



Your Pregnancy Rights

Legal options after a positive pregnancy test

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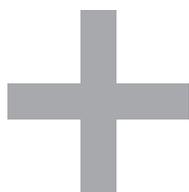
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Introduction

This booklet contains answers to legal questions that might come up if you are pregnant. It is written mainly for young women, but also answers questions faced by young men when they find out that their partner, or their ex-partner, is pregnant. Lots of the information will be useful to people of any age.

This booklet explains your right to choose adoption, termination or foster care. It describes the important differences between adoption and whāngai. It explains what paternity is and how both women and men can go about proving who is or isn't the father of a child. It describes the law around who can care for a baby, and who has the right to make decisions about how a baby grows up. These things are called "guardianship", "day-to-day care" and "contact". This booklet also looks at what protection is available for parents and babies experiencing domestic violence. This booklet sets out what can happen if someone believes your baby is at risk of harm or neglect.

This booklet provides basic information about a young parent's rights at school or in their job, when they find out they are pregnant, and once they have had a baby. It sets out what financial support is available from Work and Income to help young parents, including if they wish to live independently (away from their own parents). Finally, this booklet can help you decide if you need a lawyer and where to find one.

If you still have questions after reading this booklet, your nearest Community Law Centre should be able to provide further help. Visit www.communitylaw.org.nz to find your nearest Community Law Centre. Apart from legal issues, many other questions will come up during your pregnancy. It is important that you get information and advice from people you trust. This may come from your Family Planning clinic, your school counsellor, your doctor or midwife, the social work department of your hospital, or family and friends. Try to talk to a range of different people so that you can explore your options, and reach a decision that feels right for you. If you are not sure who to talk to, your local Citizens Advice Bureau will be able to give you some contacts. Call 0800 FOR CAB (0800 367 222).

Definitions

Abortion: See “Termination”.

Adoption: A legal process by which a parent-child relationship is created between people who are not related by blood.

Allege: To say something is true without having proved it.

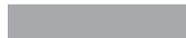
Birth certificate: An official document identifying someone by their name, date of birth, place of birth and parent(s).

Certifying consultants: Doctors who have been certified by the Abortion Supervisory Committee to authorise or decline a termination.

Child, Youth and Family: The government agency responsible for, among other things, making sure children are protected from abuse and neglect. Child, Youth and Family also runs Adoption Services.

Consent: To give permission or agree voluntarily.

Contact: A family law term that means being able to see and spend time with a child, and participate in the child's life. (Contact used to be called “access”.) Also see “Day-to-day care”.



Counsellor: A person trained to give guidance on personal problems.

Court: In this booklet, Court refers to the Family Court.

Day-to-day care: A family law term that means having responsibility for a child's daily life, such as where they live, their safety, making sure they get to school, and that they are properly fed. (Day-to-day care used to be called "custody".) Also see "Contact".

Embryo: Stage of development from fertilisation of the egg until the beginning of the third month of pregnancy.

Foetus: Stage of development from beginning of third month of pregnancy until birth.

Foster care: When day-to-day care of a child is provided by someone other than the birth parents. Foster parents don't usually have any legal rights in relation to the child.

Guardianship: The responsibility and the right to make important decisions about a child's upbringing. Includes decisions about things such as the child's name, education, religion, medical decisions and where the child will live.

Medical records: Personal health information that is kept on file by health professionals.



Obstetrician: A doctor who specialises in dealing with pregnancy.

Open adoption: An agreement that there will be ongoing communication between the birth mother and adoptive parents. Extremely difficult to enforce.

Parenting Order: An order made by the Family Court about who will have the day-to-day care of a child and who can have contact with the child.

Paternity: Proof of who the birth father is.

Significantly impaired: Having an intellectual, physical or mental impairment which means you are incapable of making or communicating decisions about sexual conduct, or of foreseeing the consequences of sexual conduct.

Termination (also referred to as abortion): A medical or surgical procedure to end a pregnancy.

