

# Revenue Ruling

Ruling Number	:	PTA012
Title	:	Exemption for maternity and adoption leave pay
Tax Line	:	Payroll Tax
Legislative Reference	:	<i>Payroll Tax Act 2008</i>
Previous Ruling	:	PUB-PT-2008-13
Date of Ruling	:	1 July 2008 - 31 October 2020
Attachments	:	-

## Preamble

The *Payroll Tax Act 2008* (the Act), which commenced on 1 July 2008, rewrote the *Pay-roll Tax Act 1971* and harmonised payroll tax legislation in Tasmania with Victoria and New South Wales. A summary of the jurisdictions that have adopted this Revenue Ruling is available at: <http://payrolltax.gov.au/revenue>.

Section 53 of the Act exempts from payroll tax, wages paid or payable to employees on maternity leave or adoption leave. The exemption:

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

The purpose of this Revenue Ruling is to explain the application of the exemption for maternity and adoption leave pay and clarify the elements of the exemption.

## 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. The female employee may take maternity leave before or after the birth of her child (section 52(2) of the Act). Sick leave, recreation leave, annual leave or any similar leave taken in connection with a pregnancy or the birth of a child is not considered as maternity leave for payroll tax purposes.

This exemption does not apply to paternity leave which is granted to a male employee after his spouse (or de facto spouse) has given birth.

### **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 10 weeks, annual leave of 4 weeks, paid maternity leave of 12 weeks and unpaid leave of 26 weeks. Only the wages paid 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 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 Sydney. All six weeks are considered to be adoption leave. Consequently, wages paid for the six weeks leave are exempt.

### **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 eg 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 3 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 \$4 200 (\$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 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 the 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 63 of the *Taxation Administration Act 1997*).

**Please note that rulings do not have the force of law. Each decision made by the State Revenue Office is made on the merits of each individual case having regard to any relevant ruling.**

### More Information

Enquiries about this Revenue Ruling should be directed to the Legislation, Communication and Review Section on telephone (03) 6166 4400 or e-mail at [revenuereview@treasury.tas.gov.au](mailto:revenuereview@treasury.tas.gov.au).

All rulings must be read in conjunction with the 'Explanation and Status of Revenue Rulings' available on the SRO website, [www.sro.tas.gov.au/resources/rulings](http://www.sro.tas.gov.au/resources/rulings).



W K Sawford  
**COMMISSIONER OF STATE REVENUE**

#### Enquiries:

Telephone: (03) 6166 4400  
Facsimile: (03) 6234 3357  
Email: [revenuereview@treasury.tas.gov.au](mailto:revenuereview@treasury.tas.gov.au)  
Internet: [www.sro.tas.gov.au](http://www.sro.tas.gov.au)

#### By Correspondence:

The Commissioner of State Revenue, State Revenue Office  
GPO Box 1374, HOBART Tas 7001

**In Person:** Ground floor  
Salamanca Building Parliament Square  
4 Salamanca Place HOBART TAS 7000



Tasmania