

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH OFFICE**

[2011] NZERA Christchurch 168
5355870

BETWEEN TRACY LEE YARRELL
 Applicant

AND DEPARTMENT OF LABOUR
 Respondent

Member of Authority: David Appleton

Representatives: The Applicant in person
 Alex Leulu, Counsel for Respondent

Investigation meeting: Determined on the papers by consent of the parties

Determination: 2 November 2011

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Tracy Yarrell applied to the Inland Revenue Department for paid parental leave on or around 27 July 2011. On the application form Ms Yarrell's employer, Signature Style Limited, declared that Ms Yarrell:

“will have been employed by me for nearly 5 month(s) at the date of commencement of maternity leave and will have worked for an average of 37.5 hours a week over the 5 months before the baby's expected due date.....”

[2] The Inland Revenue Department referred the application to the Department of Labour to check Ms Yarrell's eligibility for paid parental leave. By way of a letter dated 17 August 2011 from an information officer of the Department of Labour, Ms Yarrell was informed that she did not satisfy the eligibility criteria for paid parental leave as she had less than six months continuous employment in her current employment at the expected delivery date, and that she was not eligible for parental leave or to receive tax payer funded parental leave payments.

[3] Ms Yarrell's Statement of Problem states that she had been formerly employed as a solicitor by Taylor Shaw, a law firm in Christchurch, from 9 August 2010 until

the earthquake on 22 February 2011 forced Taylor Shaw to make her redundant with effect from 31 March 2011. Ms Yarrell succeeded immediately in finding new employment with Signature Style Limited, but concedes that she would have been employed by Signature Style for only five months at the expected date of delivery.

[4] Ms Yarrell asks for the Authority to reverse the Department of Labour's decision not to grant tax payer funded parental leave payments pursuant to s 71 ZB of the Parental Leave and Employment Protection Act 1987.

[5] The Department of Labour, in its Statement in Reply, states that Ms Yarrell is not entitled to receive tax payer funded parental leave payments because she did not satisfy the eligibility criteria.

Determination on the papers alone

[6] At a telephone Directions Conference on 1 November 2011, the parties agreed that the Authority could determine this issue on the papers alone and that they had no further submissions to add other than those made in their respective Statement of Problem and Statement in Reply.

The law

[7] An employee's entitlement to parental leave payments is set out in s. 71D (1) of the Parental Leave and Employment Protection Act 1987.

An employee is entitled to a parental leave payment under this Part if the employee—

(a) has given written notice to his or her employer of his or her wish to take parental leave (either in accordance with this Act or with the alternative provision under which the leave is taken); and

(b) takes parental leave from his or her employment in respect of a child; and

(c) is an eligible employee

[8] "An eligible employee" is defined in s. 71 CA (1) of the Parental Leave and Employment Protection Act 1987 as follows:

In this Part, eligible employee means—

- (a) a female employee who meets the criteria for maternity leave for the child under section 7; or
- (b) an employee who meets the criteria for parental leave for the adopted child under section 8 or section 18 or section 24; or
- (c) an employee to whom all or part of an entitlement to a parental leave payment is transferred under section 71E; or
- (d) an employee who succeeds to all or part of an entitlement to a parental leave payment under section 72B

[9] The only subpart of s. 71CA (1) that applies to Ms Yarrell is (a), which refers to s. 7 of the 1987 Act. This states:

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.

Conclusion

[9] The statutory eligibility criteria for receipt of a parental leave payment are clear and do not leave room for the Department of Labour to exercise any discretion. Whilst the Authority's sympathies extend to Ms Yarrell, whose ineligibility for a parental leave payment derives directly from the loss of her employment with Taylor Shaw following the February 2011 earthquake, the Authority cannot find fault with the Department of Labour's conclusion that Ms Yarrell does not qualify.

Determination

[10] In light of the above, the Authority confirms the decision of the Department of Labour not to grant parental leave payments to Ms Yarrell.

David Appleton
Member of the Employment relations Authority