

## **The influence of collective bargaining on parental leave for employees**

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The new coalition government prioritised paid parental leave in their legislative programme, and an extended period of paid leave was introduced last month to take effect on 1 July 2018. But, what provisions exist for new parents, particularly by way of collective bargaining, outside of the statutory provision?

Both paid and unpaid protected child-related leave varies considerably between industrialised countries. While entitlement to parental leave has generally been accomplished through legislative means, collective bargaining has historically influenced the formulation of national policies in a number of countries. Moreover, where there is little or no statutory entitlement to parental leave, collective bargaining can play an important role in determining policy and practice in this area, and in countries where workers enjoy a statutory entitlement to parental leave, collective bargaining frequently builds on that entitlement.

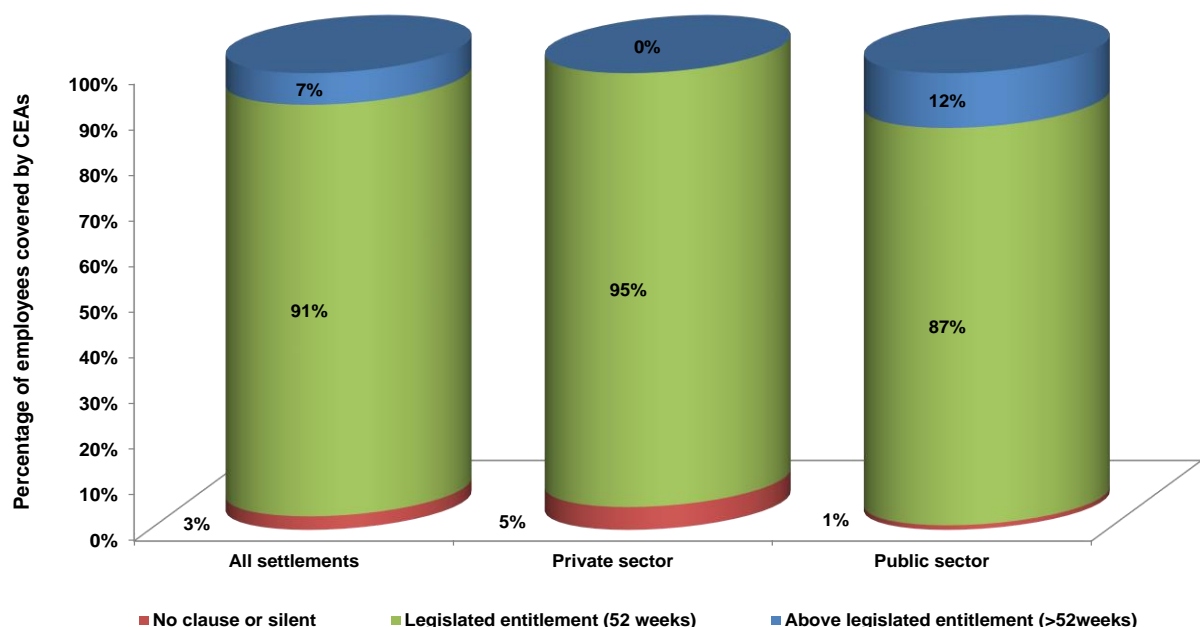
Collective bargaining has also played a crucial role in shaping legislative initiatives on parental leave and can have a 'leverage effect' on public policy, even where bargaining coverage is relatively low. Moreover, in light of declining union densities and coverage and 'reach' of collective bargaining in recent decades, the policy-making role previously played by collective bargaining in most countries has diminished. Despite this, while collectively-agreed provisions generally supplement statutory provisions, employers will sometimes unilaterally implement policies that enhance any statutory entitlement. To this effect, the broader impact of collective bargaining depends on the extent to which collective bargaining influences employment arrangements across the labour market, including the non-unionised sector.

