

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKĀURAU ROHE**

[2021] NZERA 105
3090252

BETWEEN

REBECCA ALLCOCK
Applicant

AND

MINISTRY OF BUSINESS,
INNOVATION AND
EMPLOYMENT
Respondent

Member of Authority: Vicki Campbell
Representatives: Applicant in person
Greg La Hood, counsel for Respondent
Investigation Meeting: 17 February 2021
Submissions Received : 17 February 2021 from Respondent
Determination: 15 March 2021

DETERMINATION OF THE AUTHORITY

- A. Ms Allcock is entitled to a payment of 18 weeks paid parental leave commencing on 25 August 2017.**

Employment relationship problem

[1] Ms Allcock is one of two directors and shareholders of a business involved in property management. On 25 August 2017 Ms Allcock gave birth to a baby boy. On 20 August 2018 Ms Allcock applied for paid parental leave (PPL) under the Parental Leave and Employment Protection Act 1987 (PLEPA) in respect of her baby born in 2017.

[2] By letter dated 30 August 2018 the Inland Revenue sought further information from Ms Allcock in respect of her application including her current tax code. On 16 October 2018 Ms Allcock, through her accountant, advised Inland Revenue that she had returned to work and therefore her current tax code was M.

[3] On 25 October 2018 Ms Allcock's accountant spoke to an Inland Revenue customer service officer and confirmed Ms Allcock had officially returned to work in April 2018. Ms Allcock's application was declined by Inland Revenue on 25 October 2018 on the grounds that she had returned to work before she had made her application of PPL.

[4] Ms Allcock seeks a review of the decision to decline PPL and for orders that she is eligible for PPL under the PLEPA.

[5] MBIE maintains Ms Allcock's claim was correctly denied by Inland Review because she had returned to work before her application was made.

[6] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made as a result. While I have not referred in this determination to all the evidence received I have carefully considered all relevant material lodged with the Authority.

The applicable law

[7] Section 71ZB of the PLEPA enables an affected employee to apply to the Authority for a review of decisions made by MBIE relating to that person's entitlement to a parental leave payment. Under this section the Authority has a wide discretion to confirm, modify or reverse MBIE's decision.

[8] Other relevant sections of the PLEPA include:

- a) Section 71A sets out the purpose of Part 7A, which is to entitle certain persons who become the primary carer in respect of a child and who stop working, or take a period of leave, to up to 22 weeks of parental leave payments out of public money.
- b) Section 71D establishes when a person is entitled to a parental leave payment. It provides:

- (1) A person is entitled to a parental leave payment under this Part, if—
- (a) the person is—
 - (i) an eligible employee or an eligible self-employed person; or
 - (ii) a person to whom all or part of an entitlement to a parental leave payment is transferred under section 71E; or
 - (iii) a person who succeeds to all or part of an entitlement to a parental leave payment under section 72B; and
 - (b) during the period in relation to which the person receives parental leave payments, the person—
 - (i) is not employed or self-employed; or
 - (ii) takes parental leave from their employment or self-employment.

(2) Despite subsection (1), a person who becomes the primary carer in respect of a child who is under the age of 6 years is not entitled to parental leave payments in respect of that child if—

- (a) the person has previously received parental leave payments in respect of that child; or
- (b) the person's spouse or partner has previously received parental leave payments in respect of that child (unless the person's entitlement arises from a transfer under section 71E or by succession under section 72B).

(3) This section is subject to sections 71F to 71IA (restrictions on parental leave payments and making an application for payment).

[9] Section 71K of the PLEPA identifies the commencement date for parental leave payments as being the date on which Ms Allcock became the primary carer in respect of her child. PPL must be taken in one continuous period from the date parental leave begins.

[10] At the time Ms Allcock gave birth the period for PPL was a period not exceeding 18 weeks. This was increased to 22 weeks on 1 July 2018 and subsequently 26 weeks on 1 July 2020.¹

¹ Parental Leave and Employment Protection Act 1987 (PLEPA), ss 9(1) and 71J.

Analysis

[11] There is no dispute that but for the timing of Ms Allcock's application, she was an eligible self-employed person. She was the primary carer of the child and met the parental leave payment threshold test.²

[12] In accordance with s 71K of the PLEPA, the commencement date for any entitlement to PPL was the day Ms Allcock became the child's primary carer - that is 25 August 2017. At that time the period covered by PPL was 18 weeks.

[13] Ms Allcock was self-employed and I have accepted her evidence that prior to having her baby the duties performed by her included:

- a) Sourcing properties;
- b) Meeting with owners and agents;
- c) Staging properties;
- d) Meeting with tenants; and
- e) Growing the business.

[14] Ms Allcock told me she stopped working before her baby was born. At that time she dropped back to doing only administrative tasks including paying bills and signing off GST returns for her business. Ms Allcock told me she paid a marketing consultant to undertake all of the daily tasks associated with the management of rental properties.

Ms Allcock's return to work

[15] Applications for PPL must be made before the person returns to work or the date on which the child attains the age of 12 months, whichever is the earlier date.

[16] A self-employed person is not treated as having returned to work because she carries out work in the nature of oversight or occasional administrative tasks in the business in which she is self-employed.³

² PLEPA, s 2BA.

³ PLEPA, s 71CD.

[17] MBIE submits Ms Allcock is not entitled to PPL because she returned to work before making her application. I do not agree. Ms Allcock has not returned to work. From April 2018 she carried out oversight or occasional administrative tasks in the business which she was entitled to do without this being considered a “return to work”.

[18] The question of her return to work was clarified by Ms Allcock’s accountant on 8 February 2019 when he advised Inland Revenue that Ms Allcock had only attended to minor administrative tasks such as signing GST returns and account reconciliations to ensure taxation compliance requirements were met.

[19] Ms Allcock’s accountant confirmed during the investigation meeting that because Ms Allcock had become available for communications and to sign off minor administrative tasks they had conveyed to Inland Revenue that Ms Allcock had “returned to work”. That, he says, was a mistake on his part.

Conclusion

[20] This determination confirms my oral indication of preliminary findings at the investigation meeting that at the time Ms Allcock made her application for PPL she had not returned to work and nor had her baby attained the age of 12 months.

[21] Accordingly, MBIE’s decision that Ms Allcock was not entitled to paid parental leave is reversed. Ms Allcock is entitled to a payment of 18 weeks paid parental leave commencing on 25 August 2017.

Costs

[22] There is no claim for costs.

Vicki Campbell
Member of the Employment Relations Authority