

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

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

[2026] NZERA 219
3438664

BETWEEN	ANDRES FELIPE ARGUELLES RAMIREZ Applicant
AND	MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT Respondent

Member of Authority:	Robert Davies
Representatives:	Andres Ramirez, in person for the Applicant Matt Burden, counsel for the Respondent
Investigation Meeting:	On the papers
Submissions received:	18 March 2026 from the Applicant 13 March 2026 from the Respondent
Determination:	10 April 2026

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] This is an application by Andres Ramirez to review the respondent's decision to decline his entitlement to a parental leave payment under the Parental Leave and Employment Protection Act 1987 (PLEPA). The review application is made in accordance with section 71ZB of the PLEPA. The Authority is responsible for undertaking the review and has the discretionary power to confirm, modify, or reverse the Respondent's decision.

The Authority's investigation

[2] During case management of these proceedings on 26 February 2026, the parties agreed the matter could be determined on the papers. Affidavit evidence and submissions were filed by Mr Ramirez as the applicant and Mr Burden provided submissions in writing on behalf of the respondent.

[3] 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.

[4] I have chosen not to name Mr Ramirez's wife or daughter in this determination because that detail isn't necessary for me to still dispose of the matter. However, and for clarity, non-publication orders were not sought and have not been made in this case.

The issue

[5] The issue requiring review and determination is:

- (a) Whether Andres Felipe Arguelles Ramirez is the "primary carer" of [his daughter] for the purposes of section 7 of the PLEPA and is therefore entitled to parental leave payments?

[6] Irrespective of the outcome of the review into that issue, the Authority also needs to consider whether to exercise its discretion to reverse or modify the decision under review, in accordance with section 71ZB of the PLEPA.

The Parental Leave and Employment Protection Act 1987

[7] The PLEPA came into force on 1 October 1987.¹ Amongst other things, its purpose is to "...entitle certain persons to up to 26 weeks of parental leave payments".² For any one of those 'certain persons', this can include an entitlement to paid primary carer leave, provided the person is also a 'primary carer' for the purposes of section 7 of the PLEPA:

¹ Parental Leave and Employment Protection Act 1987, s 1(2).

² Ibid, s 1A(c).

7 Meaning of primary carer

- (1) In this Act, unless the context otherwise requires, **primary carer** means—
- (a) a female (the **biological mother**) who is pregnant or has given birth to a child;
 - (b) the spouse or partner of the biological mother, only if—
 - (i) the spouse or partner has succeeded under section 72B to all or part of the biological mother's entitlement to a parental leave payment; or
 - (ii) the biological mother has transferred all or part of her entitlement to a parental leave payment to that spouse or partner under section 71E (in which case the spouse or partner is the primary carer for the period of time in relation to which the entitlement is transferred); or
 - (iii) neither subparagraph (i) or (ii) applies and all of the following are true:
 - (A) the child is under 1 year of age; and
 - (B) the spouse or partner, because of the death of the biological mother or for any other reason, has taken permanent primary responsibility for the care, development, and upbringing of the child to the exclusion of the biological mother; and
 - (C) at the time the spouse or partner took that permanent primary responsibility, the biological mother either had not applied for, or did not qualify to apply for, a parental leave payment:
 - (c) a person, other than the biological mother or her spouse or partner, who takes permanent primary responsibility for the care, development, and upbringing of a child who is under the age of 6 years (and if there is more than 1 such person, the person nominated in accordance with subsection (2)).

...

[8] Section 7 of the PLEPA creates three categories of primary carer: (i) biological mothers; (ii) their spouses or partners (but only in prescribed circumstances); or (iii) other persons with permanent primary responsibility for the care, development and upbringing of a child.

[9] In the case of spouses and partners like Mr Ramirez, the prescribed circumstances are in section 7(1)(b)(iii)(A) to (C) (inclusive) of the PLEPA, and all need to be satisfied. They are:

- a. that the child in question is under 1 year of age; and
- b. that the spouse or partner has taken permanent primary responsibility for them to the exclusion of the biological mother; and
- c. that, at the time that responsibility was assumed, the biological mother either had not applied for, or did not qualify to apply for, a parental leave payment.

