

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI-A-TARA ROHE**

[2026] NZERA 121
3416344

BETWEEN

NISHA BHANA
Applicant

AND

MINISTRY OF BUSINESS
INNOVATION AND
EMPLOYMENT
Respondent

Member of Authority: Alyn Higgins

Representatives: Applicant in person
Petrina Siania for the Respondent

Investigation Meeting: On the papers

Submissions received: 8 February 2026 from the Applicant
28 January 2026 from the respondent

Determination: 2 March 2026

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The applicant, Ms Nisha Bhana, has applied under s 71ZB of the Parental Leave and Employment Protection Act 1987 (the PLEPA) for a review of a decision by the Ministry of Business, Innovation, and Employment (MBIE) that she was not entitled to parental leave payments (PLP).

[2] Ms Bhana's application for PLP was declined on the grounds that Ms Bhana was not eligible for PLP because she did not work for at least 26 weeks in the 52 weeks prior to her expected date of delivery (EDD).

[3] Pursuant to s 71ZB of the PLEPA, an employee may apply to the Authority for a review of a decision relating to an entitlement to PLP. On such a review, the Authority may "confirm, modify or reverse" the decision.¹

The Authority's Investigation

[4] The parties agreed on a Case Management Conference call that this matter could be determined on the papers following written submissions from both parties. An agreed statement of facts (ASoF) was also provided to the Authority.

[5] Both parties lodged submissions and supporting documents in accordance with an agreed timetable.

[6] As permitted by s 174E of the Employment Relations Act 2000 this determination states findings of fact and law, expresses conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received but all information provided in the course of the investigation has been considered.

Issues to be determined

[7] The issues requiring investigation and determination were:

- (a) Was Ms Bhana entitled to receive PLP under s 71D(1)(b) of the PLEPA?
- (b) Was MBIE correct in declining Ms Bhana's PLP application, and in not exercising its discretion to approve Ms Bhana's PLP application?
- (c) Should the Authority exercise its discretion to reverse or modify MBIE's decision?

¹ Parental Leave and Employment Protection Act 1987 a 71ZB (1)

Agreed Relevant Facts

[8] The facts relevant to the application for review were provided to the Authority in the form of an ASoF that both parties signed.

[9] Ms Bhana had been employed at Kindercare, an early childhood education centre since 30 January 2023. Ms Bhana raised a personal grievance claim on 8 March 2024 in relation to some workplace issues she was experiencing and Ms Bhana stopped working for the centre on 11 March 2024.

[10] On 30 May 2024 Ms Bhana registered with IRD to receive parental leave payments in regard to her pregnancy. Ms Bhana's EDD was 3 November 2024.

[11] In June 2024 Ms Bhana had discussions with IRD and on 14 June IRD advised Ms Bhana that she would not be eligible to receive PLP as she had not met the statutory test as set out in of the PLEPA, which requires at least 10 hours a per week of work over the 52 weeks prior to the EDD as is set out in s 2BA (4) of the PLEPA.

[12] IRD advised that her PLP application would be declined as she would not have worked the required weeks prior to her EDD, but she could appeal to the Authority against this decision if she wished.

[13] On 15 October 2025 Ms Bhana contacted IRD regarding her declined PLP and asked if it would be worth pursuing an appeal to the Authority. The IRD officer advised it would be worth "giving it a go" but stated that they could not speak for the Authority. The IRD officer made a PLP registration manually and sent through the case to MBIE with supporting documents.

[14] Ms Bhana then made an appeal to MBIE to have her PLP application re-evaluated due to special circumstances and stated that she could have met the weeks worked requirement if it was not for the workplace issues she had experienced and being medically unfit to work during her pregnancy as a result of the workplace issues.

[15] MBIE again declined Ms Bhana's application for PLP because she did not meet the test of working 26 out of 52 weeks under the PLEPA.

[16] Ms Bhana lodged her application to the Authority on 20 October 2025 and MBIE lodged a statement in reply on 13 November 2025.

[17] On 19 December 2025 the parties attended a Case Management Conference call (CMC) with the Authority and were directed to complete an ASoF memorandum. During this CMC Ms Bhana confirmed that she was not actively pursuing her personal grievance claim against Kindercare and there were currently no active proceedings against her former employer.

Paid parental leave - eligibility and entitlement requirements

[18] Part 7A of the PLEPA deals with PLP. Section 71A provides that the purpose of Part 7A of the PLEPA is to entitle certain persons who become the primary carer of a child, and who stop working or take a period of leave with up to 26 weeks of PLP out of public money.

[19] The Employment case of *Ministry of Business, Innovation and Employment v Duan*², sets out a five step roadmap for determining a person's eligibility and entitlement to PLP under the PLEPA. For reasons that will become apparent below, only the first two steps in respect of eligibility and entitlement need be considered in the present case.

