

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2024] NZERA 768  
3327100

	BETWEEN	AMY DE VRIES Applicant
	AND	MINISTRY OF BUSINESS INNOVATION AND EMPLOYMENT Respondent
Member of Authority:	Eleanor Robinson	
Representatives:	Applicant in Person Amy Webster, counsel for the Respondent	
Investigation Meeting:	On the papers	
Submissions and/or further evidence	22 November 2024 from the Applicant 15 November 2024 from the Respondent	
Determination:	20 December 2024	

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] The Applicant, Ms Amy de Vries, has lodged a Statement of Problem in the Authority applying to the Authority for a review of a decision pursuant to s. 71ZB of the PLEPA.

[2] The Ministry of Business, Innovation and Employment (MBIE) claims that Ms de Vries is not eligible for parental leave payments because she only worked 9 weeks in the 52 weeks prior to her Expected Delivery Date (EDD) therefore did not meet the threshold test in s 2BA(4) of the Parental Leave and Employment Protection Act 1987 (PLEPA).

[3] The parties agreed to the Authority determining this issue ‘on the papers’ based on the Statements of Problem and in Reply and on submissions from the parties. Whilst I have not referred to all the submissions made by the parties, I have fully considered them.

**Background**

[4] Ms de Vries is the biological mother of a baby whose expected date of delivery was 9 August 2024.

[5] Ms de Vries applied for paid parental leave in accordance with PLEPA on 11 April 2024.

[6] On 12 April 2024 the Inland Revenue Department (IRD) approved the application for the period of 19 July 2024 to 16 January 2025. In its letter the IRD:

- i. advised Ms de Vries that in order to get paid parental leave (PPL), she needed to work at least 10 hours a week, in any 26 of the 52 weeks before her expected due date;
- ii. noted that at the time the application was made, Ms de Vries had not worked 26 weeks; and
- iii. asked Ms de Vries to advise IRD if she did not work 26 weeks before her due date.

[7] On 9 July 2024 IRD sent a further letter to Ms de Vries declining her application for PPL on the basis that she had not worked enough hours in the required period.

[8] Ms de Vries lodged a Statement of Problem in the Authority on 24 September 2024 applying to the Authority for a review of that decision pursuant to s. 71ZB of the PLEPA.

[9] Ms de Vries accepted that she had not worked a minimum of 10 hours for 26 weeks within 52 weeks of the EDD. However she submits that if she had worked the minimum requirement she would have worked 260 hours. In fact, she worked 296 hours in that period, therefore exceeding the minimum required hours in the requisite time frame.

**Was the department correct in declining Ms de Vries application for PPL and not exercising its statutory discretion to approve irregular application?**

[10] Applications for PPL are determined by the 'department' being either IRD or MBIE.

[11] Part 7A of PLEPA deals with parental leave payments, and in s 71A provides that certain persons who become the primary carer in respect of a child, and who stops working or take a period of leave, are entitled to up to 26 weeks of parental leave payments, met by taxpayer funding.

[12] In order to qualify for the payments, an applicant must be both an 'eligible employee' and 'entitled' in accordance with the PLEPA.

[13] As set out in the Employment Court judgment *Ministry of Business Innovation and Employment v Duan* there is a ‘roadmap’ that applies when assessing eligibility and entitlement to receive parental leave payments under PLEPA.<sup>1</sup>

#### *Eligibility*

[14] The first step is eligibility. To qualify as an ‘eligible employee’ Ms De Vries must meet the following two requirements:

- a) She must be the primary carer of the child; and
- b) She must meet the parental leave threshold requirement.

[15] Ms de Vries is the primary carer of the child being its biological mother and therefore I find that the first requirement is fulfilled.

[16] The second requirement is that Ms de Vries meets the parental leave threshold test as set out in s 2BA(4) of PLEPA which states:

#### **2BA Thresholds for entitlements**

...

(4) In this Act, the following test is used to determine a person’s entitlement to parental leave entitlements (the **parental leave payment threshold test**):

- (a) An employee meets the parental leave threshold test if he or she will have been employed as an employee for at least an average of 10 hours a week for any 26 of the 52 weeks immediately preceding –
  - (i) the expected date of delivery of the child (in the case of a child to be born to the person or his or her partner): or
  - (ii) the date on which the person, or his or her spouse or partner becomes the primary carer in respect of the child (in any other case)

[17] In accordance with PLEPA, the relevant 52 week period is that which runs backwards from “the expected date of delivery”.

[18] Ms de Vries expected date of delivery was 9 August 2024 . This means that the relevant 52 week period is 9 August 2023 to 9 August 2022 (the Relevant 52 week period).

[19] During that relevant 52 week period, Ms de Vries was employed at:

- (i) Studio DB from 9 August 2023 to 25 August 2023 (2 weeks, 3 days); and
- (ii) Darkhouse from 4 September 2023 to 9 October 2023 (5 weeks, 1 day).

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<sup>1</sup> *Ministry of Business Innovation and Employment v Duan* {NZEmpC 232 at {25} – [41].

[20] This means that Ms de Vries worked for 9 weeks only (counting the part weeks as full weeks) in the Relevant 52 week period.

[21] During the 3 August 2023 to 3 August 2024 Ms de Vries accepts that she did not complete the required minimum of 10 hours a week for 26 weeks within the 52 weeks of the expected due date set out in the Parental Leave and Employment Protection Act 1987 (PLEPA).

[22] Due to medical circumstances outside of her control Ms de Vries was unable to continue in the workforce during 2022 to 2023. However she submits that if she had worked the minimum requirement in the Relevant 52 week period, that would equate to 260 hours, whereas when she was able to return to work, she exceeded the minimum hours, working a total of 296 hours with the two employers.

**Should the Authority exercise its discretion to confirm, modify or reverse the decision of MBIE in the circumstances of this case?**

[23] MBIE submits that, while it does have discretion under s 71A of the PLEPA to approve the making of a parental leave payment to a person despite an irregularity in their application for payments, that discretion is limited. Thus, MBIE is limited to exercising its discretion to an irregularity in form, not to approving applications where the eligibility criteria are not met.

[24] The Authority has power to “confirm, modify or reverse’ any decision of MBIE pursuant to a 71ZB of the PLEPE. The Authority can also act without regard to technicalities and in equity and good conscience.<sup>2</sup>

[25] I fully understand the basis for consideration Ms de Vries has submitted, and I appreciate that the purpose of s 7A of the PLEPA is to entitle the primary carer of a child who stops working or takes a period of leave to receive parental leave payments out of public funds.

[26] However Parliament has set a statutory requirement for eligibility for parental leave payments. Ms de Vries has not met the statutory requirement which is not only for a minimum hours, but for a period of weeks over which they must be worked.

[27] The Authority cannot set aside statute. In those circumstances, I find that there is no legal basis which would permit the Authority to set aside the statutory eligibility criteria.

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<sup>2</sup> Employment Relations Act 2000 s 157(3).

[28] Accordingly I decline to modify or reverse the decision of MBIE in respect of Ms de Vries

### **Costs**

[29] I consider that this is an appropriate case for costs lying where they fall.

[30] However if costs are sought and an Authority determination on costs is needed MBIE may lodge, and then should serve, a memorandum on costs within 28 days of the date of issue of the written determination in this matter. From the date of service of that memorandum the respondent would then have 14 days to lodge any reply memorandum. Costs will not be considered outside this timetable unless prior leave to do so is sought and granted.

**Eleanor Robinson**  
**Member of the Employment Relations Authority**