[10] In this case, the parties agree the circumstances in section 7(1)(b)(iii)(A) and (C) are satisfied (i.e. that Mr Ramirez's daughter is under 1 year of age and that, at the

time he assumed permanent primary responsibility, his wife did not qualify for a parental leave payment).

[11] What remains in dispute is whether Mr Ramirez meets the specific circumstance in section 7(1)(b)(iii)(B), namely that "...for any other reason..." he has taken "...permanent primary responsibility for the care, development and upbringing of the child to the exclusion of the biological mother".

The parties' positions and relevant factual background

[12] Mr Ramirez provided two affidavits (including one in reply to the respondent's submissions) as well as written submissions of his own. Much of what Mr Ramirez deposed is not disputed by the respondent, and certainly nothing in respect of the relevant factual background.

[13] Mr Ramirez says that he assumed primary responsibility for his daughter's day-to-day care when she was born on 5 December 2025 on the basis the biological mother, his wife, "...has urgent and serious overseas family obligations requiring her presence outside of New Zealand." Mr Ramirez says his wife's uncertain and open-ended obligations mean this assumption of responsibility for his daughter will be "...ongoing and not temporary or provisional in nature".

[14] Mr Ramirez states that this arrangement was agreed with his wife, who is not eligible for paid parental leave and is not seeking it. Mr Ramirez maintains that he is the only person seeking recognition as primary carer for statutory purposes and that the transfer of caregiving responsibility to him was genuine, not rotational, and will not be shared. Mr Ramirez points out he has stopped working to assume this responsibility.

[15] In response to the respondent's reference to immigration information suggesting his wife has remained in New Zealand, Mr Ramirez says that issue does not alter the practical reality that he has assumed primary responsibility for his daughter's care. He emphasises that this caregiving arrangement reflects the substantive allocation of responsibility within the family, rather than formal or technical considerations such as travel movements or future plans.

[16] Mr Ramirez also challenges the respondent's interpretation of the requirement that parental responsibility be assumed "to the exclusion of the biological mother". He submits that this does not mean the mother can have no involvement in the child's life

or that she must be physically absent from New Zealand. Rather, it concerns the allocation of primary caregiving responsibility.

[17] Mr Ramirez emphasises the breadth of the phrase “...or for any other reason” in section 7(1)(b)(iii)(B), arguing that Parliament must have intended it to capture a wide range of family arrangements where one partner assumes primary care. On that interpretation, the fact that his wife remains in New Zealand and may retain some involvement in his daughter’s care does not disqualify him, as her spouse or partner, provided he has assumed the primary caregiving role in a substantive sense.

[18] For the respondent, Mr Burden relied on the approach in *Ministry of Business, Innovation and Employment v Duan* as providing an authoritative framework for assessing any entitlement to paid parental leave,³ submitting that decision sets out a structured “roadmap” requiring applicants to satisfy both eligibility and entitlement under the PLEPA, including meeting the definition of primary carer in section 7. Mr Burden emphasises this involves a sequential assessment, beginning with whether the applicant meets the statutory criteria, and that failure to satisfy any element – particularly the requirement to have assumed permanent primary responsibility for the child's care to the exclusion of the biological mother – precludes entitlement overall.

[19] Mr Burden submits the PLEPA’s statutory requirements are not met in this case. While Mr Ramirez asserts he has assumed primary responsibility due to the biological mother's overseas travel, the evidence does not establish that she is excluded from the child's care in the manner contemplated by the PLEPA. The respondent interprets “exclusion” as requiring a complete absence of involvement by the biological mother, such as where she is deceased, imprisoned, or subject to orders removing care responsibilities. Mr Ramirez’s evidence is said to be vague and does not adequately address his wife’s circumstances, level of involvement, or the permanence of any arrangements regarding his daughter’s care, development and upbringing.

