



NEW ZEALAND COUNCIL OF TRADE UNIONS  
*Te Kauae Kaimahi*

**Submission of the  
New Zealand Council of Trade Unions  
Te Kauae Kaimahi**

to the

**Ministry of Business, Innovation &  
Employment**

**On the Discussion Document**

**“Modernising Parental Leave”**

**P O Box 6645  
Wellington  
August 2014**

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## CTU Submission Modernising Paid Parental Leave: August 2014

### 1. Summary of recommendations

- 1.1. The CTU welcomes the widening of the eligibility criteria to ensure that people in temporary and non-standard employment are entitled to paid parental leave, and the change of focus to a person's employment pattern rather than their relationship with a single employer.
- 1.2. We recommend a reduction in the "hours threshold test" per week to improve eligibility entitlement.
- 1.3. We are concerned that the current two tests in the Act may still militate against some casual and seasonal workers being eligible for paid parental leave. We recommend more policy work on the impact of the "hours threshold" test and the "tenure test" on eligibility in sectors where there are high numbers of temporary workers.
- 1.4. We recommend changes to s 71L (3) to ensure that the parental leave payment continues for the duration of the maternity leave period and not to cease on the date on which the fixed term employment period ends.
- 1.5. Special leave also must be provided for pregnant workers in non-standard employment as per s 15 of the Act.
- 1.6. Support and resources need to be improved to provide people in non-standard work who are applying for parental leave with easy-to-understand information around entitlements.
- 1.7. We support the proposal to enable verification of length of service and salary using Inland Revenue Department data.
- 1.8. We support the proposal that the parental leave scheme be changed to include access to parental leave entitlements for people in diverse family arrangements.
- 1.9. Protections are essential, if people on parental leave return to work during the time of that leave, to ensure the objectives of the Act are preserved. Our recommendations are listed in Section 8 of this submission.

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- 1.10. We recommend that access to flexible work provisions following parental leave should be incorporated into the Parental Leave and Employment Protection Act 1987.
- 1.11. The CTU supports extending unpaid leave after having worked six months but less than 12 months on a pro-rata basis according to length of service.
- 1.12. The CTU supports paid leave for those eligible for spouse/partner leave.
- 1.13. We recommend the immediate repeal of s 42(2) (c).
- 1.14. Penalty provisions that were repealed in 1991 should be reintroduced at a level that effectively deters breaches of the Act.

## 2. Introduction

- 2.1. This submission is made on behalf of the 37 unions affiliated to the New Zealand Council of Trade Unions Te Kauae Kaimahi (CTU). With over 330,000 members, the CTU is one of the largest democratic organisations in New Zealand.
- 2.2. The CTU acknowledges Te Tiriti o Waitangi as the founding document of Aotearoa New Zealand and formally acknowledges this through Te Rūnanga o Ngā Kaimahi Māori o Aotearoa (Te Rūnanga) the Māori arm of Te Kauae Kaimahi (CTU) which represents approximately 60,000 Māori workers.
- 2.3. Parental leave is a core employment issue for unions. The CTU supports the submissions of its affiliated unions: the Public Service Association (PSA); the Post Primary Teachers Association (PPTA); the New Zealand Educational Institute (NZEI); the Tertiary Education Union (TEU) and the New Zealand Nurses Organisation (NZNO). These unions have large numbers of members who are directly affected by the Parental Leave and Employment Protection Act 1987 (the Act).
- 2.4. The CTU welcomes changes to the paid parental leave scheme that bring the provisions in the scheme in line with the structure of the workforce in 2014, that are more responsive to the social needs of and economic pressures on new parents and that recognises the widespread economic and social benefits from parental leave.
- 2.5. For these reasons the CTU strongly supported the private members Bill of Labour MP Sue Moroney which extended the length of paid parental leave from 14 weeks to 26 weeks. New Zealand has one of the lowest rates of parental leave provision in the OECD. Most economically developed countries provide between 3 and 12 months of paid leave, while new parents in New Zealand currently have only 14 weeks of paid leave (due to increase to 18 weeks by 2016).
- 2.6. The extension of paid parental leave to 26 weeks had widespread public support. Polls typically showed at least two thirds of voters supported the extension, with some showing even greater support. There was strong pressure on the Government to extend the paid parental leave provisions. The announcement of the extension in

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Budget 2014 from 14 weeks to 16 weeks on 1 April 2015 and then to 18 weeks on 1 April 2016 was not surprising.

