# PARENTAL LEAVE REQUEST TO VARY LEAVE FORM

This template form is intended to assist member businesses develop their own workplace forms. The following information should be used as a guide only. Any wording changes, other than those to insert a business name, may change the context, meaning or purpose of the form. We recommend you receive advice from the Victorian Chamber of Commerce and Industry prior to making such changes.

This form will enable employees to specify how and why they wish to modify their parental leave.

## Contacting the Victorian Chamber of Commerce and Industry

The Victorian Chamber’s team of experienced workplace relations advisors can assist members with a range of employment, human resources and industrial relations issues.

Our experienced workplace relations consultants can also provide assistance to both members and non-members on a range of more complex matters for a fee-for-service. The consultants can, among other things, provide training to employees, conduct investigations and provide representation at proceedings at the Fair Work Commission.

For assistance or more information, please contact the Workplace Relations Advice Line on (03) 8662 5222.

Disclaimer

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# REQUEST TO VARY PARENTAL LEAVE FORM

## General Information

Those variations can include:

shortening a period of parental leave

* extending a period of parental leave up to 52 weeks

extending a period of parental leave to a maximum for 104 weeks

This is a complex and newly developing area of the law which, if not handled correctly, could lead to a number of legal claims, including, underpayment, breach of award/agreement, discrimination, general protections claim, breach of contract, and unfair dismissal. The commentary that follows is not intended to be comprehensive and does not address all legal issues that should be considered and addressed in dealing with requests to vary a period of parental leave.

## What is parental leave?

Parental leave includes long parental leave, short parental leave or adoption leave which an eligible employee is entitled to take following the birth or adoption of a child. An eligible employee is entitled to up to 52 weeks off work for long parental leave to enable the employee to provide care and support to a child. Provided the employee is eligible for parental leave and complies with relevant notice and documentation requirements, an employer is required to provide that employee with parental leave.

The 52 week period of parental leave includes any period(s) of authorised leave (such as annual leave and long service leave) and any period(s) taken by the employee’s spouse or de-facto partner because of the pregnancy, birth of the child, or placement of the child apart from 8 weeks concurrent leave.

## Applying for parental leave

Employees who are eligible to take unpaid parental leave must first apply to take parental leave. A [Request for Parental Leave Form](http://hradvanceprofessional.com.au/vault/global/forms/request-for-parental-leave-form) (which is available on the Victorian Chamberwebsite) can be provided to relevant employees to assist them to meet relevant notice and documentation requirements.

## Who is eligible to request a variation to their parental leave arrangements?

To be eligible to use the form:

the employee must be on parental leave, or be eligible to take a period of parental leave; and

* the employee must be a parent of a child, or have responsibility for the care of a child in respect of whom the employee has or will be taking parental leave; and
* the request must be for the purpose of assisting the employee to care for the child in respect of whom the employee has or will be taking parental leave.

An employer can however, at its own option, choose to extend this right to employees who are not eligible under relevant legislation.

## Shortening parental leave

If an employer agrees, an employee may shorten their period of parental leave by providing a written request to their employer at least 14 days before the employee wants to return to work.

## Extending long parental leave within the 52 week limit

An employee who initially applied for a period of long parental leave that is less than 52 weeks, may extend their period of parental leave only once, without requiring the consent of their employer. A request for such an extension must be made at least 4 weeks before the start of the parental leave or if the parental leave has started — before the parental leave ends.

If an employee requests a further extension of their parental leave, the extension is not automatic and will require the employer’s consent. Any employee who requests an extension of parental leave should be asked to submit the request in writing by using this form.

## Are there any other ways to extend or vary parental leave?

Other than shortening or lengthening a period of parental leave within the 52 week limit, an employee who is on parental leave or is eligible to take parental leave, has a right to request their employer to consider their application to:

extend their period of long parental leave up to a maximum of 104 weeks (less any leave already taken by them and their spouse/de facto partner);

* return to work on a part-time basis following the expiration of their long parental leave; and/or

have flexible working arrangements.

Any request by an employee to vary their parental leave in the manner detailed above must be submitted in writing. If the employee wishes to submit a request which falls within the last 2 bullet points detailed above, the employee should be asked to submit a Request for Part-time Work/Flexible Working Arrangements Form (which is available on the Victorian Chamber website).

It is important to remember that an eligible employee who complies with relevant notice and documentation requirements is automatically entitled to 52 weeks off work for parental leave, less any leave taken by the employee’s spouse or partner. However, if the employee requests leave beyond the 52 week entitlement, the employer has a right to refuse that request on ‘reasonable business grounds’.

## The employer’s response

Other than for requests to extend parental leave beyond the 52 week limit, an employer should respond to an employee’s request to vary their parental leave as soon as practicable.

If the employee’s request is to extend their parental leave beyond the 52 week limit, the employer is required to respond to the request in writing within 21 days stating whether the employer grants or refuses the request.

An employer should give genuine consideration to the employee's request before providing a response.

