

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

[2013] NZERA Auckland 412  
5420570

BETWEEN

JESSICA LANE  
Applicant

A N D

THE MINISTRY OF  
BUSINESS INNOVATION  
AND EMPLOYMENT  
Respondent

Member of Authority: T G Tetitaha

Representatives: Applicant in person  
A Leulu, Counsel for Respondent

Investigation Meeting: On the papers

Submissions Received: 24 May 2013 from Applicant  
15 July 2013 from Respondent

Date of Determination: 11 September 2013

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**DETERMINATION OF THE AUTHORITY**

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**A. Jessica Lane is ineligible for payments for parental leave under the Parental Leave and Employment Protection Act 1987.**

**Employment relationship problem**

[1] Jessica Lane seeks a determination she is entitled to payments for parental leave. She signed her employment contract on 23 November 2012. It originally stated she was to start work on 8 December later changed to 10 December 2012. Her estimated date of delivery was 2 days short of the 6 months required under the Parental Leave and Employment Protection Act 1987.

[2] The Ministry of Business Innovation and Employment (MBIE) submits she is ineligible for paid parental leave and there is no discretion to grant her payment.

## Issues

[3] There is a single issue for determination, namely, whether Ms Lane is eligible to receive paid parental leave under the Parental Leave and Employment Protection Act 1987?

## Facts

[4] Ms Lane commenced work with Fairfax Media as an Editorial Assistant as a self employed contractor on 16 July 2012.

[5] In November 2012 she applied for an employed position as a Brand Manager to cover maternity leave. Ms Lane was offered and signed a one year fixed term contract on 23 November 2012. The term of employment was to start on 8 December 2012 but this was later amended because she started work on Monday, 10 December 2012.

[6] Ms Lane applied for parental leave on 25 March 2013. Her expected delivery date was 8 June 2013. She was advised she was ineligible because her estimated date of delivery was two days short of six months continuous employment with Fairfax Media.

## Eligibility for paid parental leave

[7] Female employees who become pregnant are entitled to receive paid parental leave who:

*... at the expected date of delivery, will have been in employment with the same employer for at least an average of 10 hours per week over the immediately preceding six months ...<sup>1</sup>*

[8] The Act requires six months continuous employment. Ms Lane does not meet the criteria. She was employed at the time she became pregnant but had not had six months continuous employment at the estimated date of delivery. She may be eligible if her actual delivery date was on or after 10 June 2013.

[9] Although the Authority has sympathy for Ms Lane's position and her medical history, it is required to apply the law as it is. Accordingly, Ms Lane is ineligible for paid parental leave.

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<sup>1</sup> Section 7(a)(2)(b)(ii) Parental Leave and Employment Protection Act 1987 (PLEPA)

**Costs**

[10] The parties were self-represented or utilised in-house Counsel. In the circumstances costs shall lie where they fall.

T G Tetitaha  
Member of the Employment Relations Authority