

# THE ROLE OF COLLECTIVE BARGAINING IN PAID PARENTAL LEAVE POLICY IN NEW ZEALAND?

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## Abstract

*Labour MP Sue Moroney's Parental Leave and Employment Protection (Six Months' Paid Leave) Amendment Bill to extend paid parental leave (PPL) to 26 weeks by 2014 was drawn from the Member's ballot in April and made it past its first reading in July, with all parties except National and Act indicating their support. One of the objectives of this bill, according to its sponsor, is to bring New Zealand in line with the rest of the industrialised world. In many industrialised countries, however, in the absence of any statutory entitlement, collective bargaining has played a crucial role both in determining PPL policies and in shaping legislative initiatives (Gregory and Milner 2009; Baird and Murray 2012). This article considers the role of collective bargaining in PPL policy in New Zealand.*

## Introduction

The statutory right to 12 months unpaid parental leave was established in New Zealand by the *Parental Leave and Employment Protection Act 1987*, under which parents who've worked for their employer for at least 12 months gained entitlement to up to 52 weeks unpaid extended leave, which can be shared with a spouse/partner if they also meet the 12-month eligibility criteria. The *Act* was amended, effective 1 July 2002, to provide New Zealand's first state-funded scheme of 12 weeks paid leave for new parents. Eligibility for paid parental leave was extended to those employed for at least 6 months on 01 December 2004, and entitlement was increased to 13 weeks on that same date and to 14 weeks a year later.<sup>1</sup>

At present, employees are entitled to parental leave if they've worked for the same employer for an average of at least 10 hours per week and at least one hour in every

week or 40 hours in every month for either the 6 or 12 months before the expected due date of their baby or the date they assume care of a child they intend adopting. Employees who meet the 6-month employment eligibility criteria are entitled to 14 weeks' paid parental leave - some or all of which can be transferred to a spouse/partner if they also meet the 6-month criteria. Those who meet the 12-month eligibility criteria, are also entitled to up to 52 weeks' unpaid extended leave, less any paid parental leave taken, which can be shared with a spouse/partner if they also meet the 12-month eligibility criteria.

## International Comparisons

As can be seen in Figure 1, which reports the amount of unpaid and paid PL available jointly to new parents with a new child across the OECD, New Zealand has one of the lowest rates of PPL in the OECD.<sup>2</sup> In New Zealand, new

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<sup>1</sup>Parental leave, as defined under the *Parental Leave and Employment Protection Act 1987*, encompasses four (4) types of leave: maternity leave, partners/paternity leave, extended leave and special leave. Maternity leave is a period of up to 14 weeks away from work for a female employee around the time of birth or assumption of care of an adoptive child. Partner's/paternity leave is up to 2 weeks and is also taken around the time the birth or adoption. Extended leave is of up to 52 weeks, less any maternity leave taken or period of extended partner's/paternity leave taken, and can be shared between the two eligible parents. Special leave of up to 10 days total per year is also unpaid and can be taken for reasons relating to a female employee's pregnancy, such as medical appointments and antenatal classes.

