

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH OFFICE**

BETWEEN Kim Michelle Evans (Applicant)
AND Department of Labour (Respondent)
REPRESENTATIVES Kim Evans, in person
Natasha Szeto, counsel for respondent
MEMBER OF AUTHORITY Helen Doyle
**CONSIDERATION OF
PAPERS AND
TELECONFERENCE** 13 December 2005
DATE OF DETERMINATION 19 December 2005

DETERMINATION OF THE AUTHORITY

The progress of the application

- [1] The applicant, Kim Evans, says that her problem is that she has not received payment for parental leave. This is because her application for paid leave was not received by the Inland Revenue Department until after her fixed term employment agreement with her employer, Child Youth and Family Services ("CYFS") expired on 19 March 2005.
- [2] Initially Ms Evans named CYFS as the respondent in her statement of problem and she referred to inaction on their part in filling in the form.
- [3] During a telephone conversation with the parties it was agreed that Ms Evans would resubmit her application for paid parental leave for review with the principal Labour Inspector as there was an issue as to whether Ms Evans was substantively eligible for paid parental leave.
- [4] A full and helpful report was received as a result of the review. The Labour Inspector found that Ms Evans would have been substantively entitled to paid parental leave from 13 January 2005 to 19 March 2005 but that there were procedural irregularities as a result of both employer and employee actions.
- [5] I then held a further telephone conference with the parties and by agreement the application against CYFS was withdrawn and the Department of Labour was substituted as the respondent.
- [6] I directed that the Department of Labour be served with the statement of problem, notice of direction and a copy of the Labour Inspectors report. I advised in my notice of direction that the statement of problem was to be treated as an application to the Employment Relations Authority under section 68(3) of the Parental Leave and Employment Protection Act 1987 ("PLEPA"). I

indicated that once a statement in reply had been received from the Department of Labour I would convene a further teleconference.

[7] During the telephone conference it was confirmed that Ms Evans would have been substantively entitled to paid parental leave but for irregularities.

[8] There are two irregularities as defined by section 68(2) (a) and (b) of the PLEPA that the Authority is required to consider in exercising its discretion whether or not relief should be granted to Ms Evans.

[9] The first is that under section 71D of the PLEPA Ms Evans did not give written notice to her employer of her intention to take parental leave. The second is that the application for paid parental leave was not received by the Inland Revenue Department until Ms Evans fixed term contract had expired in accordance with section 71I of the PLEPA.

The Background

[10] Ms Evans was employed on a casual basis by way of a fixed term agreement by CYFS from 19 March 2004 to 19 March 2005 at Papanui, Christchurch to perform work for the organisation as a babysitter, housekeeper and resource worker when and as required.

[11] Ms Evans' manager became aware that she was pregnant but there was no written letter provided to the employer advising of the proposed date of commencement of leave as required under the PLEPA. Ms Evans did not believe that she was eligible to qualify for paid parental leave because of the requirement when her other child was born for an employee to be in continuous employment for one year. Ms Evans was not aware of the recent amendments to the PLEPA in terms of her eligibility.

[12] Ms Evans worked until a day before her baby was born on 13 January 2005 which was one week before the due date. Two weeks after the birth of her baby Ms Evans made contact with her employer about returning to work but was told she could not do that until the baby was three months old and the baby would then have to be placed in childcare. It was during a conversation with the Department of Labour about whether she could be asked to put her baby into child care as she had taken her other child to work with her that Ms Evans became aware that she was probably eligible for paid parental leave.

[13] Ms Evans promptly completed an application for paid parental leave on 7 February 2005 and sent it in to her employer for signature. There were delays because CYFS were not sure about Ms Evans eligibility and the form was not signed by the employer until 30 March 2005. The Inland Revenue Department eventually received the application on 8 April 2005. It should have been received before 19 March 2005 when the fixed term agreement expired. Ms Evans did not return to work as the fixed term agreement had expired.

Determination

[14] With respect to the failure to comply with the notice requirements of the PLEPA, I am required to be satisfied under section 68(4) the Ms Evans' actions were in good faith and the extent to which she did comply or did not comply was reasonable in the particular circumstances.

[15] I am satisfied that Ms Evans was unaware of the amendments to the PLEPA in terms of her work situation and her failure to give written notice to her employer therefore was in good faith and, given the lack of knowledge of her entitlements, reasonable in this case.

[16] With respect to the late filing of the application for paid parental leave I am required under section 68(5) of the PLEPA to have regard to the nature of the irregularity, the good faith or otherwise of the parties and any other matters that I regard as proper.

[17] Once Ms Evans became aware of her entitlement to paid parental leave she acted promptly in completing an application for paid parental leave and forwarding that to her employer on 7 February 2005. The delay from that point was because CYFS believed that Ms Evans was not eligible for paid parental leave and as a result it did not promptly send the form to the Inland Revenue Department.

[18] I am satisfied that the circumstances surrounding both irregularities are not ones that should deprive Ms Evans of her entitlement to paid parental leave. Ms Evans' actions were in good faith and reasonable.

[19] I therefore waive the irregularities and confirm that Ms Evans is entitled to parental leave and a parental leave payment from 13 January 2005 to 19 March 2005. The paid parental leave ends on the date that Ms Evans' fixed term employment agreement ends in accordance with section 71(3)(a) of the PLEPA.

Helen Doyle
Member of Employment Relations Authority