

*Submission*

**By**

**to**

**Government Administration Select  
Committee**

**on the**

**Parental Leave and Employment  
Protection (Six Months' Paid Leave)  
Amendment Bill**

**5 October 2012**

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## **PARENTAL LEAVE AND EMPLOYMENT PROTECTION (SIX MONTHS' PAID LEAVE) AMENDMENT BILL**

BusinessNZ welcomes the opportunity to submit on the bill.

### **RECOMMENDATION**

1. That the bill not proceed.

### **DISCUSSION**

1. Female labour market participation rates have increased markedly since the 1970s – a development which the 1980 Maternity Leave and Employment Protection Act both responded to and encouraged. The Act provided for up to six months unpaid leave for job protection purposes, subsequently extended to 12 months (which parents could share between them) by the 1987 Parental Leave and Employment Protection Act. This contrasted to the initial ILO Maternity Protection Convention (1919) the purpose of which was to ensure (as in many countries it still is) that a woman in paid employment can have a break from work when her child is born. The leave was to be paid from public funds or by means of a social insurance system
2. A subsequent ILO Convention (1952) similarly made provision for maternity leave paid from public funds or by means of compulsory social insurance. In both cases the amount of leave was stated to be 12 weeks and compulsory for the first six weeks following the birth, although in some areas of work exceptions could be made. Neither convention was widely ratified.
3. A further-revised Maternity Protection Convention (No. 183) was developed in 2000, this time with provision for 14 weeks' paid leave. Like the earlier conventions, provision is not made for the leave to be transferred to an eligible partner and again, the convention has been little ratified, with the greatest number of ratifying countries to be found in Eastern Europe. The low number of ratifications undoubtedly reflects the convention's prescriptive nature, which at the time of its development employer representatives protested about to little effect. The low ratification rate is a clear indication that, while accepting the principles involved, most countries prefer to make their own decisions about what best suits their particular circumstances.

4. While New Zealand has not ratified Convention 183, this country is well in compliance with its provisions. Where it does not comply is in not providing for a compulsory six-week leave period following childbirth and in allowing the leave to be shared with an eligible partner (parental leave).
5. On the other hand, in conformity with the Convention, leave can be taken prior to the expected date of delivery, medical benefits are provided, jobs must be kept open for 4 weeks and thereafter until 12 months have elapsed. The exception is where the job in question is a 'key position' but this term has been defined so narrowly by the courts that it applies to very few jobs. Women are also entitled to ask to breastfeed at work.
6. With regard to leave payments, New Zealand provides for a capped statutory amount per week while the convention requires payment of not less than two-thirds of a woman's previous earnings. However, the statutorily-determined maximum means that lower paid women receive the whole of what they previously earned while higher income earners get the maximum amount payable. This seems a reasonable compromise and goes some way towards assisting poorer families most in need of income support. (A recent Families Commission report has noted a widening gap between educated well-off families and poorer families.) It should be noted that in New Zealand the self-employed are also entitled to a leave payment.
7. Much is often made of some other countries' rather more generous paid maternity leave provisions but it should be noted that there are very many places where leave and leave payments go only to women who work in the formal (often the government) sector. In New Zealand, nearly all women in paid employment are eligible for paid leave provided they fulfil leave eligibility requirements. Only work on the most casual basis - less than an average of ten hours a week over a 12- or 6-month period (depending on the length of time employed by the same employer) or one hour in any one week or 40 in any one month - does not qualify. In the UK, for example, casual employees are not entitled to maternity leave unless this is stated in their contract. They may get statutory maternity pay but must have worked for the same employer for at least 26 weeks by the end of the 15th week before the expected date of delivery. This means an employee has to have started the job before she became pregnant (the 15th week being approximately the 26<sup>th</sup> week of the pregnancy) - in contrast to the New Zealand situation where an employee could be three months' pregnant when taking up a new job since the entitlement to paid leave accrues once the employee has worked six months for the same employer.

8. What the above clearly illustrates is that country comparisons are frequently misleading. All too often there is a considerable difference between what is available in theory and what happens in practice, particularly in countries with a large informal economy.
9. New Zealand's leave payment is categorised as a payment for use while on leave from work but having been granted leave by the employer, there is no actual requirement to return to work. Further, many women who do return to work often want to work fewer than full-time hours, if at all possible. This has a number of consequences for both the employer and the employee.
10. The fact that there is no requirement on a woman who takes leave (or on her partner, if the leave is shared) to return to work can act to weaken labour market attachment. OECD research indicates that a paid leave period of more than 20 weeks appears to have a negative effect on female participation with one commentator suggesting that extended parental leave may damage future career paths and earnings, making it difficult or less interesting for mothers to return to the labour market.<sup>1</sup> Certainly, many who do return to the labour market do so in a part-time capacity and frequently do not look for higher paying jobs or greater responsibility.
11. The above conclusion is supported by a 2008 New Zealand study<sup>2</sup> which, though unable to track actual work hours, found substantial evidence of reduced earnings following paid parental leave, indicating fewer hours worked than previously.
12. The taking of parental leave, whether the leave is paid or unpaid, may well constitute an economic cost to the employee but it is also a direct monetary cost to the government and therefore to tax payers generally, employers included. Particularly at a time of economic fragility it is not an additional cost the country should be asked to carry.
13. And a direct monetary cost is not the only consequence. At a time when there are many who would decry non-standard work, vacancies resulting from parental leave-taking must be filled by temporary employees. Employees with adequate replacement skills prepared to work on a temporary basis are often hard to find, while the fact that