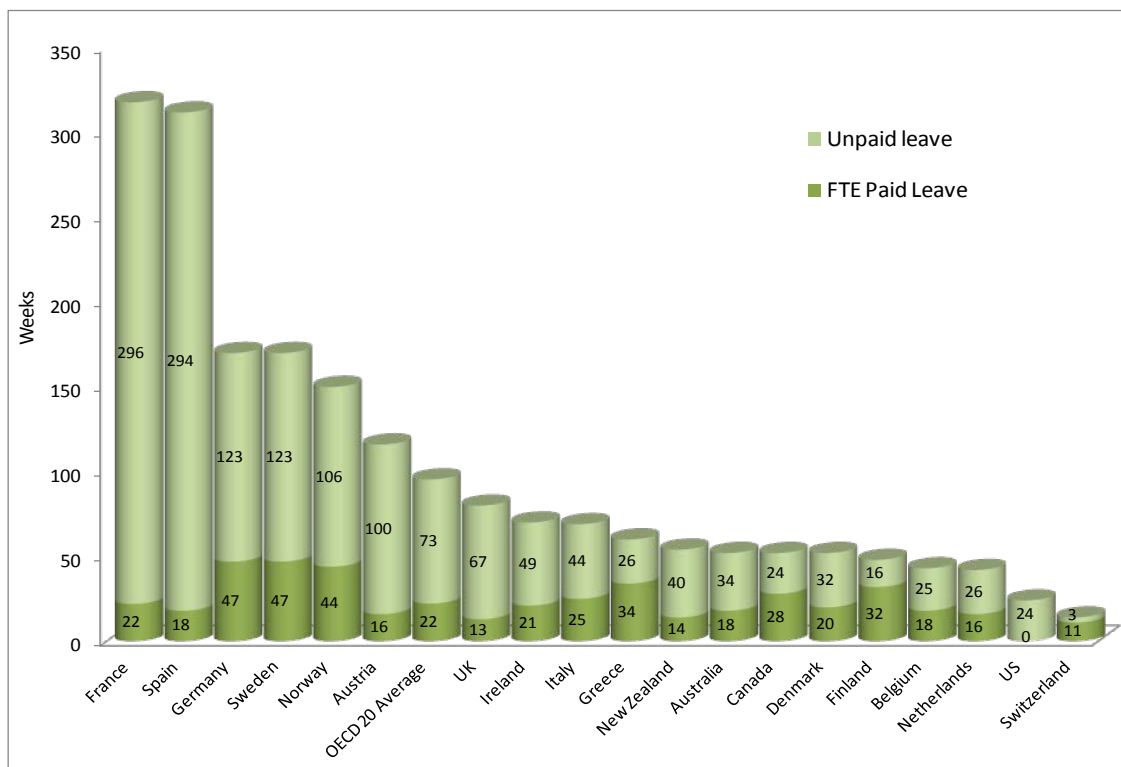
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<sup>2</sup>Payments have been converted to a full-time equivalent (FTE) basis to simplify comparisons across countries. The OECD (2002) has defined parental leave as employment-protected leave of absence for employed parents. In New Zealand and Australia, parental leave is a generic term used to refer to the period of leave taken by the parent around the birth or adoption of a child. In other national contexts, parental leave may refer to time away from work available to working parents for the care of children up to school age. Note that either definition—narrow or broad—fits with the OECD's definition makes no stipulation that employees be compensated during any portion of the period of parental leave. Payment during parental leave is supplemental to the actual period of leave and, where it is required, is typically is made for a far shorter period than the full period of leave to which new parents may be entitled.

parents enjoy 12 months total parental leave (PL); this compares to the OECD average of 22 months. In addition, most economically developed countries provide between 3 and 12 months of FTE paid leave, whereas New

Zealand provides 14 weeks—just over 3 months. Despite this, it's important to note that the data shown in Figure 1 also suggest that protected child-related leave—both paid and unpaid—varies considerably across the OECD.

**FIGURE 1: Total and FTE Paid Parental Leave (PPL) for Two-Parent Families**



Source: Ray, et al 2010.

One reason for this wide variation in PL entitlement across industrialised countries is that collective bargaining can play a very important role compared with legislation in determining PL policy. Even in countries where workers enjoy an entitlement to PPL under legislation, collective bargaining frequently builds on the maximum statutory entitlement (Dickens 2000). The broader impact of collective bargaining on the provision of PL in any country, however, depends on the extent of collective bargaining coverage and the extent to which collective bargaining influences employment arrangements derived outside of collective bargaining. Nevertheless, collective bargaining can have a ‘leverage effect’ on public policy, even where bargaining coverage is relatively low (Rigby and O’Brien-Smith 2010).

