

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 364/10
5299514

BETWEEN TRINA MARY ALLEN
 Applicant

AND DEPARTMENT OF LABOUR
 Respondent

Member of Authority: Dzintra King

Representatives: Applicant in person
 Alex Leulu, Counsel for Respondent

On the papers: 16 June 2010 from Respondent
 5 July 2010 from Applicant

Additional documentation 17 August 2010
received:

Determination: 18 August 2010

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] The applicant, Ms Trina Allen, seeks a review of a decision of the Department of Labour that she is not entitled to paid parental leave (“PPL”). The review application is made under s 71ZB of the Parental Leave and Employment Protection Act 1987 (“PLEPA”) which authorises the Authority to confirm, modify or reverse the decision of the department.

[2] Ms Allen was employed on a fixed term employment agreement which expired on 17 December 2009. Ms Allen was employed as a Music Specialist at Remuera primary School.

[3] Section 7 sets out the entitlement of female employee to maternity leave.

Except as otherwise provided in this Act, every female employee –

- (a) *Who becomes pregnant; and*
- (b) *Who, at the expected date of delivery, will have been in the employment of the same employer for at least an average of 10 hours a week over –*
- (i) *The immediately preceding 12 months; or*
- (ii) *The immediately preceding 6 months –*
- shall be entitled to maternity leave in accordance with this Act.*

[4] The PLEPA confers a PPL entitlement only to an “eligible employee” (s 71D). This term is defined in s 71CA. In this case the applicant's eligibility depends on whether she was “*a female employee who meets the criteria for maternity leave for the child under section 7.*”

[5] The problem for the applicant is that the Act states that the period of employment is to “*immediately*” precede the expected date of birth (s 7(b)), and that parental leave is to cease being payable from the date on which fixed term employment ends (s 71L (3) (a)).

[6] Ms Allen’s employment ended on 17 December 2009. Her employment, therefore, did not immediately precede the expected date of birth which was 2 February 2010.

[7] The respondent has referred to the Authority’s determination in *Christine Hull v Department of Labour*, A Dumbleton, 9 March 2006, AA 68/06. As in that case, the employment here ceased prior to the expected date of delivery.

[8] Ms Allen does not have an entitlement to paid parental leave.

Costs

[9] If the parties are unable to agree the matter of costs, the respondent should file a memorandum within 28 days of the date of this determination. The applicant should then file a memorandum in reply within 14 days of receipt of the respondent’s memorandum.

Dzintra King
Member of the Employment Relations Authority