Whereas entitlement to parental leave has generally been accomplished through legislative means in New Zealand, the historical role of collective bargaining in this area has influenced the formulation of national policies. When debate surrounding paid parental leave (PPL) intensified in the mid-1990s, the share of employees covered under a number of collective employment contracts (CECs) and collective employment agreements (CEAs) which included some form of payment associated with parental leave, increased significantly. Yet, notwithstanding their earlier successes at the bargaining table, as data from the Centre for Labour, Employment and Work's longitudinal database of collective employment agreements suggests, unions in New Zealand have had little success over the past decade negotiating more favourable PPL provisions than those provided under the country's paid parental leave legislation, especially in the private sector.

The Parental Leave and Employment Protection Act 1987, as amended, provides for up to 52 weeks' leave following the birth or adoption of a child, depending on length of the employee's service to that employer. This is the amount of time an employer is required to hold a position open for an employee on parental leave. In this regard, nothing has changed in the past 30 years, as new parents in New Zealand still enjoy no more than 12 months' total parental leave under statute. Also, as shown in Figure 1, the majority of employees in New Zealand on collective employment agreements are entitled to no more than the statutory amount of time off from work when taking parental leave. Under the Act, an employer is required to hold open the employee's position for the period of leave, unless it can be demonstrated that the position is a key one and consequently that a temporary replacement is unsuitable or that a redundancy situation exists. Provisions in collective agreements specifying above the legislated entitlement of 52 weeks' parental leave are found in central government, mainly in CEAs covering employees in education, where the importance of this issue seems to be best understood given the nature of work performed in those industries.

In 2002, though, the Parental Leave and Employment Protection Act was amended to provide New Zealand's first state-funded scheme of 12 weeks' paid leave for new parents. The Parental Leave and Employment Protection Amendment Act 2004 extended eligibility to employees who have been employed by the same employer for at least six months preceding the expected date of delivery (or adoption), and for not less than 10 hours per week during that period. A further amendment in 2005 clarified who is an eligible parent by inserting, after the word 'spouse', the words 'or partner'. Currently, a worker qualifies for paid parental leave if they have permanent primary responsibility for the care, development and upbringing of a child under six.

**Figure 1: Duration of parental leave by sector, 2017**



Under legislation introduced to Parliament under urgency in November as part of the new government's 100-day plan, paid parental leave provisions will be increased to 22 weeks from 1 July 2018 and to 26 weeks from 1 July 2020 on Wednesday. The bill enacted largely mirrored Labour MP

Sue Moroney's Parental Leave and Employment Protection (Six Months' Paid Leave) Amendment Bill, which was pulled from the ballot in the last legislative session. While it gained a parliamentary majority, that bill was blocked by former Finance Minister Bill English at the last hurdle, using his financial veto in 2016. Currently under statute in New Zealand, new parents are entitled to 18 weeks of paid leave.

Because the statutory provision is capped at less than the minimum wage for those who are working full-time, additional employer-provided payments assist employees taking parental leave to maintain their incomes. Noteworthy in this regard is the fact that New Zealanders currently enjoy one of the lowest parental leave allowances in the OECD, notwithstanding that this statutory entitlement has increased from 14 weeks in just the last four years. Nevertheless, as with the duration of parental leave, some employers and unions, again primarily those in the public sector, have agreed in collective bargaining to extend parental leave payment eligibility beyond those minimum statutory protections.

