

Revenue Ruling

Ruling Number	:	PTA012v2
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; PTA012
Date of Ruling	:	1 November 2020
Attachments	:	-

Preamble

[Section 53 of the Payroll Tax Act 2008](#) (the Act) exempts from payroll tax certain wages paid or payable to employees in respect of maternity leave or adoption leave. The exemption applies to wages paid or payable to:

- female employees in respect of maternity leave; and
- male and female employees in respect of adoption leave.

The exemption:

- is limited to a maximum of 14 weeks' pay at the rate or amount of wages that would normally be paid by the employer if the employee had worked;
- applies irrespective of whether the leave is taken before or after the relevant birth or adoption; and
- must be supported by relevant records.

The exemption does not apply to fringe benefits.

For payroll tax purposes maternity and adoption leave are distinct from Paid Parental Leave (PPL) payments which are payments not liable to payroll tax (see Revenue Ruling PTA 037). 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 53\(2\) 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. See examples next page.

Example 1

In relation to the birth of her child, Mary took long service leave of 10 weeks, annual leave of four (4) weeks, PPL of 18 weeks and unpaid leave of 20 weeks. The wages paid for all the leave taken by Mary are taxable, except the PPL.

Example 2

In relation to the birth of her child, Mary took long service leave of 10 weeks, annual leave of four (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, any sick leave, recreation leave, annual leave or any similar leave taken in connection with the adoption leave is not considered to be adoption leave for payroll tax purposes is, therefore, not exempt.

Example 3

John has taken six (6) weeks' paid adoption leave in three (3) distinct parts:

- one (1) week to familiarise himself with the adoption process;
- two (2) weeks to go interstate/overseas to meet the child; and
- a further three (3) weeks after the child arrived in Sydney.

All six (6) weeks are considered to be adoption leave. Consequently, wages paid for the six (6) weeks' leave are exempt.

Types of Wages that are Not Exempt

Wages paid to an employee which has no connection with the maternity or adoption are not exempt. Examples of payments made during a period of maternity, or adoption leave that are not exempt include an annual performance bonus, payments of wages in excess of 14 weeks' pay, commissions, overtime for services performed prior to the period of leave and advance payments for future periods of service occurring after the employee returns from leave.

Example 4

Jane goes on maternity leave in July 2017 and is paid a bonus in July 2017 which relates to services she provided in the financial year ending June 2017. That bonus is not exempt wages because it is not a product, incident or consequence of Jane taking maternity leave.

Fringe benefits provided to an employee on maternity, adoption or paternity leave are not exempt under any circumstances ([see 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 5

Cathy is a part-time employee. She works three (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 6

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 (5) 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

Direct any enquiries about this Revenue Ruling to the Legislation, Communication and Review Section on telephone (03) 6166 4400 or email to revenuereview@treasury.tas.gov.au.

All rulings must be read in conjunction with the [Explanation and Status of Revenue Rulings](#), available at sro.tas.gov.au/resources/rulings.



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