- 2.7. The discussion document released by MBIE, *Modernising Parental Leave*, which discusses other changes that were also announced on Budget Day 2014 is welcome. The discussion document provides an opportunity to look in more depth not only at the entitlement provisions that have been signalled for change, but also to consider whether there should be other changes to the scheme.
- 2.8. We agree with the Minister of Labour who states in the forward of the discussion document that changes to the Act are needed “*so more people can access the scheme.*”<sup>1</sup> Progress is long overdue given major changes in the labour market and in family and social structures over the last decade and longer term.

### 3. CTU Policy

- 3.1. It is a fundamental principle of the CTU that all pregnant women workers have an entitlement to paid maternity leave.
- 3.2. The CTU is the New Zealand affiliate of the International Trade Union Confederation (ITUC). As such we report on International Labour Organisation (ILO) Conventions. Maternity leave and protections are a core issue for the ILO and ITUC. ILO Maternity Convention 3 was one of the first ILO Conventions when it was passed in 1919. Since then, the ILO has adopted two other Conventions on maternity protection (No. 103, 1952 and No. 183, 2000). All of these maternity conventions, together with their accompanying recommendations, have progressively expanded the scope and entitlements for maternity protection and provided guidance for national policy and action on maternity and parental leave.
- 3.3. New Zealand’s ratification of the Convention on the Elimination of Discrimination against Women (CEDAW) creates obligations to provide paid parental leave and specifies payment entitlements. In its report to the New Zealand Government in 2012, the Expert Committee noted with concern, “*the challenges in implementing parental*

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<sup>1</sup> <http://www.dol.govt.nz/consultation/parental-leave/modernising-parental-leave-consultation.pdf> page 1.

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*leave, including paid parental leave for men, in ensuring paid leave for seasonal or fixed-term workers with multiple employment relationships....”*<sup>2</sup>

- 3.4. Therefore it is heartening to see a widening of the eligibility criteria to ensure that people in casual and seasonal employment are entitled to paid parental leave.
- 3.5. The CTU has submitted on all legislative changes to the Act (2002, 2004 and 2006 and a review of the Act in 2003) that the extension of paid parental leave to seasonal and casual workers must be a priority to ensure that those who are most in need have access to it.<sup>3</sup>
- 3.6. The 2005/2006 evaluation of the paid parental leave scheme<sup>4</sup> (‘the 2006 Evaluation’) confirmed the disadvantage experienced by pregnant women who are in casual and non-standard employment. The Evaluation found that low-income workers were over-represented amongst mothers who were in work but did not qualify for parental leave. It also showed the disadvantage experienced by casual workers: just under half of the ineligible workers were in casual work versus six percent for those who were fully eligible.
- 3.7. We welcome the changed focus of the scheme to a person’s employment history and pattern rather than their relationship with a single employer. However the changes proposed must fulfil the policy objective of extending paid parental leave provisions to more parents in the workforce. Issues remain and further analysis is needed as to whether the policy objective of extension to non-standard workers will be fully met by the proposals.
- 3.8. This submission comments on the proposals and makes some recommendations. The last section of the submission raises considerations regarding the changes required to the Act. These include the need to provide paid parental leave for spouses/ partners; the high prevalence of pregnancy-related discrimination in workplaces; the financial penalty provisions in the Act relating to holiday leave in the year returning to work

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<sup>2</sup> Committee on the Elimination of Discrimination against Women Concluding Observations, 52<sup>nd</sup> Session, 9-27 July, 2012.

<sup>3</sup>CTU submission on PLEPA 2002, Review of PLEPA 2003, CTU Submission PLEPA, 2004., CTU Submission PLEPA 2006

<sup>4</sup> <http://www.dol.govt.nz/PDFs/research-parental-leave-evaluation2005-06.pdf>

following parental leave; and the absence of any penalties for breaches of the Act.