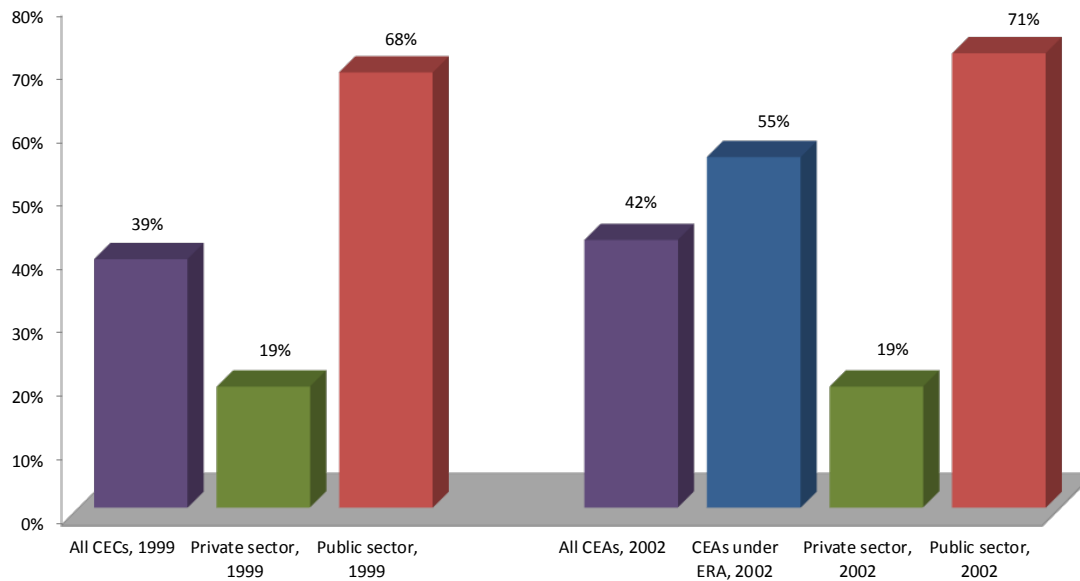
Due to the parental leave directive, nearly all European Union member states have some form of regulation on parental leave. While this has generally been accomplished through legislative means, the historical role of collective bargaining in this area has been influential in formulating national policies in a number of countries (Demetriades et al, 2006). In addition, collectively-agreed provisions generally supplement statutory provisions; employers too will sometimes unilaterally implement policies which enhance any statutory parental leave entitlement. This is particularly true in the Netherlands, where the unpaid entitlement is

frequently enhanced with financial support within collective agreements, and in the UK, where larger employers are prone to offer paid parental leave in the absence, until of legislation compelling it (Anxo et al 2007).

Statutory entitlement to PPL was first established in New Zealand under the *Parental Leave and Employment Protection (Paid Parental Leave) Amendment Act 2002*. When debate surrounding PPL intensified in the mid-1990s, a number of Collective Employment Contracts (CECs) and subsequent to Employment Relations Act 2000, Collective Employment Agreements (CEAs), with existing PPL provisions restricted the ability of an employer to reduce any agreed entitlement, should the Government introduce an administered PPL plan providing for a lower level of entitlement. Others stipulated that entitlement would be limited—typically to the level of the statutory entitlement—in the event that the Government should introduce PPL. In response, Parliament stipulated in the Act that, where existing PPL provisions had been negotiated into a CEA, those payments would not be affected by the new legislative entitlement.

### **Paid Parental leave (PPL) in New Zealand prior to 2002**

**FIGURE 2: PPL entitlements in CECs and CEAs (1999 and 2002)**



Source: Industrial Relations Centre, Victoria University of Wellington

Figure 2 provides a snapshot of PPL entitlements in CECs and CEAs effective prior to enactment of statutory PPL, in 1999 and in 2002. The first set of columns in Figure 2 show that, at the end of the *ECA* era, nearly 2 in 5 New Zealanders on CECs had entitlement to PPL through their employment contract. The second set of columns show that, in the 3 years leading up to enactment of PPL in New Zealand, not much had changed in this regard. In the year to June 2002, a month before statutory PPL took effect in New Zealand, the share of employees under CECs negotiated under the *ECA* eligible for some form of payment associated with PL had climbed only 3 points in 3 years, to just 42 per cent. In spite of this, employees on CEAs negotiated subsequent to enactment of the *ERA* in May 2000 (see blue column in Figure 2) appear, on average, to have fared somewhat better, with 55 per cent being on CEAs entitling them to PPL.