**Figure 2: Parental leave provisions by sector, 2017**

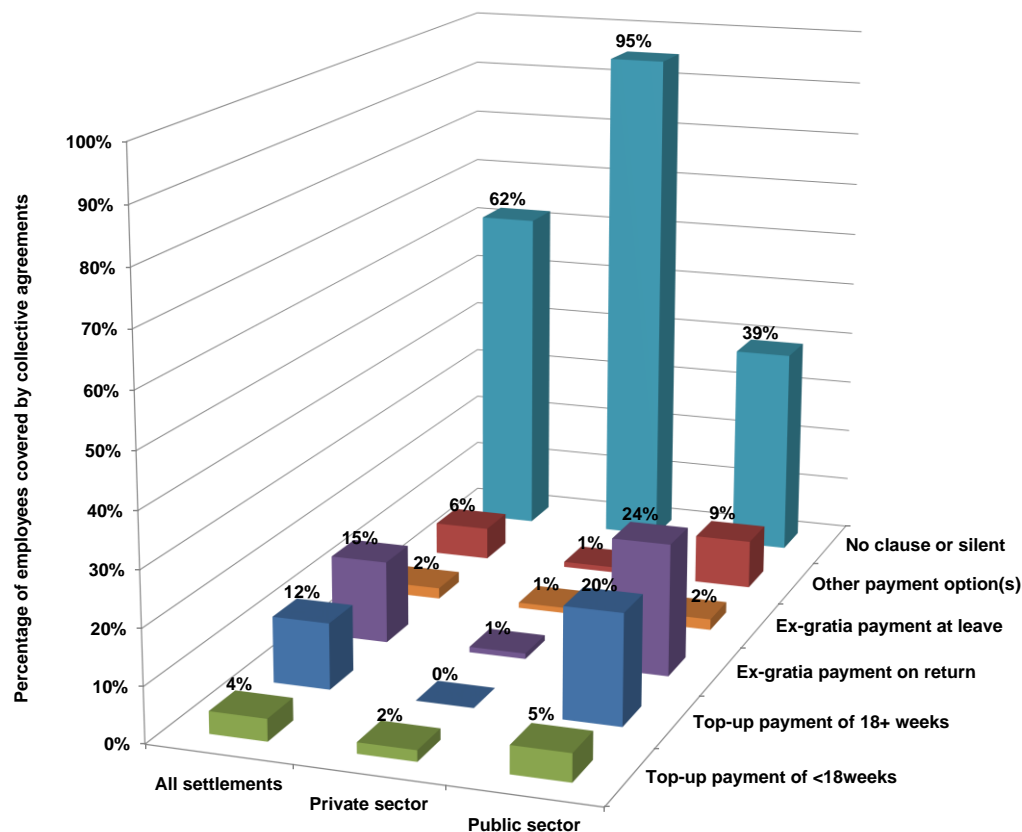


Figure 2 provides a picture of parental leave payment entitlements other than through statute under collective agreements in effect in the year to June 2017. Payments above the legislated minimum take the form of a top-up of the government-provided payment to the employee's wage or salary for a period, or as an ex-gratia payment either at the start of the leave period, on the employee's return to work, or after a period back at work. Employees entitled to a top-up payment are typically in health and social assistance and other services. Those in public administration and education and training are most likely to be eligible for an ex-gratia payment as part of their parental leave provisions. Thirty-six percent of employees in arts and recreation services, 24 percent in transport, postal and warehousing and 19 percent in other services are also entitled to some form of ex-gratia payment.

The evidence in CLEW's collective bargaining data suggests expansion of paid parental leave benefits beyond the statutory minima has occurred almost exclusively in public sector agreements. It is also clear that the duration of leave outcomes tends to be more frequent and greater in the public sector than the private sector. One conclusion to be drawn from this evidence, therefore, is that the social and legislative contexts apparently do influence bargaining outcomes, but far more so in the public sector than in the private sector, where the absence of legislated schemes does not necessarily encourage their promotion or achievement through collective bargaining. Further research is needed to determine if the clauses in public sector agreement are replicating or extending the legislated conditions for public servants.

In addition, the variations in patterns between the public and private sectors, and also within both sectors, are significant and need to be understood more clearly. That is, there are clearly some industries in which bargaining for paid parental leave is taking place, while there are others where the absence of paid parental leave clauses indicates either no bargaining or early trade-offs occurring on the bargaining table. This suggests it is not enough simply to report that, although operating in the same legislative and social contexts, there has been minimal diffusion of bargaining for paid parental leave from the public sector to the private sector.

There is also the possibility that employers are introducing paid parental leave into company policy but not agreeing to include these policies in collective agreements, that there is no business case for the implementation of such policies, or that some groups of employees and their unions lack the bargaining power and, hence, the capacity to negotiate extended parental leave benefits beyond the statutory minima. Finally, there may be other factors related to the characteristics of unions, union density levels, the gender composition of bargaining teams, or processes within unions that either impede or promote placement of parental leave on the bargaining agenda.