We would welcome the opportunity to discuss the matters raised in this submission with Ministry of Business and Innovation (MBIE) officials.

#### **4. The evidence**

- 4.1. The 2006 Evaluation identified areas for improvement: that parents would like to take more leave; that parents are returning to work earlier than they like due mainly to financial constraints and pressures; that fathers are not using the unpaid paternity leave and instead are using annual leave at the time of the birth/ adoption of their child; that the eligibility criteria mean that some working parents are not covered by the scheme; and that some employers, especially small and medium-sized enterprises (SMEs) find it difficult to manage work flows when a parent is on leave. These areas remain problematic nearly 10 years on.
- 4.2. The submission by the researchers who are undertaking the *Growing Up in New Zealand* study on the Parental Leave and Employment Protection (Six Months Paid Leave) Amendment Bill in 2012 also confirmed that there is a large gap between the amount of time people prefer to take on parental leave compared to the entitlements in the Act.
- 4.3. This study found that over 95 percent of all the *Growing Up in New Zealand* mothers, who were pregnant and in paid employment, intended to take leave once their baby was born. These women reported that they anticipated taking an average of six months of leave when their babies were born. The mothers, who were also asked how much leave they would prefer to take when their babies were born, reported a preference for an average of 16.5 months. The length of anticipated leave was similar across maternal characteristics including ethnicity, deprivation and occupation. Those women living in households with the lowest household income (less than \$20,000 per year) anticipated having and preferred a shorter period of leave compared to other women.

## 5. Labour market changes

- 5.1. Since the Act was established in 1987 there have been major changes in labour market participation. There has been a significant increase in the number of females in the workforce with their labour market participation rate rising from 53.2% in 1989 to 63.1% in 2014. Of major importance is the increase in the labour participation rate of females aged 25-34 in the workforce which is the period when women are most likely to have children.
- 5.2. Notwithstanding, New Zealand still has a lower rate of labour participation of females aged 25-34 years than the OECD average. One of the reasons that has been suggested is the lack of jobs that offer flexible working arrangements.<sup>5</sup> We comment on this in the latter part of this submission and recommend flexible work requests be strengthened and incorporated into the Parental Leave and Employment Act 1987 to enable changes in employment to be made that better suit new parents. Difficulties in accessing flexible employment arrangements is one of the major barriers that women face coming back after parental leave.
- 5.3. Another major contextual issue which makes it critical to make changes to the eligibility criteria is the substantial growth in the number of people in casual and temporary employment and insecure work. Women are represented disproportionately among the workforce who are in insecure employment. Females are more likely than males to be working in temporary jobs with an overall incidence rate of approximately 11 percent, compared with 8 percent for men.<sup>6</sup>
- 5.4. Approximately 10 percent of employees work in temporary jobs according to the 2012 Survey of Working Life (SoWL). Of the 192,200 temporary workers identified by SoWL, casual workers were by far the largest group making up almost half (48 percent). The majority of the remainder were fixed term workers (9 percent) followed by seasonal workers (14 percent) and temporary workers (8 percent).<sup>7</sup> Women make up 58

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<sup>5</sup> <http://www.dol.govt.nz/publications/lmr/participation/participation.pdf>

<sup>6</sup> <http://www.dol.govt.nz/publications/research/temporaryworkers/temporary-workers.pdf>

<sup>7</sup> Ongley P., Lum, R., Lynch, C., Lu, E. (2013). *A Snapshot of New Zealand's temporary workers: results from the 2012 Survey of Working Life*, Paper presented at the New Zealand Association of Economists (NZAE) Conference, Wellington 2013.

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percent of temporary employees as opposed to 48 percent of permanent employees. There are also differences in the different types of temporary work: women make up almost seven in every ten people in fixed term jobs and six in ten casual workers. The education and training sectors employ the largest number of temporary workers followed by the retail, accommodation and food services sectors.

5.5. For seasonal, temporary and casual workers, who are more likely be on low incomes, maintenance of income stability during parental leave is particularly important.