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<sup>1</sup> OECD Economics Department, May 2004 Female Labour Force Participation: Past Trends and Main Determinants in OED Countries

<sup>2</sup> Work Patterns after Paid Parental Leave, Sarah Crichton, Department of Labour and Statistics NZ, December 2008

there is no obligation on the leave-taking employee, until the leave is nearly over, to indicate whether or not there will be a return to work adds a further complication. Employers who have been forced to bear considerable replacement costs or to find those among their other employees willing to provide cover, may well think hard before again employing a woman of child-bearing age.

14. Of course, the above attitude can be seen as discriminatory but as a UK member of the European Parliament said of the Parliament's proposed 2010 Pregnant Workers' Directive<sup>3</sup> (though rather more emphatically):

*Absurd legislation such as this closes the door on opportunities for young women and consigns them to a role as second class citizens, trapped at home by the stupidity of legislators. It will single-handedly turn back the clock to the 1920s by forcing employers to avoid exposure to the penalties by not hiring young women<sup>4</sup>*

15. The above statement was echoed (in rather more moderate tones) by a British employment and benefits lawyer, Sarah Henchoz, who was quoted in The (UK) Telegraph, 20 October 2010, as saying that if the changes went ahead women could find it harder to find work:

*These proposals could lead to companies deliberately not employing women of child bearing age.*

16. As at 6 July this year<sup>5</sup> an 8-member consortium<sup>6</sup> from the EU's Employment and Social Affairs Council has blocked the EU Parliament's proposal, concerned about what they regard as the adoption of maximum, not minimum, standards and the lack of flexibility to accommodate existing EU systems. They were concerned also about the financial consequences of the proposal, particularly in the current economic climate. The consortium has the power to shelve the proposed legislation indefinitely and though it cannot throw the proposal out, it cannot be forced to put the matter back on the agenda.<sup>7</sup>

17. As with the proposed EU directive, the good intentions of the amendment bill cannot be questioned but good intentions are an

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<sup>3</sup> Providing for 20 weeks' full paid leave

<sup>4</sup> Godfrey Bloom, Euro MP and longstanding member of the EU's Women's Rights & Gender Equality Committee

<sup>5</sup> European Women's Lobby report

<sup>6</sup> Comprising Germany, the UK, Sweden, Denmark, Estonia, Slovakia, the Czech Republic and the Netherlands

<sup>7</sup> EurActiv.com

inadequate basis for legislation that would give rise to a number of unintended consequences, namely:

- a) place an extra and undue extra strain on an already fragile economy
- (b) help to discourage women from re-entering the workforce following childbirth given that longer absences can mean deteriorating skills and/or a loss of interest
- (c) encourage the growth of non-standard forms of work
- (d) impose further costs on businesses, particularly small firms
- (e) discourage the employment of younger women.

## **RECOMMENDATION**

That the bill not proceed.

## 9. APPENDIX

### Background Information on BusinessNZ

- 9.1 Encompassing four regional business organisations (Employers' & Manufacturers' Association, Employers' Chamber of Commerce Central, Canterbury Employers' Chamber of Commerce, and the Otago-Southland Employers' Association), its 71 member Major Companies Group comprising New Zealand's largest businesses, and its 70-member Affiliated Industries Group (AIG), which comprises most of New Zealand's national industry associations, BusinessNZ is New Zealand's largest business advocacy body. BusinessNZ is able to tap into the views of over 76,000 employers and businesses, ranging from the smallest to the largest and reflecting the make-up of the New Zealand economy.
- 9.2 In addition to advocacy on behalf of enterprise, BusinessNZ contributes to Governmental and tripartite working parties and international bodies including the ILO, the International Organisation of Employers and the Business and Industry Advisory Council to the OECD.
- 9.3 BusinessNZ's key goal is the implementation of policies that would see New Zealand retain a first world national income and regain a place in the top ten of the OECD (a high comparative OECD growth ranking is the most robust indicator of a country's ability to deliver quality health, education, superannuation and other social services). It is widely acknowledged that consistent, sustainable growth well in excess of 4% per capita per year would be required to achieve this goal in the medium term.