Eligibility

[20] A person is entitled to paid parental leave payments if they are an eligible employee. Section 71CA of the PLEPA provides a two-limb test for a person to come within the definition of an "eligible employee". An eligible employee must be the primary carer of the child and meet the "parental leave payment threshold test" in s 2BA of the PLEPA.

Entitlement

[21] Under s 71D of the PLEPA, an eligible employee is entitled to receive PLP if during the 'relevant period', they are not employed, or self-employed, or they take parental leave from their employment.

² *Ministry of Business, Innovation and Employment v Duan* [2023] NZEmpC 232.

Discussion

[22] Section 71CA of PLEPA defines an eligible employee as a person who is the primary carer in respect of a child and meets the parental leave payment threshold test. Ms Bhana gave birth to her child on 22 October 2024 and met the definition of primary carer.³

[23] Having met the threshold of an eligible employee as required by s 71CA of the PLEPA, Ms Bhana must still be entitled to receive PLP, under s 71D of the PLEPA.

[24] MBIE's submission is that Ms Bhana did not meet the parental leave payment threshold test in s 2BA (4) (a) of the PLEPA because she did not work for at least an average of 26 weeks in the 52 weeks prior to her EDD and is not therefore eligible for PLP.

[25] The PLEPA sets the relevant 52-week period as being counted back from the EDD. Ms Bhana's EDD was 3 November 2024. Therefore, the relevant 52-week period was 5 November 2023 – 3 November 2024.

[26] The ASoF provides that during this 52-week Period, Ms Bhana was employed at Kindercare Learning Centres at Johnsonville from 5 November 2023 – 4 February 2024 (13 weeks and one day) and then at the Lower Hutt Branch from 5 February 2024 – 11 March 2024 (5 weeks and one day).

[27] MBIE says that on the most generous interpretation, rounding the single days up to a week, this would mean Ms Bhana had worked 20 weeks in the Relevant 52-week Period.

[28] Based on the Income details provided by IRD, MBIE understands that Ms Bhana also received some further income from Kindercare for the period ending 31 March 2024. It is unclear whether this payment was annual leave and/or her notice period being paid out but if it is construed as her employment continuing until this date, then this adds another 2 weeks.

³ Under s 7(1) (a) of the PLEPA, being the child's biological mother, Ms Bhana became the primary carer on the birth of her child.

[29] It is further noted that there is an additional income payment in the IR records, from Discovery Elim Christian Centre Trust, however the payment of \$189.54 is low enough it likely relates to a day (or less) of work in July 2024. Otherwise there is no other employment for Ms Bhana between the end of her employment with Kindercare in March 2024 and the birth of her child.

[30] MBIE says that even on the most generous interpretation of this information, including the rounding up noted above and including the possible single day of work for Discovery, Ms Bhana still would have only worked a maximum of 23 weeks in the relevant 52-week period, which is still short of the required 26 weeks.

[31] MBIE says that it must apply the law as it is written and that law currently requires an applicant for PLP to have worked at least 26 weeks in the relevant period and have an average of at least 10 hours a week across those weeks.

[32] In her submissions Ms Bhana acknowledges that she has not worked for 26 weeks in the relevant eligibility period for PLP but essentially says that if not for her employment relationship problem with Kindercare, coupled with her pregnancy-related health issues following the ending of her employment, she would have been able to meet the requirements set out in section 2BA of the PLEPA.

Was MBIE correct in declining Ms Bhana’s PLP application, and in not exercising its discretion to approve Ms Bhana’s PLP application?

[33] Under s 71IA of the PLEPA, MBIE has a discretion to approve PLP to a person, despite an ‘irregularity’ in that person’s application for PLP. However, s 71IA(5) makes it clear that ‘irregularity’ relates to matters of form only. The Court in *Duan* held that under 71IA(5), MBIE’s discretion cannot be exercised in relation to matters of substance.⁴

[34] MBIE says that while it does have some discretion under s 71IA of the PLEPA to approve the making of PLP this does not allow it to change the PLEPA’s eligibility requirements, which are anchored in the legislation and these are connected to a working relationship that persists for at least 26 weeks in the relevant 52-week period.

⁴ Above n2 at [61]

[35] Ms Bhana also says that if the 52 week period is taken back from the birth of her child on 22 October 2024 then she is only short by one week. However, this is not how the payment threshold test applies. Taking the lead from the *Duan* case, the meaning of the PLEPA provisions must be ascertained from their text and in light of their purpose and context.

[36] In the *Duan* case the Employment Court held that s 2BA(4)(a)(i) explicitly refers to the expected date of delivery in cases where the child is born to the applicant or their partner. Section 71IA of the PLEPA does not allow MBIE to exercise its discretion to move the relevant dates, being the start and end dates of the parental leave payment period to another time period not provided for by the legislation.⁵

[37] MBIE says that as Ms Bhana does not meet the statutory test it was right to decline her application given its discretion is limited to approve irregular applications where the irregularity is a matter of form, such as making a late application or applying in a manner other than that prescribed in the regulations.⁶ There is no such irregularity in this case.