5.6. The following section addresses the five proposals in the discussion document.

### **6. Proposal 1: Extending paid parental leave entitlement to less regular (or non-standard) employees and employees who have recently changed jobs or experienced gaps in employment.**

6.1. This proposal leaves the two tests in place to decide on eligibility for parental leave payment: the six month test and the ten hours on average per week test. The proposal is that these tests are applied to workers who have been or are working for multiple employers.

6.2. While the proposal to apply the eligibility tests across multiple employers is an improvement there will still be people who struggle to meet the criteria. We are concerned that the current two tests may still militate against some casual and seasonal workers being eligible for paid parental leave. A quarter of the women in the 2005/2006 evaluation had not worked for the required eligibility period and of the ineligible employed women surveyed, two thirds were ineligible due to tenure.

6.3. The proposal that applicants will need to have worked an average of at least 10 hours per week over any 26 weeks out of the 52 weeks immediately preceding the expected date of delivery/ adoption is an improvement but it will still be hard to meet for workers in temporary, casual and seasonal work. We recommend a reduction in the hours test per week to increase eligibility.

6.4. The Families Commission recommended in 2007 that the ten hour per week eligibility criterion should be removed. The NZNO is recommending in its submission on this

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discussion document that the required hours be reduced to 4 -5 hours because it is more realistic, reflects current work patterns in nursing and is consistent with the number of hours needed to retain clinical registration.

- 6.5. We recommend more policy work on the impact of the “hours threshold” test and the “tenure test” on eligibility in sectors where there are high numbers of temporary workers.
- 6.6. This proposal may also not adequately take account of the issues in sectors where there is high use of fixed term agreements. The education sector particularly has a high proportion of its workforce employed on fixed-term arrangements (8 percent of its employees).
- 6.7. The changes will not improve the eligibility of some women who are employed on fixed term agreements despite having consistent work histories and work patterns over many years. Eligibility for parental leave payments for women on a fixed term agreement ceases on the date the fixed term ends as per s 71L (3) which states:
- ..... the period for which a parental leave payment is payable to an employee terminates earlier than the date referred to in subsection (1)—*
- (a) if the employee takes parental leave only from fixed term employment (within the meaning of [section 66](#) of the Employment Relations Act 2000), in which case the payment stops on the date on which fixed term employment ends;*
- 6.8. Given that a person is not eligible for both the parental tax credit and for parental leave payments, a person on a fixed-term agreement which has expired, could face serious financial disadvantage, despite having a consistent work pattern.
- 6.9. This disadvantage needs to be rectified. We recommend changes to s 71L (3) to ensure that the parental leave payment continues for the duration of the maternity leave period and not cease on the date on which the fixed term employment period ends.
- 6.10. Special leave also must be provided for non-standard workers. Currently a female employee who is pregnant is entitled to 10 days special leave before taking maternity

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leave in s 15 of the Act. The extension of paid parental leave to temporary and non-standard workers needs also to reflect that female temporary and non-standard workers are entitled to special leave for reasons connected with pregnancy.

- 6.11. A critical issue for accessing parental leave is accessible, easy-to-understand information about the entitlements in the Act. The advice in many workplaces is woefully inadequate. The PSA reports in their submission that many of their members have difficulties working out eligibility and entitlements.
- 6.12. Temporary workers are among the most vulnerable and precarious groups in the labour market. Research has found that people in seasonal and casual work are less aware of their employment entitlements.<sup>8</sup> This was also shown by the 2008 SoWL survey which found that temporary employees were much more likely than permanent employees to be unaware that they had a paid annual leave entitlements, or not know what their entitlement was. Among temporary workers, casual and temporary agency workers had the lowest level of knowledge<sup>9</sup>.
- 6.13. Support systems need to be improved to provide people in non-standard work who are applying for parental leave with easy-to-understand information. Information from unions representing workers in casual and seasonal work is that workers have very little knowledge about access to paid parental leave and are daunted by the complexity of working out entitlements.
- 6.14. The PPL calculator on the MBIE web site is well regarded and is useful but there needs to be additional support at MBIE for queries regarding applying for parental leave and on entitlements.
- 6.15. We recommend at least an additional source of support for accessing information on employment and parental leave entitlements is through Lead Maternity Carers (LMC). They provide a practical interface for nearly all pregnant women in New Zealand. Adoption agencies should also be provided with information.