Importantly, prior to enactment of PPL, entitlements were found predominantly in the public sector. In the core Government sector, for instance, over 80 per cent of collectivised employees in the year to June 2002 were on settlements which provided some form of payment for those taking PL.<sup>3</sup> The most common arrangement across

<sup>3</sup> The primary reason for this is the legacy of the New Zealand Public Service Manual, which had included relatively generous provisions for both maternity and paternity leave since 1978. In 1988, when the *State Sector Act* was enacted, each Government Department became employer of its own staff. Given the 90-day window in which the parties had to negotiate employment contracts, initial terms and conditions were, for the most part,

all CEAs, in both the public and private sectors, was the traditional provision for a lump sum payment—referred to in awards, CECs, and other legal documents as ‘*ex-gratia* payments’<sup>4</sup>—of 6 weeks’ salary, to be made to returning employees, and only after they had accrued 6 months’ service. Other payments varied in type, ranging from entitlements of 3 days paid leave before or after the birth to the most generous entitlement of 12 weeks PPL paid at the employee’s ordinary wages, effectively top-up of the new statutory entitlement.

### **Paid Parental leave (PPL) in New Zealand post-2002**

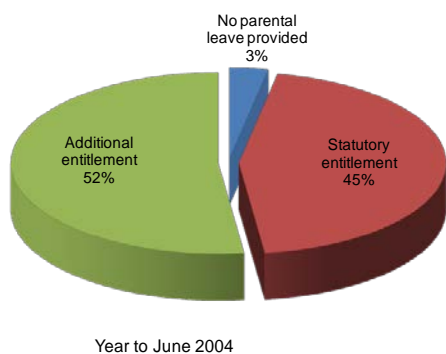
The pie chart in Figure 3 shows the relative shares of employees on CEAs extant in the year to June 2004 that contained no provision for PPL, that contained entitlement to no more than the statutory entitlement, and

merely extracted from the Public Service Manual (State Services Commission 1998).

<sup>4</sup> *Ex gratia* is Latin for ‘by favour’ and is used to refer to something that has been done voluntarily or out of generosity rather than when there is an obligation—as under an employment agreement—or liability to pay. Despite the appropriateness of this usage, the terminology used in Awards, CECs and, in particular, the Public Service Manual lives on in common legal terminology and in CEAs where lump sum payments for parental leave are considered.

that provided for an additional entitlement above the statutory minimum. What the data in Figure 3 indicate is that, two years following enactment of the 2002 Amendment providing for PPL, slightly more than half of all collectivised employees in New Zealand were on CEAs containing PL payments above the statutory entitlement. Those employees on collectives offering more than the statutory entitlement in 2004 were largely employed in core Government or Government trading.

**FIGURE 3: PPL entitlements in CEAs (2004)**



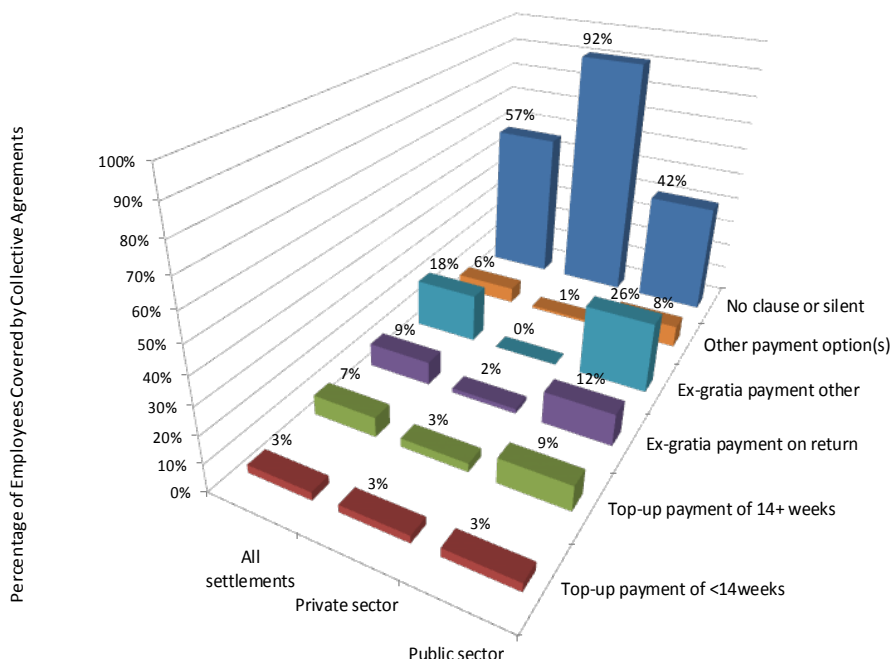
Source: Industrial Relations Centre, Victoria University of Wellington

