and the employee being introduced.

Additional changes were introduced in January 2009 via the *Long Service Leave (Unpaid Leave) Amendment Act 2008* which altered the method of calculating entitlements for employees working varied hours. This amendment meant that paid leave is considered as time worked and a full week of unpaid leave (including sick leave without pay) is not considered as time worked.

2.2 Coverage of the Act

The *Long Service Leave Act 1987* (the 'Act') creates an obligation to grant leave pursuant to the Act for all employers in South Australia, whether they are bound by an industrial instrument (such as an award or agreement) or not.

Under the Act, the definition of **"worker"** or **"employee"** refers to "any person employed under a contract of service", but excludes subcontractors and other non-employment relationships.

Therefore, "worker" or "employee" encompasses all full-time and part-time employees and can also include casual employees who are employed on a regular basis and seasonal employees.

In this Part, the common term of "employee" has been used, as opposed to "worker", which is used in both the Act and associated Regulations. Both "employee" and "worker" are intended as being one and the same and have, for all intents and purposes, the same meaning.

2.3 Exemptions From the Act

The *Long Service Leave Act 1987* does not apply to the following:

- employers who are bound to contribute pursuant to the *Construction Industry Long Service Leave Act 1987*. This exemption applies only in regards to employees who are entitled to receive payments pursuant to that Act;
- employees of employers who are bound by an 'applicable award-derived long service leave term' that prescribes long service leave rights. This exemption applies only in regards to employees who are entitled to or would have been entitled to long service leave provisions in a Pre-Reform Federal Award or a Transitional Award, in accordance with the National Employment Standards of the Federal *Fair Work Act 2009*;
- Public Service employees in South Australia; and
- an employer who has been granted an exemption from the Act by the Industrial Relations Commission of South Australia.

The *Long Service Leave Act 1987* allows the Industrial Relations Commission of South Australia to grant an exemption of an employer from the provisions of the Act. Such an exemption may be granted where employees of the employer, pursuant to an industrial instrument (such as an award or agreement), are entitled to benefits which are not less favourable than those as prescribed by the Act.

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1.1 Introduction

It is essential for employers and employees to understand their rights and responsibilities in relation to occupational health, safety and welfare, as the potential legal and humanitarian consequences can be significant if this area is not managed correctly.

In South Australia, the *Occupational Health, Safety and Welfare Act 1986* is the primary legislation that deals with health and safety.

There are many steps that employers can take to minimise the risks to health and safety in the workplace, including:

- knowing their legal responsibilities;
- implementing policies and safe work procedures;
- involving employees;
- managing hazards;
- keeping employees informed about occupational health and safety matters;
- keeping occupational health and safety records; and
- monitoring and reviewing safety in the workplace.

Under this legislation, there is a requirement to develop and implement an occupational health and safety policy outlining the intent of the organisation and the general responsibilities of the employer, employees, contractors and volunteers. Failure to publish such a policy is an offence under the legislation.

A copy of the *Occupational Health, Safety and Welfare Act 1986*, associated Regulations and relevant approved Codes of Practices must also be available to employees upon request. As legislation and associated standards are subject to change, these must be checked periodically to ensure the organisation is complying with the latest version.

Further, there is also a requirement under the South Australian *Occupational Health, Safety and Welfare Act 1986* for employers to keep and maintain certain health and safety records as part of their duty of care obligations. This can be done through the establishment and maintenance of an OH&S Document Management System (DMS).

This Chapter is designed to assist employers to better understand and manage their health and safety responsibilities under the South Australian *Occupational Health, Safety and Welfare Act 1986*.

1.2 Implementation of Policies and Associated Procedures

The implementation of written workplace occupational health and safety policies and procedures will assist an organisation to outline the organisational practices and standards that are required by its employees, contractors and volunteers, along with stipulating the consequences of any breaches of the established practices and/or standards.

There are many reasons for establishing occupational health and safety policies and procedures within an organisation, including:

- ensuring compliance with legislative requirements;
- creating a safe working environment;
- improving employment relationships; and
- reducing costs.

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1.1 Introduction

Since the turn of the twentieth century, South Australia has had workers' compensation legislation. In 1900, when the *Workmen's Compensation Act* was introduced, the legislation followed similar Acts of the English Parliament.

Workers' compensation was considered by many at that time to be a basic response to a social need that was felt in the 1890s. It was felt that common law was an inadequate remedy to compensate injured workers. In 1932, the Act was consolidated and had its application extended in a form which was replaced by the *Workers Compensation Act 1971*. In turn, that Act was replaced by the current *Workers Rehabilitation and Compensation Act 1986* (the 'Act').