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<sup>8</sup> <http://www.dol.govt.nz/publications/research/temporaryworkers/summary.asp>

<sup>9</sup> <http://www.dol.govt.nz/publications/research/temporaryworkers/temporary-workers-summary.pdf>

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6.16. The number of complaints to the New Zealand Human Rights Commission (HRC) and the evidence from the Australian Human Rights Commission<sup>10</sup> on the prevalence of pregnancy-related discrimination underline the need for more intensive enforcement of the provisions of the Act.

6.17. We support the proposal to enable verification of length of service and salary using Inland Revenue Department data. Many employees will not want to go back to their employers and there is very little incentive for former employers to promptly respond to people wanting this information.

### **7. Proposal 2: Recognising diverse family arrangements**

7.1. The CTU supports the proposal to extend access to parental leave entitlements to grandparents caring for grandchildren, biological fathers, and those caring for a child on a permanent basis by way of a whāngai adoption/ arrangement.

7.2. These changes reflect the greater diversity of families. Māori families differ significantly from European families, with grandparents and other whānau taking on permanent caregiver roles.

7.3. Though biological fathers are specifically mentioned, we question whether non-biological fathers/ parents should also be specified too.

7.4. There is added diversity in Pasifikafamilies and families of other ethnicities. We recommend that changes in the Act to the provisions to recognise diverse family arrangements recognise whāngai or *other similar cultural family relationships*.

### **8. Proposal 3: Enabling employees to work limited days (*keeping in touch days*) during the paid parental leave period.**

8.1. We support the intention of the proposal to allow people on paid parental leave to return to work on an occasional basis for purposes of, for example, completing a handover or receiving some training without losing parental leave entitlements. However, this provision may have unintended consequences. Adequate protections

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<sup>10</sup> Supporting Working Parents: Pregnancy and Return to Work National Review, Report (2014), Australian Human Rights Commission.

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are essential if this provision is introduced to ensure the underlying objectives of the Act are maintained.

- 8.2. We note that the United Kingdom has 10 *keeping in touch days* per year. These are optional and terms of employment and conditions are protected.
- 8.3. We recommend the use of the term *keeping in touch days* to emphasise that these days of work should not be used to cover sick leave or other staff absences.
- 8.4. We agree with the proposal in the discussion document that *keeping in touch days* should have no impact on the paid parent leave payment.
- 8.5. We agree that these days may only be worked after the first four weeks of the birth of the baby, that there must be mutual agreement by employers and employees to undertake these days, that the agreement is in writing and that neither party is obliged to agree. The person must not return on employment conditions inferior to these that they left on.
- 8.6. We think, however, there may well be a greater need for *keeping in touch days* in the period of unpaid parental leave and this is the period of time that people may be in a better position to take them as they prepare to return to work.
- 8.7. The current situation is that if a person returns to work in the period prior to the end of their extended paid leave period then they are deemed to have completed their parental leave and are back in employment. We recommend that the *keeping in touch days* are part of the unpaid leave period also and that there is a limited number of *keeping in touch days* in the period of unpaid leave to a maximum of one day a month.
- 8.8. A tricky issue is the status of replacement workers hired to cover parental leave. The introduction of *keeping in touch days* must be done in a way that does not allow employers to use the (brief) reintroduction of the original worker into the workplace as grounds to terminate the replacement worker's employment agreement.