Many of the settlements included in the data described in Figure 3 were negotiated before the 2002 Amendment Act came into effect (but after the ERA's moratorium on CECs negotiated under the ECA). Clauses providing for entitlement above the statutory minimum were particularly common in the core Government sector, where PPL had been negotiated into many CECs following enactment of *State Sector Act 1988* (and before enactment of the ECA), at which time each Government Department became employer of its own staff. Given the 90-day window in which the new employers had to negotiate contracts with their employees' unions, initial terms and conditions were typically extracted verbatim from the Public Service Manual, which had included relatively generous provisions for both maternity and paternity leave since 1978 (State Services Commission 1998). Those collectives covered workers across most of the health and education sectors, as well as most other Government employees.

**Paid Parental leave (PPL) in New Zealand in 2012**

Figure 4 offers a picture of how supplemental PL payments are expressed in CEAs effective in the year to June 2012. It is presently the case that 43 per cent of collectivised employees are on CEAs providing for an entitlement to PPL above the statutory level, nearly the same share as just after the Amendment providing for PPL in New Zealand was passed a decade ago.

**FIGURE 4: Supplemental PPL entitlements in CEAs by sector (2012)**

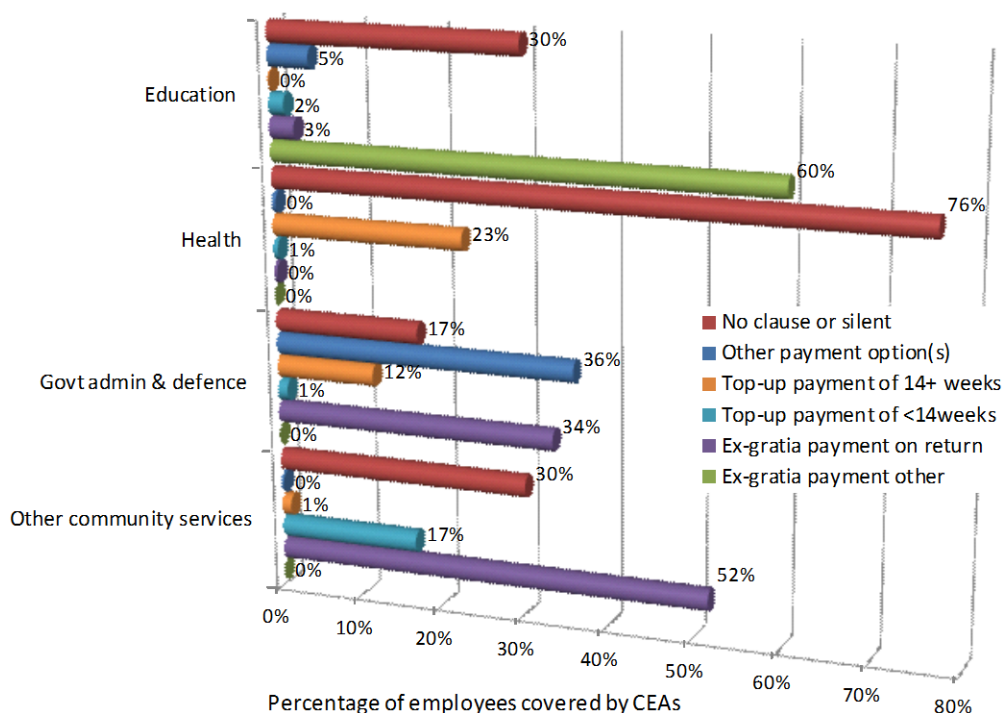


Source: Industrial Relations Centre, Victoria University of Wellington

The current maximum PPL entitlement for 14 weeks is \$475 per week, \$65 less per week than the statutory minimum wage for a 40-hour week and \$150 less per week than the mean (average) lowest adult wage paid under CEAs effective in the year to June 2012. Hence, there is no reason to believe that improving replacement rates of statutory PPL had any impact on the declining prevalence of entitlement under CEAs above the statutory level of entitlement over the last decade. Rather, what this suggests is that, despite the increase in the prevalence of above-statutory entitlement to PPL in CEAs in the first years following enactment of PPL, during the latter part of the first decade of statutory PPL in New Zealand, employees covered by CEAs in New Zealand fared little better than they did prior to enactment of PPL in terms of their entitlement to payment for PL.

Also noteworthy is that supplemental PPL entitlements remain primarily a public sector phenomenon. Despite this, as can be seen in Figure 5, there is considerable variation in the provision of supplemental PPL across the public sector. For example, CEAs covering area school and primary teachers generally contain provision for a maternity grant payable to female teachers on production of a birth certificate or evidence of an adoption placement. The employee can gain this benefit whether she returns to the job or resigns before returning. Nonetheless, very few collective agreements outside of education include provision for lump sum payments prior to the employee's returning to work.

**FIGURE 5: Supplemental PPL provisions in CEAs in the public sector (2012)**



Source: Industrial Relations Centre, Victoria University of Wellington

