

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2025] NZERA 206
3353763

BETWEEN

LEH
Applicant

AND

MINISTRY OF BUSINESS,
INNOVATION AND
EMPLOYMENT
Respondent

Member of Authority: Helen van Druten

Representatives: Applicant in person
Brayden Palethorpe, counsel for the Respondent

Investigation Meeting: On the papers

Submissions received: 30 January 2025 from the Applicant
13 February and 19 March 2025 from the Respondent

Determination: 14 April 2025

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] LEH seeks review of the decision by the Ministry of Business, Innovation and Employment (MBIE) to decline her application for parental leave payments under the Parental Leave and Employment Protection Act 1987 (the PLEPA).

[2] On 7 July 2024, LEH applied to Inland Revenue (IRD) for parental leave payments after her child was born prematurely on 3 July 2024. Her child's expected date of delivery (EDD) was on 18 October 2024. Given the circumstances and the additional care her child required, LEH resigned from her work on 14 July 2024 to focus on her child and her own recovery.

[3] MBIE assessed LEH's application for entitlement to parental leave under the PLEPA. MBIE determined that LEH was not eligible for paid parental leave (PPL) as she was not employed for more than 26 of the 52 weeks prior to her EDD as required by s 2BA (4) of the PLEPA. MBIE advised LEH of this decision on 25 October 2024.

[4] In her statement of problem of 27 January 2025, LEH has submitted that her PPL eligibility should have been based on the actual date of her baby's birth (being 3 July 2024), not the EDD (18 October 2024). If the 3 July 2024 date was used, she would qualify as an eligible employee for paid parental leave entitlements.

[5] LEH has applied to the Authority for a review of MBIE's decision to decline her parental leave payment application.¹

Anonymisation

[6] I consider that, having regard to the nature of these proceedings, it is appropriate for the applicant's name to be anonymised. A random generator has been used to refer to the applicant in these proceedings. LEH is a randomly generated name and does not resemble the name of the applicant.

The Authority's investigation

[7] The parties agreed that this investigation was to be held on the papers. The Authority received information from the parties including submissions. Following a review of the submissions received, a case management conference was held on 3 March 2025 to clarify three points and ensure that all relevant information had been received.

[8] 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. It has not recorded all evidence and submissions received.

¹ PLEPA, s 71ZB.

The issues

- [9] The issues requiring investigation and determination are:
- (a) Was the “parental leave entitlement threshold test” calculated correctly?² Specifically, should section 2BA(4)(a)(i) or section 2BA(4)(a)(ii) have been applied by MBIE for LEH’s application?
 - (b) Should the Authority exercise its discretion under s71ZB of the PLEPA?

Relevant law

[10] In the PLEPA, section 71D(1) provides the relevant requirements for entitlement to parental leave payments:

71D Entitlement to parental leave payments

- (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.

[11] Section 71CA defines “eligible employee” to mean a person who is the primary carer in respect of a child and meets the parental leave payment threshold test.

[12] Section 2BA(4)(a) then outlines the relevant parental leave payment threshold test:

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

- (a) an employee meets the parental leave payment 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 spouse or partner); or
 - (ii) the first 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).

² PLEPA, s 2BA(4).

Assessment of PPL payment entitlement

[13] LEH worked for two employers in the relevant period. Her first employment was from January 2022 to 18 November 2023. LEH resigned and went overseas and then returned to New Zealand in April 2024. On her return she was under specialist care and decided not to return to work until she had specialist approval. She obtained this in May 2024. LEH then began work on 13 May 2024 and, after the premature arrival of her child, she resigned on 14 July 2024.

[14] Both parties agree that during these periods of employment LEH's employment was on a 'full-time hours per week' basis.

[15] Both parties also agree that LEH meets the "employee" definition and the "primary carer" requirement. Equally, the "at least an average of 10 hours per week" for the test in Section 2BA (4) of the PLEPA can be with more than one employer and does not have to be continuous employment.³

[16] MBIE submits that for the purposes of the relevant threshold test, LEH's eligibility should be assessed on "any 26 of the 52 weeks immediately preceding the expected date of delivery of the child".⁴

[17] To summarise MBIE's reasoning of LEH's application:

- (a) For a person to be entitled to PPL payments they must be an "eligible employee";⁵ then
- (b) To be an "eligible employee", they must be "a primary carer... and meet the parental leave payment threshold test";⁶ and
- (c) To meet the "parental leave payment threshold test", section 2BA(4)(a) presents two options:
 - i. Section 2BA(4)(a)(i) applies where the child is "to be born to the person or his or her spouse or partner"; or
 - ii. Section 2BA(4)(a)(ii) only applies where the child is not born to the person or his or her spouse or partner i.e. "in any other case".

