

Division 2: Maternity leave entitlements

TAX ALERT: PACMATE [Annex 3.A](#), item 78.

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5.4.12 Overview

1. This Division describes maternity leave.

Related information: Members who have been granted more than six weeks' leave without pay may have different entitlements. For those members, this Division should be read subject to [Division 4](#). This means that if the rules in Division 4 and the rules in this Division are different, Division 4 rules apply to those members. Where the rules can work together, both sets of rules apply.

2. Maternity leave has features that make it an unusual leave type.
 - a. The leave is an entitlement. Approval is an administrative formality. If the member is entitled to take the leave, it must be approved.
 - b. If a member was pregnant 20 weeks before the expected date of birth, she is entitled to a maternity leave absence. This is true of members on Permanent or Reserve service. It is also true of members of long and short service.
 - i. If members have the required qualifying service, part of the leave is paid.

See:
[Clause 5.4.14, Paid maternity leave](#)
[Division 1 clause 5.4.4, Definition of 'qualifying service'](#)
 - ii. Members may substitute recreation or long service leave for unpaid maternity leave.

See: [Clause 5.4.18, Access to other leave](#)
 - c. If the member resumes duty early, she is entitled to go on maternity leave again during the 52-week period.

See: [Clause 5.4.21, Resuming leave](#)

5.4.13 Entitlement

1. The member is entitled to be absent from duty during this period.
 - a. **From** the first day of the member's maternity leave.
 - b. **Until** the day 52 weeks after the day in paragraph a.

See: Clause 5.4.14, for entitlement to paid maternity leave.
2. The period of absence starts on the first day of the member's required absence.

See: [Division 3](#), Required absence

5.4.14 Paid maternity leave

1. This clause does not apply to a member on Reserve service.

See: Clause 5.4.16, Member on Reserve service
2. If a member has completed 12 months' qualifying service, she is entitled to salary for up to 14 weeks of her maternity leave. This table sets out the period of entitlement.

See: [Division 1 clause 5.4.4, Definition of 'qualifying service'](#)

| Item | If the member's absence is for... | then she is entitled to salary for... |
|------|-----------------------------------|--|
| 1. | more than 14 weeks | the first 14 weeks of the absence. The rest of her absence will be unpaid maternity leave. But see: Clause 5.4.18, Access to other leave |
| 2. | less than 14 weeks | the whole of the period. |

Note: The period of paid maternity leave will usually overlap a member's period of required absence. However, they are separate matters. Sometimes the two periods can be very different. They must be worked out separately. Required absence is described in Division 3.

Example 1: A member completes her first 12 months of qualifying service, she then becomes pregnant with her first child and takes 14 weeks of paid maternity leave and other types of leave which adds up to her 52 weeks of entitled leave. She comes back to full time service for an additional five months before applying for maternity leave to have her second child. She is entitled to 14 weeks of paid maternity leave for the second child.

Example 2: A member completes her first 12 months of qualifying service, she then becomes pregnant with her first child and takes 14 weeks of paid maternity leave and other types of leave which adds up to her 52 weeks of entitled leave. At the end of the leave she comes back to full time service for two months before leaving the ADF to join a Federal Government department for two years. After the two years she rejoins the ADF and after three months applies for maternity leave to have her second child. She is entitled to 14 weeks of paid maternity leave for the second child.

- 2A. Paid maternity leave may only be taken during the first 14 weeks of maternity leave absence.

3. A member is not entitled to paid maternity leave for any period of absence before her first 12 months' qualifying service.

Example 1: A member completes her first 12 months of qualifying service, she then becomes pregnant with her first child and takes 14 weeks of paid maternity leave and other types of leave which adds up to her 52 weeks of entitled leave. She comes back to full time service for an additional five months before leaving the ADF. After two years the member rejoins the ADF. Three months after rejoining she applies for maternity leave to have her second child. She has only completed three months of her qualifying period of service and is not entitled to the 14 weeks of paid maternity leave.

Example 2: A member completes her first 12 months of qualifying service, she then becomes pregnant with her first child and takes 14 weeks of paid maternity leave and other types of leave which adds up to her 52 weeks of entitled leave. She comes back to full time service for an additional five months before leaving the permanent ADF to join as a Reserve Force member. The member then completes two years of reserve service before applying for maternity leave to have her second child. The member is not entitled to the 14 weeks paid maternity leave as she has broken her full-time service and has not completed a continuous period of 12 months full-time service.