As can be seen from the title of the current Act, there was a considerable shift in emphasis towards rehabilitation. Significantly, at the time of the enactment of the current Act, insurance arrangements moved from the private sector insurance companies to the WorkCover Corporation ('WorkCover'), which is the corporate entity responsible for administration of the Act. However, from 1 August 1995, private insurers again undertook the role of claims management. Currently, 'Employers Mutual Limited' is the sole Claims Agent.

The current Act applies to all injuries occurring after 4.00pm, Wednesday 30 September, 1987. As from that time, all employers in South Australia were required to be registered with WorkCover and all subsequent claims handled in accordance with the new system.

1.2 Summary of the Legislation

The *Workers Rehabilitation and Compensation Act 1986* (the 'Act'), as with all workers' compensation legislation, has its emphasis on providing compensation to workers in the case of workplace injury or illness suffered by workers arising out of or in the course of their employment. The question of fault or negligence on the part of the employer or employee does not affect the payment or granting of workers' compensation. In some cases of serious or wilful misconduct, there may be a bar to a claim under the Act.

The WorkCover Corporation ('WorkCover') is administered by a Board with representation of employer, employee and government interests. WorkCover administers the collection of levies pursuant to the Act, whilst Employers Mutual Limited facilitates the claims management process.

There is an obligation on all employers in South Australia to be registered with WorkCover under the Act.

WorkCover has the responsibility for funding payments to injured workers on behalf of employers. However, the first two (2) weeks of any claim for workers' compensation is the responsibility of the employer. This is something akin to an 'excess' as in a typical insurance policy.

If an employer lodges a claim within forty-eight (48) hours of receipt, the obligation to pay the first two (2) weeks is waived.

The employer pays a maximum of two (2) weeks of average weekly earnings to an individual worker in any calendar year, regardless of whether:

- several periods of incapacity are involved for the same injury;
- the worker has more than one (1) injury in the same year; and
- the incapacity extends into the next calendar year.

The Act also provides that WorkCover may request an employer to pay compensation directly to an injured worker and, in which case, the employer must be reimbursed within fourteen (14) to thirty (30) days by the Claims Agent.

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1.1 Introduction

Discrimination and harassment in employment is unlawful under both State and Federal anti-discrimination laws. Employers generally are not only liable for unlawful acts and behaviour they may have committed, but also the acts and behaviour committed by their employees. Breaching anti-discrimination laws could result in substantial penalties being imposed.

This Chapter provides an outline of the discrimination laws as they currently apply in South Australia.

1.2 Legislation Relevant to Discrimination and Harassment

Discrimination and harassment is not only covered by the anti-discrimination laws, it may also be covered by workplace relations and occupational health and safety laws.

1.2.1 Discrimination Laws

There are eight (8) main pieces of legislation which are most pertinent to the issue of discrimination in employment, being:

South Australian Legislation

- *Equal Opportunity Act 1984; and*
- *Racial Vilification Act 1996.*

Federal Legislation

- *Australian Human Rights Commission Act 1986;*
- *Sex Discrimination Act 1984;*
- *Racial Discrimination Act 1975;*
- *Age Discrimination Act 2004;*
- *Equal Opportunity for Women in the Workplace Act 1999; and*
- *Disability Discrimination Act 1992.*

The above discrimination legislation has been framed in such a way that an employer may potentially be faced with a complaint under either one of these Acts. Alternatively, other avenues have been preserved for proceedings to be taken on such matters outside these Acts.

The Federal Sex, Racial, Disability and Age Discrimination Acts provide for persons pursuing a complaint in South Australia to have a choice to bring their complaint under either the *State Equal Opportunity Act 1984* or the appropriate Federal Act; however, a complaint cannot be made under both Federal and State Acts.

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3.1 Definitions

Within South Australia, an apprentice or trainee is employed under a binding agreement with an employer called a **"training contract"**.

An **"apprentice"** is a person who is, or will be, trained on-the-job by his/her employer and trained (either on-the-job or off-the-job) and assessed as being competent to do the job by a Registered Training Organisation under a training contract in a trade occupation as declared by the Training and Skills Development Act 2008. Most apprenticeships are long term contracts of between three (3) to four (4) years. However, the term can be shortened if required skills are developed earlier or if the apprentice already has relevant skills that have been recognised.