³ PLEPA, s 72A.

⁴ PLEPA, s 2BA(4)(a)(i).

⁵ PLEPA, s 71D.

⁶ PLEPA, s 71CA.

- (d) As the child was born to LEH then to meet the “test” she must have worked for “any 26 of the 52 weeks” immediately preceding “the expected date of delivery” of the child meaning the period from 18 October 2023 to 18 October 2024. For that period, LEH worked 13.5 weeks within those 52 weeks. LEH does not therefore meet the section 2BA “test” and therefore is not eligible for PPL payments under section 71D.
- (e) MBIE must apply the law as written and any discretion is limited to issues of form.

[18] LEH is claiming entitlement under section 2BA(4)(a)(ii). LEH submits that the relevant section 2BA threshold test means that her eligibility should be assessed on “any 26 of the 52 weeks immediately preceding the first date on which the person...becomes the primary carer in respect of the child”.⁷

[19] She submits that the online eligibility calculator (ird.govt.nz) indicated she was eligible, she followed medical advice by not restarting work until May 2024, and she has worked for 26 of the 52 weeks prior to her child’s birth so this fits into the section 2BA(4)(a)(ii) situation. If this section was the correct one to apply, then (based on information held by the Authority) LEH would qualify as she would have worked 29 weeks between 3 July 2023 and 3 July 2024.

Considerations

[20] LEH took medical advice regarding her return to work and only returned to work in May once her medical all-clear was given. She could not have foreseen that her child would be born prematurely and, as LEH noted, that the “complexities involved with such a premature baby” would lead to her resignation. She prioritised the health of her and her baby.

[21] LEH has requested a review of the decision as she is entitled to do. The legislation is intended to set minimum entitlements, protect rights and entitle certain persons to parental leave payments.⁸ However, even with the Authority’s discretion under section 157, neither MBIE (limited to discretion on matters of form) nor the

⁷ PLEPA, s 2BA(4)(a)(ii).

⁸ PLEPA, s 1A.

Authority (under section 71ZB) can use its discretion to make exceptions to specific entitlement provisions unless provided for within the legislation.⁹

[22] Taking the lead from the decision in *Ministry of Business, Innovation and Employment v Duan*, the meaning of the PLEPA provisions must be ascertained from their text and in light of their purpose and context.¹⁰

[23] Overall, the PLEPA is (perhaps necessarily) technical and somewhat prescriptive by nature. This step-by-step detail is evident in section 2BA of the PLEPA where the section is drafted as a test to specifically define a case where the child is born to the parent(s) and differentiate this from “any other case”. While that may be harsh in LEH’s situation, this section is drafted as a test and with detail and that cannot be overlooked.

[24] For completeness, I also considered other sections of the legislation regarding potential eligibility for situations where a premature baby is born that may apply to LEH. Any pre-term baby payment is only available if the person meets the section 71D entitlement requirements, so this section does not apply.

[25] The Authority has previously used its discretion in s 71ZB of the PLEPA to order parental leave payments be paid to parents who have been given incorrect information. I also considered this factor. LEH referred to the Inland Revenue guided help tool on its website where “I determined that I was eligible for PPL”. Question 4 of this tool says:

Will you have worked for any 26 of the 52 weeks before your child arrives?

[More info](#) ▼

Yes



[26] I do not consider that this advice warrants use of the Authority’s discretion as:

- (a) the website says this is a general tool and (as the site disclaimer outlines), is provided for general information only. MBIE assesses each application;

⁹ Such as MBIE’s discretion to approve irregular applications under section 71IA.

¹⁰ *Ministry of Business, Innovation and Employment v Duan* [2023] NZEmpC 232 at [16].

- (b) while it doesn't have an 'either/or' provision in relation to section 2BA in the "more info" there are multiple references and links to eligibility and further information on the site; and
- (c) having a more general tool arguably keeps the tool simple and encourages applications that can then be considered specifically on their facts.

Conclusion

[27] I understand LEH's frustration that the law has not allowed for payment to be approved in her specific circumstances when the circumstances of her child's birth were outside her control. Despite this, for the reasons outlined above, I accept that MBIE made the correct assessment to decline LEH's application for parental leave payments in accordance with legislation. LEH's application is therefore declined.

Costs

[28] Costs lie where they fall.¹¹

Helen van Druten
Member of the Employment Relations Authority

¹¹ For further information about costs see: www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1.