4. A member with less than 12 months' qualifying service before a period of absence may be entitled to salary if she completes the 12 months during the period of absence. She is entitled for any period of absence that meets both of these conditions.
 - a. It starts when she completes 12 months' qualifying service.
 - b. It ends when the member has had 14 weeks' maternity leave.

Example: A member falls pregnant during her first year of service and her compulsory period of absence commences four weeks before she reaches her 12 months' qualifying service. She takes four weeks unpaid maternity leave until her qualifying period is reached. She then takes paid maternity leave for the remaining 10 weeks of her 14 week maternity leave entitlement.



5. A multiple birth or adoption is taken to be a single event.

5.4.15 Maternity leave at half pay

1. The CDF may grant a member a period of her entitlement at half her salary rate to extend the time she is entitled to paid maternity leave under subclause 5.4.14.2.

Example:

| Item | If a member applies for half pay for... | then she is entitled to... |
|------|---|---|
| 1. | all of her entitlement (maximum of 14 weeks subject to qualifying service) See: Division 1 clause 5.4.4, Definition of 'qualifying service' | 28 weeks maternity leave at half pay. |
| 2. | 6 weeks of her entitlement | 8 weeks maternity leave at full pay and 12 weeks at half pay. |

2. The member must apply to the CDF in writing to request a period of maternity leave at half pay under subclause 1.

Note: The member must still contribute to superannuation each fortnight that she receives salary. The contribution rate is based on her full rate of salary. It is not reduced even though she is being paid less.

Persons who can make the decision under clause 5.4.15 on behalf of the CDF:
Supervisor not below WO2(E)/APS 4 of the member in the member's direct chain of command or supervision

5.4.16 Member on Reserve service

A member on Reserve service is not entitled to maternity leave. They are entitled to a 52-week break in their minimum training service obligation, as if they had access to maternity leave.

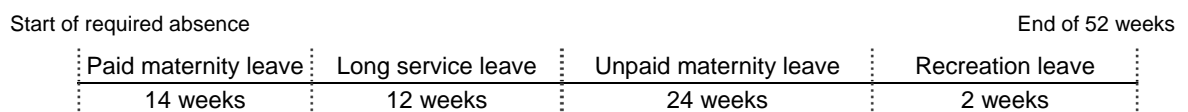
5.4.17 Second period of maternity leave

1. This clause applies to a member who meets both of these conditions.
 - a. The member has been granted maternity leave.
 - b. During the period of the leave, the member qualifies for a second grant of maternity leave.
2. The member is entitled to a second grant of maternity leave. The leave should be worked out under this Part.

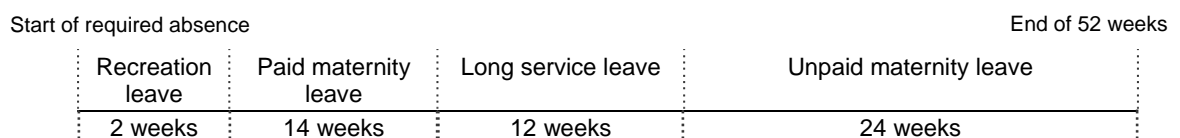
5.4.18 Access to other leave

1. A member may substitute recreation leave or long service leave for unpaid maternity leave.

Example: A member may make up a 52-week period of absence in this way.



Non-example: The non-example below is not an acceptable alternative. This is because paid maternity leave must be the first 14 weeks of the maternity leave absence.



2. A member who substitutes other leave for unpaid maternity leave may not extend the total period of maternity leave. The limits in clause 5.4.13 continue to apply.

Note: A member on maternity leave is still subject to the recreation leave lapsing provisions in clause 5.2.27. It may be in a member's interest to substitute recreation leave for unpaid maternity leave, to prevent it from lapsing.

See: [Division 3](#) clause 5.2.27, Expiration of recreation leave credits ('leave lapsing')

Note: A member may be entitled to a further 14 weeks' parental leave. This is an unpaid leave type. This would take the total period of absence in this example to 66 weeks.

See: Chapter 5 [Part 5](#), Parental leave

5.4.19 Effect of unpaid maternity leave

1. Any period of paid maternity leave is a period of effective service. This includes maternity leave at half pay.
2. Any period of unpaid maternity leave is not a period of effective service.

Note: MSBS members may choose to maintain their superannuation contributions.

See: The Note to [Division 4](#) clause 5.4.33, Other matters.

3. A period of unpaid maternity leave has these features.
 - a. It counts as continuous service.
 - b. It will not break continuity of service if the conditions for a particular entitlement are met.
 - c. The member is not required to remain fit or deployable.
 - d. The member continues to receive free medical care. The member is not returned to the payroll for hospitalisation, treatment, illness or convalescence.
 - e. The member keeps their housing assistance.