[20] Further, and as already alluded to above, Mr Burden identifies gaps in the evidence, including regarding the biological mother's location, travel history, reasons for being overseas, expected return, future care arrangements, as well as the extent of ongoing contact between the parents. Mr Burden says information obtained from Immigration New Zealand is said to indicate that the biological mother has remained in

³ *Ministry of Business, Innovation and Employment v Duan* [2023] NZEmpC 232.

New Zealand since shortly before the child's birth, which, if correct, is also said to undermine Mr Ramirez's account.

[21] On that basis, Mr Burden submits on behalf of the respondent that Mr Ramirez has not demonstrated the statutory criteria in section 7(1)(b)(iii) are satisfied, and also that there is no relevant irregularity that would justify the exercise of any discretion under the PLEPA to nevertheless reverse or modify the decision in question, and therefore, Mr Ramirez is not eligible for paid parental leave. It also follows, submits Mr Burden, that the respondent's decision to decline the original application was correct.

Statutory interpretation

[22] This review requires the Authority to decide between two quite different interpretations of the same statutory provisions in section 7(1)(b)(iii) of the PLEPA.

[23] The starting point for statutory interpretation in New Zealand is section 10 of the Legislation Act 2019, which requires that legislation be interpreted according to its text and in light of its purpose and its context.⁴ The text, purpose and context must all be considered together, not sequentially or in isolation. This direction reflects a unitary approach to interpretation, under which statutory meaning is derived from the interaction between the ordinary meaning of the words used and their legislative purpose, assessed in context.⁵

[24] Legislative purpose is not confined to an abstract or high-level single objective but is derived from the Act in question as a whole, including its scheme, structure and, where appropriate, legislative history. However, the weight given to purpose will depend on the clarity of the statutory language: the clearer the statutory language, the more difficult it will be to justify a departure from its ordinary meaning in the name of purpose.⁶

[25] Context also plays a critical role in interpretation. I have taken this to include the immediate textual context, the wider statutory framework, and any relevant common law or statutory presumptions. This means words are to be read in their statutory setting rather than in isolation.

⁴ Legislation Act 2019, s 10(1).

⁵ *Commerce Commission v Fonterra Co-operative Group Ltd* [2007] NZSC 36.

⁶ *R v Hansen* [2007] NZSC 7.

[26] Finally, any interpretation must remain consistent with the limits of the judicial role. The Authority must apply the legislation as enacted and cannot rewrite or supplement it under the guise of interpretation. Where the statutory language is clear, it must be given effect, even if the outcome appears harsh or imperfect. This constraint reflects the constitutional principle that law making is the function of Parliament, while interpretation is the function of the courts and statutory decision makers, including the Authority.

Consideration and analysis

[27] The essential issue in this case is whether Mr Ramirez can be his daughter's primary carer in circumstances where the evidence also suggests his wife, the biological mother, is not permanently excluded from that daughter's care, development and upbringing, as apparently required by section 7(1)(b)(iii)(B) of the PLEPA:

...the spouse or partner, because of the death of the biological mother or for any other reason, has taken permanent primary responsibility for the care, development, and upbringing of the child to the exclusion of the biological mother.

[28] In my view, the statutory language is stringent and clear.

[29] The plain and ordinary meaning of "permanent primary responsibility", when considered alongside the words "to the exclusion of the biological mother", denotes more than practical day-to-day care. It requires a settled and enduring assumption of responsibility by the spouse or partner without the input of the biological mother. In other words, the biological mother cannot exercise, and must not be in a position to exercise, any responsibility for the child's care, development or upbringing. In this regard, I do not accept Mr Ramirez's submission that this wording was only intended to capture caregiving arrangements, meaning a biological mother could still be involved in the child's life so long as the spouse or partner had assumed primary caregiving responsibilities.

