



# New Zealand Employment Relations Authority Decisions

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## Allen v Department of Labour AA364/10 (Auckland) [2010] NZERA 672 (18 August 2010)

Last Updated: 9 November 2010

IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

AA 364/10 5299514

BETWEEN TRINA MARY ALLEN

Applicant

AND DEPARTMENT OF LABOUR

Respondent

Member of Authority: Dzintra King

Representatives: Applicant in person

Alex Leulu, Counsel for Respondent

On the papers: 16 June 2010 from Respondent

5 July 2010 from Applicant

Additional documentation 17 August 2010 received:

Determination: 18 August 2010

### DETERMINATION OF THE AUTHORITY Employment relationship problem

[1] The applicant, Ms Trina Allen, seeks a review of a decision of the Department of Labour that she is not entitled to paid parental leave ("PPL"). The review application is made under [s 71ZB](#) of the [Parental Leave and Employment Protection Act 1987](#) ("PLEPA") which authorises the Authority to confirm, modify or reverse the decision of the department.

[2] Ms Allen was employed on a fixed term employment agreement which expired on 17 December 2009. Ms Allen was employed as a Music Specialist at Remuera primary School.

[3] [Section 7](#) sets out the entitlement of female employee to maternity leave.

*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.*

[4] The PLEPA confers a PPL entitlement only to an "eligible employee" ([s 71D](#)). This term is defined in [s 71CA](#). In this case the applicant's eligibility depends on whether she was "a female employee who meets the criteria for maternity leave for the child

under [section 7.](#)"

[5] The problem for the applicant is that the Act states that the period of employment is to "*immediately*" precede the expected date of birth ([s 7\(b\)](#)), and that parental leave is to cease being payable from the date on which fixed term employment ends ([s 71L \(3\) \(a\)](#)).

[6] Ms Allen's employment ended on 17 December 2009. Her employment, therefore, did not immediately precede the expected date of birth which was 2 February 2010.

[7] The respondent has referred to the Authority's determination in *Christine Hull v Department of Labour*, A Dumbleton, 9 March 2006, AA 68/06. As in that case, the employment here ceased prior to the expected date of delivery.

[8] Ms Allen does not have an entitlement to paid parental leave.

### **Costs**

[9] If the parties are unable to agree the matter of costs, the respondent should file a memorandum within 28 days of the date of this determination. The applicant should then file a memorandum in reply within 14 days of receipt of the respondent's memorandum.

Dzintra King

Member of the Employment Relations Authority

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