5.4.20 Resuming duty

1. A member may apply to resume duty on a date after her required absence is completed. The member must apply in writing.

Note: A member and her supervisor should discuss return to duty options when the member puts in her maternity leave application.

2. The member does not have to provide a medical certificate with her application.

Note: Members are advised to make any decision to return to work early based on medical advice.

3. The CDF may give the member permission to resume duty on a date after her required absence is completed.

Note: The CDF may also allow a member to resume duty during her required absence.

See: [Division 3](#) clause 5.4.27, Resuming duty during the required absence.

4. The CDF must make a decision on an application under subclause 1 within seven days of receiving it. The member must be told of the decision in writing.

Persons who can make the decisions under clause 5.4.20 on behalf of the CDF:
 Supervisor not below WO2(E)/APS 4 of the member in the member's direct chain of command or supervision

5.4.21 Resuming leave

1. This clause applies to a member who meets all of these conditions.
 - a. The member has taken maternity leave.
 - b. The member has resumed duty.
 - c. The member wishes to take further maternity leave.
2. If the further maternity leave falls in this period, the member is entitled to take the further leave.
 - a. **From** the day the member first takes maternity leave.
 - b. **Until** the day 52 weeks after the day in paragraph a.
3. If the further leave falls outside the period in subclause 2, the member is not entitled to maternity leave. The member may have access to parental leave.

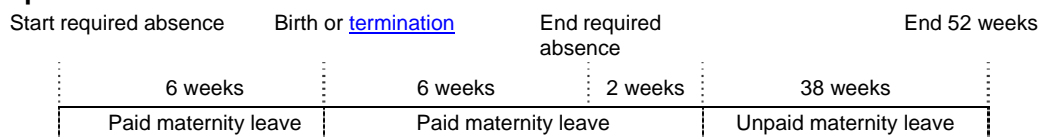
See: Chapter 5 [Part 5](#), Parental leave

5.4.22 Examples

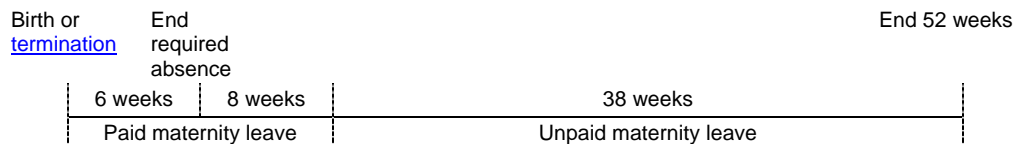
These examples set out some maternity leave scenarios.

Note: Example 4 is allowable but is unusual and would rarely occur.

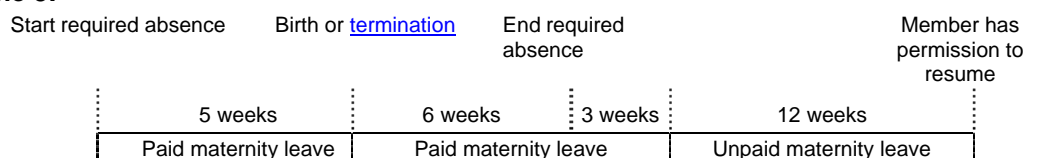
Example 1:



Example 2:



Example 3:



Example 4:

| | | | | | | |
|------------------------|--------------------------------------|---|---------------------------------------|------------------|------------------------|--|
| Start required absence | Birth or termination | Return to work (with medical certificates and CDF approval) | On leave (various) to end of 52 weeks | | | |
| 2 weeks | 2 weeks | 3 weeks | 10 weeks | 4 weeks | 31 weeks | |
| Paid maternity leave | Paid maternity leave | Work | Paid maternity leave | Recreation leave | Unpaid maternity leave | |

Example 5:

| | | | | | |
|------------------------|--------------------------------------|------------------------|------------------|---------|--|
| Start required absence | Birth or termination | End required absence | End 52 weeks | | |
| 6 weeks | 6 weeks | 2 weeks | 33 weeks | 5 weeks | |
| Paid maternity leave | Paid maternity leave | Unpaid maternity leave | Recreation leave | | |

Example 6:

| | | | | | |
|------------------------|--------------------------------------|--------------------------|------------------------|----------|--|
| Start required absence | Birth or termination | End required absence | End 52 weeks | | |
| 6 weeks | 2 weeks | 4 weeks | 8 weeks | 32 weeks | |
| Paid maternity leave | Paid maternity leave | Half pay maternity leave | Unpaid maternity leave | | |

