

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

AA 119/09
5141219

BETWEEN LINDA FAIRHALL
 Applicant

AND CHIEF EXECUTIVE OF THE
 DEPARTMENT OF LABOUR
 Respondent

Member of Authority: Marija Urlich

Representatives: Applicant, In person
 P D McCarthy, Counsel for Respondent

Investigation Meeting: On the papers

Submissions received: 17 December 2008 and 17 February 2009

Determination: 15 April 2009

DETERMINATION OF THE AUTHORITY

[1] Mrs Fairhall applies under section 68 of the Parental Leave and Employment Protection Act 1987 (“the Act”) for relief from an irregularity.

[2] The respondent Chief Executive of the Department of Labour (“the Chief Executive”) says Mrs Fairhall is ineligible for paid parental leave.

[3] By consent of the parties this matter is determined following receipt of written submissions, there being no dispute in the material facts.

Background

[4] Mrs Fairhall experienced a severe form of morning sickness in the early stages of her pregnancy and resigned her employment as a caregiver on 22 November 2007. The expected date of delivery of her baby was 12 May 2008.

[5] Mrs Fairhall resigned because:

- She had concerns for the well being of her baby;
- Her ill health made it difficult for her to discharge her duties;
- She wished to minimise the impact of her ill health on her employer.

[6] I accept Mrs Fairhall's resignation and the reasons for her resignation were genuine and sincerely held.

[7] Mrs Fairhall submitted an application for paid parental leave to the Inland Revenue Department on 14 December 2007. This application was declined by way of letter dated 20 December 2007 on the grounds that Mrs Fairhall was not eligible for paid parental leave because she had resigned her employment. The matter is now before the Authority because Mrs Fairhall seeks a review that decision.

Merits

[8] The Authority has limited scope to review issues of this nature. Section 68 of the Act provides that the Authority may waive an irregularity which has resulted in an employee not being able to exercise rights and benefits in relation to paid parental leave. An irregularity is a failure of the form in which an application for paid parental leave must be made or a failure to meet timelines set for the making of such an application or a failure to take some step required by the Act¹.

[9] To be eligible for paid parental leave an applicant must have been in the employment of the same employer for the period required by statute (variously 6 or 12 months) immediately preceding the expected date of birth².

[10] Mrs Fairhall voluntarily ended her employment five months before the expected date of the birth of her child. She was not an employee immediately preceding the expected date of birth.

¹ Section 68(2) Parental Leave and Employment Protection Act 1987

² Section 7(b) Parental Leave and Employment Protection Act 1987

[11] That Mrs Fairhall was not an employee during the statutory period immediately preceding the expected date of birth is not an irregularity of form. It is a substantive barrier to her eligibility to access paid parental leave which I do not have the power to waive.

Determination

[12] There was no irregularity capable of waiver in Mrs Fairhall's application for paid parental leave. The formal orders sought by Mrs Fairhall can not be granted.

Costs

[13] I do not understand there is any issue as to costs. If this is not the case the parties may apply for a timetable for the filing of memoranda.

Marija Urlich

Member of the Employment Relations Authority