**9. Proposal 4: Enabling employees to take unpaid parental leave part-time and flexibly**

- 9.1. This proposal would enable an employee to take any remaining parental leave within the 52 week period where they may have temporarily returned to work. The 2006 Evaluation showed many people return to work earlier than they prefer, for financial reasons. On return to work they forfeit all their remaining entitlements that were not used.
- 9.2. We support greater flexibility about this entitlement and the ability to return to work within the parental leave period. However, such an arrangement must be by mutual agreement and be in writing.
- 9.3. We note the recommendation in the TEU submission to investigate whether the period of entitlement to extended leave could be extended by the period worked. This would mean, based on the example in the discussion document, that if an employee returned to work for two months within the 52 weeks, then the period of entitlement to leave would be extended by those two months worked.
- 9.4. Careful consideration will also need to be given to the rights of temporary workers covering for workers on parental leave.
- 9.5. One of the major issues for people returning back to employment after a period of parental leave is that requests to work flexibly or to change employment arrangements may be turned down. The consequences are that parents leave the workforce. There is need to strengthen the framework around accessing flexible work arrangements to accommodate the changed family circumstances resulting from the addition of a new baby. Changes should be made to the Parental Leave and Employment Act 1987 to better accommodate this.
- 9.6. The current flexible working hours provision in 69AAF (2) of the Employment Relations Act 2000 are essentially a procedural 'right to request' rather than a 'substantive' right to flexible hours where this can be reasonably accommodated.'
- 9.7. The CTU made recommendations in its Employment Relations Amendment Bill submission in 2013 that the grounds for rejecting a flexible work request should be

tightened by adding a reasonableness test for the employer's decision and allowing workers to challenge this reasonableness.

9.8. Given that this is such a significant issue, we recommend that access to flexible work provisions following parental leave should also be incorporated into the Parental Leave and Employment Protection Act 1987 with the provision added that consent to changes to work arrangements requested by an employee following parental leave "may not be unreasonably withheld" by the employer.

9.9. Better flexible working provisions in the Act will do more to assist workers returning from parental leave than the current provisions in the Employment Relations Act which simply provide a limited right and are not being sufficiently used.

**10. Proposal Five: Providing extended leave to parents who have been with their employers for at least six months (but less than 12)**

10.1. The CTU supports this proposal and the extension of the unpaid leave on a pro-rata basis according to length of service.

10.2. The proposed formula is easy enough to calculate.

**11. Other issues**

11.1. The following issues have an impact on the integrity of the paid parental leave scheme.

**12. Workplace and pregnancy discrimination**

12.1. More research and knowledge is needed about the prevalence of pregnancy discrimination in the workplace and how to eradicate it. While pregnancy-related discrimination complaints are described as a persistent source of complaint to the HRC, these will be a small proportion of the total experiences of pregnant women workers.<sup>11</sup> The eradication of pregnancy discrimination is directly linked to enforcement of the Act.

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<sup>11</sup> <http://www.hrmonline.co.nz/news/horrible-bosses-women-denied-parental-leave-177012.aspx>

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12.2. Some information is known through the complaints and queries to the HRC. In the period 1 January 2013 to 1 June 2014 (17 months) the HRC received 107 enquiries and complaints about pregnancy and parental leave in employment or pre-employment, and working conditions before and after taking parental leave. This comprised 31 complaints of alleged unlawful discrimination related to changing working conditions before or after parental leave and not accommodating pregnancy; 30 complaints of alleged unlawful discrimination about different treatment or loss of job or threatened loss of job because of pregnancy or returning to work after pregnancy and 43 general enquiries about rights during pregnancy at work and on return from parental leave.

12.3. Some examples of discrimination and breaches of the Act identified by the HRC were:

- A complaint of a redundancy notification in a previously unannounced restructuring, coincident with the employer's receipt of an application for maternity leave.
- A complaint that after returning from maternity leave, the employer changed the employment conditions to a lesser role which was casual and night work only.
- A complaint that after a woman told her employer of her intention to take maternity leave, she was asked to consider taking redundancy or working fewer hours.

12.4. For the period 1 July 2013 to 30 June 2014, there were 58 complaints seeking the HRC's intervention of alleged unlawful discrimination on the grounds of sex specific to pregnancy, in the area of employment. Lodging a formal discrimination complaint to the HRC is a significant step. The number of complaints lodged will only represent a small number of those who experience this discrimination.