[30] I agree with Mr Ramirez that the wording "...or for any other reason" in the provision is sufficiently broadly worded to include a wide range of potential circumstances. However, the critical feature is that the reason – however unique or specific to the circumstances in question – also involves the biological mother's permanent exclusion from the child's care, development and upbringing.

[31] On the evidence, I accept that Mr Ramirez has assumed significant, and likely predominant, day-to-day caregiving responsibilities for his daughter, including that he

has stopped working. That is not in dispute. However, I do not consider the statutory test is satisfied by this predominance alone.

[32] In particular, the evidence does not satisfactorily establish to me that the biological mother is permanently excluded from the care, development, and upbringing of the child in the manner contemplated by section 7. There is no evidence of death, incapacity, legal restriction, or other circumstance permanently removing her from a caregiving role, nor is there evidence that she has relinquished or been unable to exercise that role in any permanent or substantive sense.

[33] I see this as the clear requirement of the PLEPA, even if its logical outcome is also perceived as being harsh or imperfect.

[34] The applicant's case proceeds on an anticipated future absence by the biological mother due to overseas obligations. However, on Mr Ramirez's own evidence, that absence has not yet occurred. The arrangement is contingent on future events and has not crystallised into a state where the biological mother is excluded from caregiving. The applicant's suggestion that travel timing has been affected by logistical or financial factors only reinforces that the situation remains fluid. The statutory requirement is directed to the actual and permanent allocation of caregiving responsibility, not an intended or anticipated arrangement.

[35] Additionally, the applicant's submission that matters such as travel movements or future plans are not determinative cannot be accepted. Where the statutory test requires the permanent exclusion of the biological mother, evidence bearing on her presence, involvement, and ability to provide care is also directly relevant.

[36] On the information before the Authority, the biological mother remains present in New Zealand and there is no evidence that she is excluded from caregiving arrangements, or that she would be even if she were to depart New Zealand, including for an uncertain period of time. This means that even if Mr Ramirez is the principal caregiver in practice, because the statutory threshold for primary carer status is not met, it follows that he cannot be the primary carer in law.

Discretion

[37] Notwithstanding my finding above, section 71ZB of the PLEPA still gives the Authority a broad discretion, including to modify or reverse the decision to decline

primary carer status and thereby to influence any resulting entitlement to parental leave payments.

[38] In exercising this discretion, section 157(3) of the Employment Relations Act 2000 becomes relevant, and permits the Authority to act “as it thinks fit in equity and good conscience”. Previous decisions of the Authority in paid parental leave cases, helpfully summarised in *Bhana v MBIE*, confirm that the discretion must be:⁷

- a. exercised in a principled manner, having regard to the policy and purpose of the legislation, and cautiously, so as not to re-write the legislation; and
- b. applied consistently, with the express and prescriptive provisions of the legislation in mind.

[39] I do not consider the exercise of my discretion in this case would be principled or consistent with the PLEPA, taking into account the clear and unambiguous language used in its section 7(1)(b)(iii). I consider that if I were to exercise any discretion in this case to reverse or modify the respondent’s decision, it would have the effect of re-writing the law.

Outcome

[40] Mr Ramirez is not the primary carer of his daughter for the purposes of section 7 of the PLEPA and is not entitled to parental leave payments.

Costs

[41] This category of proceeding is one in which parties should generally bear their own costs.⁸

[42] If a determination on costs is required, the respondent may lodge, and then should serve, a memorandum on costs within 28 days of the date of issue of the written determination. From the date of service of that memorandum, Mr Ramirez will 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.

⁷ *Bhana v Ministry of Business, Innovation and Employment* [2026] NZERA 121, from [43].

⁸ *Practice Direction of the Employment Relations Authority* (February 2024), p 5.

[43] The parties could expect the Authority to determine costs, if asked to do so, on its usual notional daily rate unless particular circumstances or factors required an upward or downward adjustment of that tariff. Further information about the factors considered in assessing costs is available on the Authority's website.⁹

Robert Davies
Member of the Employment Relations Authority

⁹ www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1