Lump sum ('ex-gratia') payments upon return to work are common in other community services, including fire-fighters and police officers. Top-up payments covering the period of PPL are the preferred means of supplementing the statutory entitlement in health, although more than three-quarters of collectivised employees in the industry have no entitlement to supplemental PPL. Entitlement to other forms of supplemental payment—typically an extended period of PPL beyond the statutory 14 weeks—are provided to more than 1 in 3 employees covered by CEAs in Government administration and defence; nearly a third are entitled to an lump sum payment on return to work.

Of course, large segments of New Zealand's workforce—including many young workers, service and retail sector workers, homeworkers, and migrant workers—are covered by individual employment agreements (IEAs). There is no evidence, however, that non-union employers<sup>5</sup> in New Zealand have been influenced by collective bargaining. To that end, in achieving this

<sup>5</sup> The term 'non-union' is commonly used in New Zealand to refer to those employers that do not negotiate CEAs and whose employees are all technically on IEAs, including what are called, for instance, 'General Terms and Conditions'.

objective over the past ten years, employer parties to CEAs have demonstrated a desire to reduce their PL payment obligations to the legal minimum, notwithstanding that the maximum statutory entitlement to PPL has increased each year over that period. It therefore seems reasonable that non-union employers would likewise shy away from providing entitlement to PPL above the statutory level.

## Conclusion

In some countries, especially in the developing world, clauses in collective agreements typically do little more than mirror the basic provisions in legislation on minimum wages and hours of work. Nevertheless, in most economically developed countries, the collective bargaining agenda has expanded to encompass a wide range of issues such as health and safety at work, training and development, working time and leave, and other parental rights and entitlements (Hayter 2011). However, the efficacy of policy in these areas in achieving greater gender equity across the labour market depends to a large extent on the 'reach' of that policy. That is, collective bargaining can be effective as the primary means of promulgating policy only where bargaining coverage is virtually complete or where the outcomes of collective bargaining influence subsequent public policy applied to all workers and/or company practice at all firms. This, in turn, suggests that the efficacy of parental leave policy in achieving its broader goal of gender equity is dependent, in large measure, on the 'reach' of collective bargaining.

In most industrialised countries, inclusion of PPL in settlements reached through collective bargaining has resulted in this entitlement subsequently being included in company policies, independent of collective bargaining, as well as being legislated in the future (OECD 2002). Indeed, it has been suggested that a three-pronged approach, combining legislation, collective bargaining and workplace policy, is what is most needed to achieve gender equity, more broadly (Dickens 2000). To that end, and given that just over 1 in 5 workers in New Zealand is covered by a CEA and that unions have had little success over the past decade negotiating more favourable PPL provisions than that provided under the 2002 Amendment Act, especially in the private sector, extending the legislative entitlement would seem the best approach to bringing New Zealand in line with the rest of the industrialised world with regard to such entitlement.

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