12.5. In this respect a review by the Australian Human Rights Commission into discrimination related to pregnancy, parental leave and return to work after parental leave is valuable. This Australian review<sup>12</sup> found that despite long-standing prohibitions against pregnancy / return to work discrimination, that pregnancy

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<sup>12</sup> Ibid

discrimination is pervasive. One in two mothers reported experiencing discrimination in the workplace at some point and over a quarter of the fathers and partners surveyed reported experiencing discrimination related to parental leave and return to work despite taking very short periods of leave. The qualitative and quantitative data confirmed that pregnant employees and working parents experienced many different types of discrimination in the workplace ranging from negative attitudes and comments from colleagues and managers through to loss of opportunities for further training and career advancement, reduction in pay and conditions, and redundancy and job loss.

### **13. Spouse and partner leave**

- 13.1. A wholly unaddressed issue is progress on a period of paid parental leave for spouses and partners. Unlike in many other countries, spouses or partners in New Zealand have no independent right to paid leave (unless there are provisions in their collective employment agreement). Research shows that partners are unable to take or unlikely to take leave unless there is some financial support for doing so.<sup>13</sup>
- 13.2. The ability for partners to take leave at the time of the birth of a child should not be a privilege of income. Making spouse/partner leave a realistic option for partners of all incomes will mean that their support will be more universally and beneficially added following the arrival of a new child.
- 13.3. The Families Commission reported in 2007<sup>14</sup> that only a tiny proportion of eligible New Zealand fathers/partners used their entitlement to one or two weeks unpaid leave. What makes the difference in leave being taken is that it is paid. The CTU recommends that spouse/partner leave be paid leave.

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<sup>13</sup> Moss P and O'Brien M (eds) (2006) *International Review of Leave Policies and Related Research 2006* Employment Relations Research Series No 57, Department of Trade and Industry, United Kingdom.

<sup>14</sup> <http://www.familiescommission.org.nz/sites/default/files/downloads/2-PublicationDownload.pdf>

**14. Act anomalies**

- 14.1. There is a need to make changes to Section 42 (2) of the Act which financially disadvantages women who take annual leave in their first year back at work following childbirth. Because of the financial penalty incurred by sec 42 (2) of the Act there is a disincentive to take annual holidays at the very time when holiday leave is essential.
- 14.2. Section 42 (2) of the Act overrides section 21 of the Holidays Act 2003, and provides that if an employee becomes entitled to annual holidays while they are on parental leave or in the 12 months following any parental leave, the holiday will be paid only at the rate of the employee's average weekly earnings for the 12 months immediately before the end of the last pay period before the annual holiday.
- 14.3. This means that if an employee takes their annual holidays soon after coming back from parental leave there is a high likelihood that the payment for annual leave will be at a very low rate compared to taking their annual leave at another time.
- 14.4. We recommend the repeal of s 42(2) (c).
- 14.5. Another anomaly in the Act is the absence of any financial penalties for breaches of the Act. Penalty provisions contained in s 69 of the Act were repealed in 1991. The absence of sanctions and penalties means that there are not sufficient deterrents to prevent breaches of the Act.
- 14.6. We are aware of cases in the health sector where health care assistant positions have not been kept open for the 12 month period because they have been described by the employer as a key position and they have advised employees applying for parental leave that they will not hold their hold their job open. Such a positon we think is likely to be a breach of the Act.
- 14.7. Penalty provisions should be reintroduced at a level that effectively deters breaches of the Act. This change would be consistent with the current work that is being undertaken by MBIE to increase enforcement of minimum labour standards.

**15. Conclusion**

15.1. The CTU strongly supports the extension of paid parental leave to workers in non-standard employment in line with the principle that access to parental leave is a fundamental right that must be available to all regardless of employment status. The other proposals in the discussion document are generally supported though there are concerns that *keeping in touch days* could be used to pressure people back into employment and undermine the objective of the Act. Adequate safeguards are necessary to prevent this.

15.2. There are other changes needed to the Act to ensure that it fits with modern labour force expectations and provides what the evidence shows is best for families and society. The most important of these is to increase the period of paid leave to 26 weeks. Other changes needed are paid leave for spouses/ partners at the time of birth of a new baby, repeal of S 42 of the Act which disadvantages parents taking holidays in their first year following the birth of a new baby and that penalties for breaches of the Act are reintroduced.