

[4] Ms Rogerson informed her employer that she had been selected to adopt a child and indicated that she intended to take paid parental leave after F was born.

[5] On 27 July 2015 a social worker from Child Youth and Family (CYF) advised the Rogerson's that they could take baby F home from the hospital immediately following his birth on 30 August 2015.

[6] In late September the birth mother signed an affidavit agreeing to adopt baby F to the Rogersons, who then submitted their adoption application to the Family Court. At the same time Ms Rogerson also applied to her employer for parental leave and she submitted an application for paid parental leave to the IRD, via her employer.

[7] On 23 October 2015 MBIE advised Ms Rogerson that her application for paid parental leave had been declined on the grounds of insufficient supporting documentation.

[8] Ms Rogerson made further inquiries and ascertained that MBIE considered she had not obtained 'prior approval' by a Social Worker to keep baby F at her home prior to an interim adoption order being made. Ms Rogerson said that once CYF considered that the Rogersons were involved in a private adoption then CYF effectively removed themselves from the situation. The failure to have provided the material social worker approval letter may have arisen as a result of that.

[9] Ms Rogerson sought an interim adoption order from the Family Court which was granted on 04 February 2016. Upon receiving the interim adoption order, Ms Rogerson again applied to Inland Revenue Department for paid parental leave.

[10] This application was also declined by MBIE on 03 March 2016 on the basis that Ms Rogerson did not have a Social Worker's approval letter or an interim order from the Courts on the date on which she first assumed care of baby F.

[11] There is no dispute that baby F has been in Ms Donaldson's care since birth and that she has been providing all the care and nurturing that a natural born child would have received from her. Ms Rogerson has been away from her full time job and has not worked since assuming care of baby F and she has not received any paid leave or income over that period.

[12] Ms Rogerson says she had engaged CYF adoption services from day one (as far back as June 2015) and received a glowing Social Worker visitation report in November 2015. It was also the birth mother's choice to pursue a private adoption.

[13] Ms Rogerson said that as soon as the birth mother had signed her consent to adopt (after the legal ten clear days required) then the Rogersons filed their intention to adopt notice, notified their employers and applied for paid parental leave.

[14] Ms Rogerson says that she and her husband made every effort to play by the rules and do everything correctly according to the advice that they had received and their knowledge of what was required. I accept that was the case.

Issue

[15] The sole issue to be determined by the Authority is whether or not Ms Rogerson should be paid 16 weeks' material leave as a result of becoming the primary caregiver of baby F.

Outcome

[16] The PLEPA has very specific and prescriptive notice requirements relating to the taking parental leave (see ss.31-33). At the material time, the statutory maternity leave entitlement was 16 weeks, as per s.9 of PLEPA, although that subsequently increased on 01 April 2016.

[17] Because the Rogersons entered into a private adoption, although with CYF's knowledge and apparent blessing, a CYF social worker did not provide them with a letter to accompany the formal Notice which was given in Mrs Rogerson's first parental leave application.

[18] CYF did not advise Ms Rogerson that an approval letter from them was a requirement for her to get paid parental leave. Mrs Rogerson apparently did provide a copy of the interim adoption order with her second parental leave application.

[19] Section 68 PLEPA gives the Authority the discretion to grant relief in respect of any irregularity which it thinks it is reasonable to do so, having regard to the nature of the irregularity and good faith issues. This discretion enables the Authority to extend time or waive any defects where it thinks fit.

[20] I find this is an appropriate case in which to exercise the Authority's discretion to remedy the defect arising from the failure of Mrs Rogerson to produce an approval letter from a social worker placing baby F in her care pending the outcome of her interim adoption order application.

[21] This is a situation where Mrs Rogerson proactively attempted to comply with all legal obligations regarding parental leave notices. She engaged with CYF, her employer and IRD to ascertain what her obligations were, then attempted to meet these obligations to the best of her ability.

[22] It appears possible that it was CYF's policy of not becoming involved in private adoptions that may have placed Mrs Rogerson at a disadvantage in terms of providing the necessary social worker placement approval letter. I find that this is a case in which Mrs Rogerson acted in good faith at all times and that her actions were reasonable in all the circumstances of the case.

[23] I therefore exercise my discretion to order MBIE to waive the irregularity that arose in the original parental leave notice application due to the failure of Mrs Rogerson to provide a social worker approval letter when she filed her parental leave application.

Costs

[24] Although Ms Rogerson was the successful party she represented herself, so there is no issue as to legal costs. Ms Rogerson is entitled to be reimbursed \$71.56 for her filing so MBIE is directed to pay her that amount within 28 days of the date of this determination.

Outcome

[25] Ms Rogerson's claim to the Authority succeeds. Within 28 days of the date of this determination MBIE is ordered to pay Mrs Rogerson:

- a. 16 weeks' paid maternity leave;
- b. \$71.56 to reimburse her filing fee.

Rachel Larmer
Member Employment Relations Authority