A **"trainee"** is a person who is, or will be, trained on-the-job by his/her employer and trained (either on-the-job or off-the-job) and assessed by a Registered Training Organisation under a training contract in a non-trade occupation. Traineeships are short term contracts, usually running from twelve (12) to twenty-four (24) months and encompass training in a wider variety of skills, including business, community services and tourism areas.

In South Australia, the term **"Australian Apprenticeships"** covers both traineeships and apprenticeships.

Apprenticeships and traineeships provide a combination of employment and structured training with an employer for a nominated period of time which enables a person to successfully gain competence in a trade (apprenticeship) or vocational area (traineeship).

Australian Apprenticeships are available in more than 500 occupations nationally, in both new and long established industries.

Employers are able to choose from a number of flexible training options including part-time, full-time or school-based when engaging an apprentice or trainee, depending on the relevant industrial award/agreement.

A **"school-based trainee or apprentice"** is a senior secondary student who will be trained on-the-job by his employer and off-the-job by a Registered Training Organisation under a training contract to gain a nationally recognised qualification whilst still completing their South Australian Certificate of Education (SACE) at school. They combine school with paid part-time work and accredited training. A school-based traineeship or apprenticeship must be endorsed by the school's Principal or delegate.

Note: A school-based apprentice relates to a trade occupation, whereas a school-based trainee relates to a non-trade occupation.

At the conclusion of a school-based trainee or apprentice's schooling, the school-based traineeship or apprenticeship will be converted to a full-time training contract.

The hours of employment and training for school-based trainees and apprentices (minimum eight (8) hours per week) may be averaged over a six (6) month period to accommodate exams, school holidays and seasonal business patterns.

A secondary school student may undertake a traineeship in addition to their school work (but not as part of it as would be the case as a school-based trainee) that is not endorsed by the school's Principal or delegate. This arrangement is not considered to be school-based and the minimum part-time hours apply according to the term of the contract.

It is important to note that it is unlawful in South Australia for an employer to train a person in a trade occupation except under a training contract. However, an employer who wishes to train an employee in a non-trade occupation can choose whether or not to enter into a training contract with the prospective employee.

Information, publications and forms relating to apprenticeships and traineeships can be downloaded from: www.dfeest.sa.gov.au.

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1.2 Entitlement

Parental Leave Pay is payable for eighteen (18) weeks at the National Minimum Wage to an eligible person to care for their baby or adopted child. This entitlement has to be received before the end of fifty-two (52) weeks after the date of birth or adoption. This means that an employee intending to claim the full eighteen (18) weeks of Parental Leave Pay must have made the claim with the Family Assistance Office prior to the baby reaching thirty-four (34) weeks of age or no more than thirty-four (34) weeks after the date of placement of an adopted child.

There is no requirement that a person be currently employed in order to claim Parental Leave Pay. However, a number of criteria must be met in order to qualify for Parental Leave Pay.

In the event of a multiple birth, e.g. twins or triplets, Parental Leave Pay is payable for the birth of only one (1) child. The Baby Bonus may be payable for the other children born at the same time. This also applies to the adoption of multiple children at the same time, e.g. adoption of twins or adoption of children of different ages.

1.3 Eligibility

The information on eligibility for Parental Leave Pay is for reference purposes only and to assist employers in understanding why a particular decision has been made by the Family Assistance Office in relation to Parental Leave Pay.

An employee must meet the necessary criteria in order to qualify for Parental Leave Pay.

Employees are considered **"eligible"** if they:

- have met the 'Work Test' before the birth or adoption occurs;
- have met the 'Income Test';
- are the primary carer of a newborn child or recently adopted child under the age of sixteen (16) years;
- are on Unpaid Parental Leave or not working from the time they become the child's primary carer; and
- have met the 'Australian Residency Test'.

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1.3.1 Work Test

The purpose of the Work Test is to determine whether a person has performed 'qualifying work' for at least ten (10) of the thirteen (13) months before the birth or adoption and at least 330 hours in that ten (10) month period with no more than an eight (8) week gap between two (2) consecutive working days.

The Work Test period is equivalent to the thirteen (13) months immediately before the expected or actual birth or placement of the child.

A person performs **"qualifying work"** if:

the person performs at least one (1) hour of paid work on a day; or

the person takes a period of paid leave of at least one (1) hour on a day.

Permissible Break

If, whilst performing qualifying work in the Work Test period, a person takes a break of between one (1) day and fifty-six (56) consecutive days and did not perform qualifying work during this period is considered a **'permissible break'**. Permissible breaks might include a holiday whilst the employee was on unpaid leave, an unpaid period between jobs or an unpaid period between related employment contracts where the person did not work.

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