[38] Put another way, MBIE says Ms Bhana's failure to meet the 26-week test is a matter of substance and it has applied the PLEPA appropriately.

[39] I accept this submission. Ms Bhana did not work an average of 10 hours a week for 26 out of the 52 weeks immediately preceding the EDD of her child. MBIE applied the statutory test correctly and there was not an applicable irregularity in Ms Bhana's application.

[40] Accordingly, MBIE was correct in declining Ms Bhana's application for PLP and in not exercising its statutory discretion to approve her non-compliant application for PLP.

Should the Authority exercise its discretion to modify or reverse MBIE's decision?

[41] Under s 71ZB of the PLEPA, the Authority has a discretion to confirm, modify, or reverse the decision to decline Ms Bhana's parental leave payments.

⁵ Above n2 at [62]

⁶ PLEPA s 71IA

[42] Section 157(3) of the Employment Relations Act 2000 permits the Authority to act “as it thinks fit in equity and good conscience”.

[43] Previous decisions of the Authority in paid parental leave cases confirm that its discretion⁷

- (a) must be exercised in a principled manner, having regard to the policy and purpose of the legislation;
- (b) does not permit the Authority to re-write the legislation;
- (c) must be applied consistently with the express and prescriptive provisions of the legislation; and
- (d) does not allow the Authority to approve an application where the applicant does not meet the eligibility criteria set out in PLEPA.

[44] The Authority in *McClure v MBIE*⁸ observed that a common thread in cases where discretion was exercised was that the applicant had suffered an “injustice” that prevented them from meeting the threshold test, despite otherwise being eligible.

[45] Ms Bhana says that the Authority should exercise its discretion in her favour because had it not been for the injustice she suffered with Kindercare she would have met the PLP requirements and there was a direct causal connection with her former employer’s conduct. Ms Bhana further days that the stress created as result of these events contributed to a pregnancy related medical emergency.

[46] Ms Bhana lodged a personal grievance with Kindercare and details of this were provided in her submissions. This correspondence is that Ms Bhana opted to resign her employment and, for reasons of her own, Ms Bhana has also not progressed her grievance and has confirmed that there were no active proceedings in respect of the personal grievance at the time of this review.

[47] While it is outside of the scope of this determination as to whether the personal grievance provisions of the Employment Relations Act 2000 might assist Ms Bhana, I do not consider Ms Bhana’s circumstances amount to an injustice that prevented her

⁷ See, for example: *NRT v MBIE* [2024] NZERA 421, at [18]; *Malhi v MBIE* [2023] NZERA 663 at [39]-[41]; *Foo v MBIE* [2024] NZERA 386, and *Don v MBIE* [2024] NZERA 163

⁸ *McClure v MBIE* [2022] NZERA 654, at [55].

from meeting the threshold test for PLP. I am further satisfied that there is no provision in the PLEPA for the Authority to modify or reverse MBIE's decision on Ms Bhana's application for PLP in the circumstances Ms Bhana has provided.

[48] In my research on this review, I did not identify any instances where the Authority had previously reversed or modified a decision specifically on personal grounds of the kind Ms Bhana describes in order to provide PLP to a person who had not met the qualifying periods set in the PLEPA. *Hood v MBIE*⁹ and *Walworth v MBIE*¹⁰ are recent case examples where the Authority considered personal grounds involving the requirements not being met because of caring for ill family and compassionate grounds, but these were not sufficient to overturn a PLP decision.

Outcome

[49] For the reasons given, I confirm MBIE's decision to decline Ms Bhana's application for PLP. MBIE's interpretation and application of the PLEPA was correct.

[50] Whilst I acknowledge Ms Bhana's position, there is no legal basis for the Authority to overlook the specific statutory requirements for eligibility in this situation and to modify or reverse MBIE's decision to decline PLP.

[51] Ms Bhana's application to modify or reverse MBIE's decision on PLP is not successful and MBIE's decision to decline Ms Bhana's application for PLP is confirmed.

Costs

[52] As per the current Practice Direction of the Employment Relations Authority this category of proceeding is one in which parties should generally bear their own costs.¹¹

[53] If an Authority determination on costs is however needed MBIE may lodge, and then should serve, a memorandum on costs within 28 days of the date of issue of the

⁹ *Hood v MBIE* [2021] NZERA 215

¹⁰ *Walworth v MBIE* [2021] NZERA 579

¹¹ Practice Direction of the Employment Relations Authority, February 2024, at page 5, paragraph 6 viii

written determination. From the date of service of that memorandum Ms Bhana will then have 14 days to lodge any reply memorandum.

Alyn Higgins
Member of the Employment Relations Authority