

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND OFFICE**

BETWEEN Michelle Claire Keegan (Applicant)
AND The Department of Labour (Respondent)
REPRESENTATIVES Applicant in person
Jenny Waterworth for respondent
MEMBER OF AUTHORITY Alastair Dumbleton
SUBMISSIONS RECEIVED 22 and 28 June 2005

DATE OF DETERMINATION 13 July 2005

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] In anticipation of giving birth to a child in December 2004, the applicant Ms Michelle Keegan took 12 weeks parental leave from her employment. The leave began on 6 December 2004 and finished on 25 February 2005.

[2] During the time Ms Keegan took the leave she did not make application under the Parental Leave and Employment Protection Act 1987 to have the leave paid, because she believed her length of service with her employer was not long enough to make her eligible. Ms Keegan had been employed for nine months by the time her child was born on 22 December 2004.

[3] Until 1 December 2004, to be eligible for paid parental leave 12 months was the minimum period of service required of an employee. However that period was reduced to six months by an amendment to the Act which came into force on 1 December 2004, a few days before Ms Keegan commenced her leave. She was unaware of that change at the time it occurred.

[4] Ms Keegan only learned of the law change shortly after returning to work, at the end of February 2005. She immediately applied for paid parental leave, on 23 March 2005, but had her application declined. The Department of Labour advised her that she was ineligible because she had applied after, and not before, she had returned to work.

[5] That advice was correct, for Section 71I(2) of the Act provides that an application for parental leave payment must be made before the employee returns to work, or before the leave otherwise ends. The requirement is mandatory and cannot be waived by the Department of Labour which has responsibility for administering the Act.

[6] However when it was drafted the Act contemplated that situations such as the one Ms Keegan has experienced would occur from time to time and that some relief should be available to prevent an injustice and to further the object of the Act.

[7] To achieve that end Ms Keegan has made an application under s.68 of the Act asking the Authority to overcome the irregularity of her late application by waiving the statutory time constraints. The parties have agreed that the investigation can be conducted by the Authority considering written submissions Ms Keegan and counsel for the Department of Labour Ms Waterworth, have supplied.

[8] I am satisfied from the advice given to me by the parties that this is an entirely suitable case in which to give the relief sought. Ms Keegan has acted reasonably, promptly and in good faith. The timing of her parental leave happened to coincide with the coming into force of an amendment to the Act which significantly affected her rights. It seems that the dissemination of advice about the law changes stuttered, understandably, and Ms Keegan did not become aware before or during her leave that she was eligible to apply for payment.

[9] Having regard to the nature of the irregularity, an application for payment made after rather than before parental leave had ended, and to the good faith of Ms Keegan, I am satisfied that relief should be granted by waiving the irregularity. I also take into account the advice of the Department of Labour that it does not oppose the application for relief.

Determination

[10] Accordingly, Ms Keegan's application for payment for the 12 weeks of her parental leave shall be regarded as having been made within the required time under the Act. A copy of this determination shall be forwarded to the Inland Revenue Department to enable Ms Keegan's application for payment to be approved.