

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH OFFICE**

**BETWEEN** Kirsten Anne McAuley (Applicant)  
**AND** Department of Labour (Respondent)  
**REPRESENTATIVES** Kirsten Anne McAuley in person  
Ross Hill, counsel for the respondent  
**MEMBER OF AUTHORITY** Helen Doyle  
**ON THE PAPERS AND  
TELEPHONE CONFERENCE** 28 October 2005  
**DATE OF DETERMINATION** 31 October 2005

DETERMINATION OF THE AUTHORITY

[1] The applicant, Kirsten McAuley, applies under section 68(3) of the Parental Leave and Employment Protection Act 1987 (“the PLEPA”) to the Authority for relief in respect of an irregularity.

[2] Ms McAuley’s application for paid parental leave was not received by the Department of Inland Revenue before the date on which Ms McAuley returned to work, in accordance with section 71I of the PLEPA, on 25 July 2005. Although Ms McAuley was entitled to a parental leave payment under section 71D of the PLEPA that section is subject to other sections including section 71I.

[3] The Department of Labour accepts that the application being received by the Department of Inland Revenue after Ms McAuley returned to work is an irregularity as defined by section 68(2)(b) of the PLEPA. Mr Hill also confirmed that it was the view of the Department that Ms McAuley acted in a timely fashion when she became aware that the form had not been sent.

[4] No issue was taken with Ms McAuley’s account of the facts surrounding this matter by Mr Hill on behalf of the respondent. Therefore the matter was able to be dealt with on the papers and by way of a short constructive telephone conference with Ms McAuley and Mr Hill.

[5] I was also advised that the Authority in Auckland had determined a similar application for relief under section 68(3) of the PLEPA in the determination of *Janine Neill* AA 23/04 (Member Rosemary Monaghan). Relief was granted in that case under section 68(5) of the PLEPA. The irregularity was waived and Ms Neill’s entitlement to a parental leave payment confirmed.

### ***The background***

[6] Ms McAuley is a Senior Research Fellow with the Department of Medical and Surgical Sciences at the Dunedin School of Medicine.

[7] In late March 2005 prior to her due date to give birth to her second child on 10 April 2005 Ms McAuley applied for paid parental leave on the paid parental leave application form. She sent the form to her employer to complete its part of the form. Ms McAuley did not realise that her employer was to have sent the form back to her and that she should then have sent it to the Department of Inland Revenue.

[8] Ms McAuley's baby was born one week early on 5 April 2005. Understandably with the new baby and a three year old child to look after it did not occur to Ms McAuley to check up with her employer about the paid parental leave form.

[9] It now appears that the paid parental leave application form Ms McAuley sent to her employer was either mislaid or lost. Ms McAuley was not aware of this until she received a letter from her employer dated 6 July 2005. Unfortunately this letter was addressed to Ms McAuley at work despite her being on parental leave. It was therefore put into Ms McAuley's pigeon hole and she did not receive it for some weeks when other documents in her pigeon hole were also forward to her. Ms McAuley resumed work on 25 July 2005 and completed her part of the form and forwarded it to the Department of Inland Revenue who received it on 4 August 2005.

### ***Determination***

[10] I am required under section 68(5) of the PLEPA, in the exercise of my discretion whether to grant relief in respect of the irregularity, to have regard to the nature of the irregularity, the good faith or otherwise of the parties, and any other matters that it would be proper to have regard to.

[11] I am satisfied that what led to the late filing of the application for paid parental leave was a series of unfortunate events. Ms McAuley thought that she had done everything required of her before April 2005 however her application was mislaid or lost and the letter from her employer in early July sat in her pigeon hole for some time whilst she was on parental leave. Once Ms McAuley became aware that no application had been made she acted very promptly, completed the form and sent it to the Department of Inland Revenue who received it on 4 August 2005, eight working days after Ms McAuley had commenced back at work.

[12] I am satisfied that the circumstances surrounding the irregularity are such that Ms McAuley should not be denied her entitlement to paid parental leave.

[13] I therefore waive the irregularity and confirm that Ms McAuley is entitled to a parental leave payment for the period that she was on parental leave from 10 April 2005 to 25 July 2005 when she returned to work.

Helen Doyle  
Member of Employment Relations Authority