If the request is refused, the employer must include details of the ‘reasonable business grounds’ on which the reason(s) for a refusal was based, in the letter to the employee. A request may only be refused on 'reasonable business grounds'. The Act does not identify what may or may not be ‘reasonable business grounds’. However, as a guide, reasonable business grounds might include:

the effect on the workplace and the employer’s business of approving the request, including the impact on profitability, efficiency, productivity, and customer service;

* the inability to organise work among existing staff; or

the inability to recruit a replacement employee or the practicality or otherwise of the arrangements which may need to be put in place to accommodate the employee’s request.

While the reasonableness of the business grounds itself is not reviewable, such a refusal might be used in a claim of unlawful discrimination. A well-considered, yet reasonably declined request would assist in defending against a claim of unlawful discrimination.

## Victorian employers

Employers in Victoria should seek additional advice, as further obligations apply in relation to accommodating parental/carer’s responsibilities. In particular, the *Equal Opportunity Act 2010* (VIC) contains much wider obligations on employers to accommodate such arrangements.

Under the Victorian legislation, employers in Victoria must not, in relation to the work arrangements of a contractor, an employee, or a person being offered employment, unreasonably refuse to accommodate the responsibilities that that person has as a parent or carer. The responsibilities as a carer are not merely limited to children who are under school age or children under 18 years old with a disability — they apply generally to any person who is wholly or substantially dependent on the contractor, employee, or prospective employee for ongoing care and attention.

# REQUEST TO VARY PARENTAL LEAVE FORM

Date of issue:

Policy approved by:

Contact person:

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| --- | --- |
| **General Information**  **Note: This section must be completed by all employees** | |
| Name: | Department: |
| Staff number: | Manager: |
| Commencement date: | Date of this form: |
| What is your position title: | Are you employed:(please circle)   Full-time Part-time Casual |
| Have you applied for parental leave?  Yes               No                (please circle) | Has your request for parental leave been granted?  Yes               No                (please circle) |
| If applicable — what date did your parental leave commence: | If applicable — what date will your parental leave end: |
|  | |
| **Request to Shorten Parental Leave** | |
| What date does your parental leave currently end? | What date do you want your parental leave to end?  \*[Note: the employer must agree to your request and you must provide at least 14 days’ notice before the proposed return date] |
| Why do you want to end your parental leave early? | |
|  | |
| **Request for Extension of Parental Leave** | |
| What date does your parental/adoption leave currently end? | Are you requesting an extension of your long parental leave?   Yes           No           N/A           (please circle)  \* [Note: The request must be submitted at least 4 weeks before the leave ends] |
| How many weeks do you want to extend your long parental leave? | Have you previously submitted a request to extend your period of parental leave?   Yes           No          (please circle)   If yes — please attach a copy of the application. |
| Please confirm the date that will be the final date of your long parental leave | As at the date you submitted this request, how much leave has your partner/spouse taken in relation to the birth/placement of the child? |
| How much further leave does your partner/spouse propose to take in relation to the birth/placement of the child? | Are you seeking the extension so you can continue to be the child’s primary care giver?   Yes           No           N/A           (please circle)  \*[Note: if the answer is no you are not eligible to submit the request] |
|  | |
| **Request for Extension of Parental Leave to a period of more than 52 weeks** | |
| What date does your parental leave currently end? | Are you requesting an extension of your long parental/adoption leave?   Yes No N/A (please circle) |
| How many weeks do you want to extend your long parental leave? | Please confirm the date that you propose will be the final date of your long parental leave (ie if the extension is granted) |
| Are you seeking the extension so you can continue to be the child’s primary care giver?   Yes No N/A (please circle)  \*[Note: if the answer is no you are not eligible to submit the request] | Please circle which of the following applies.  You confirm that you are eligible to submit this request because you have the responsibility for the care of:  (a) a child under school age; or  (b) a child under 18 who has a disability.  \*[Note, if you are unable to confirm either (a) or (b) – you are not eligible to submit the request unless you employed in Victoria] |
| As at the date you submitted this request, how much leave has your partner/spouse taken in relation to the birth/placement of the child? | How much further leave does your partner propose to take in relation to the birth/placement of the child? |
| Please attach a document which identifies the impact the refusal of the application may have on you and your dependants. |  |
|  | |
| **OFFICE USE ONLY** | |
| Notes  *If the application is to extend the period of Parental leave, the employer must advise the employee in writing of the employer’s decision within 21 days after receiving the application.*  *If an employer refuses an employee’s application for an extension of parental leave, the employer must provide the employee with written reasons for refusing the application – those reasons must be provided within 21 days.*  *If the employee ceases to be the child’s primary care giver while they are on Parental leave, and that situation is unlikely to change, the employer can notify the employee of a day at least 4 weeks ahead on which the employee must return to work.*  *It is unlawful to dismiss an employee because the employee applies for parental leave, is absent on parental leave, is pregnant or is going to adopt a child.*  *If the employer agrees, an employee may shorten their period of parental leave by providing the employer with at least 14 days written notice before they want to return to work.*  *Within the first 52 weeks of parental leave, an employee who has not (or will not) use the entire 52 weeks of parental leave is entitled to extend the period of parental leave once without the consent of the employer. The employee must provide no less than 4 weeks’ notice.* | |