Working for Families Tax Credits: A system of tax credits for low-to-medium income families with dependent children.

Morning after pill

Yes. Women of any age can get the emergency contraceptive pill (sometimes called the “morning after pill”). You can get it at a low cost, and possibly free, from your doctor or your local Family Planning clinic. It is also available over the counter (for a cost) at some pharmacies. It can work up to 72 hours after sex, but the sooner the better.



Pregnancy options counselling

If you find out that you’re pregnant you can get pregnancy options counselling (also called pre-decision counselling) to help you decide what you want to do. There are a number of services that provide free counselling and support. Family Planning or your doctor can refer you to a counselling service (www.familyplanning.org.nz). An experienced counsellor will explain the options available and help you to explore your feelings about each option.



Termination

What is a termination?

A termination is a surgical or medical procedure to terminate (end) a pregnancy by removing the embryo or foetus from a woman's womb before it is mature enough to survive outside the woman's body. A termination is also called an abortion.

When is it legal to have a termination?

In New Zealand a termination is legal if it is authorised by two doctors who are certifying consultants (you can get a referral to these doctors from your GP or Family Planning clinic). Certifying consultants will only authorise a termination if your pregnancy is up to 20 weeks and:

- continuing the pregnancy will result in serious danger to your life or your physical or mental health, or
- there is a big risk the child would be seriously physically or mentally disabled, or
- the pregnancy is a result of incest, or
- you have a significant impairment (see the definition on page 8).

Other factors that the consultants may consider are:

- your age
- if you are pregnant as a result of rape.

If you are more than 20 weeks pregnant, a termination is only legal if:

- it is necessary to save your life
- it is necessary to prevent serious permanent physical or mental injury to you



Where are terminations carried out?

Terminations must be carried out in a licensed clinic or hospital. Clinics or hospitals with limited licences can perform terminations for pregnancies of up to 12 weeks.

For pregnancies over 12 weeks a termination must be carried out in a clinic or hospital with a full licence.

Do I need my parents' permission to have a termination?

No, you can consent to have a termination at any age. If you are able to understand the nature and consequences of a termination, health professionals must maintain your privacy and not tell your parents. However, it is likely that your medical professionals will strongly encourage a support person over 18 years old to accompany you, to ensure your follow-up medical and psychological care needs are met.

Does the man have a right to a say in my decision about termination?

No. The decision is the woman's. The man can't force the woman to either terminate or continue with a pregnancy.

Even if the man disagrees with the woman's decision to continue with the pregnancy, he still has legal responsibilities relating to the care and financial support of the child when it is born.

Can my parents or guardians force me to have a termination?

No. It is your decision. You are legally entitled to refuse to have a termination, no matter what your age. No one has the right to force you to have a termination or to stop you from having one.

Who can I talk to about whether to have a termination?

In New Zealand it is a legal requirement that counselling services must be available to all women considering a termination. Each DHB has its own rules regarding accessing counselling. Many clinics or hospitals include counselling for women accessing their termination services. You can ask your doctor or Family Planning clinic for information (www.familyplanning.org.nz). It is a good idea to talk things through as early as possible, because the timing of your decision can affect your options.

How much does it cost?

Terminations are free for those eligible for publicly funded health care. In general you are eligible for publicly funded health care if you are a New Zealand citizen, a residence visa holder, a long-term work visa holder, or an Australian resident or citizen.



Adoption

What is adoption?

Adoption is a legal process where a person or a couple takes over the responsibility for the care and parenting of another person's child, and they bring that individual up as their own child. Adoption makes the adoptive parents the new parents of the child. The birth parents lose forever the right and responsibility to parent the child – including the right to know and have contact with the child and to receive information about the child's progress in life. The adoptive parents can rename the child.

What are the steps for an adoption?

An adoption can't go ahead unless you, as the child's mother, consent by signing a particular form provided by a lawyer. For your consent to be legal you have to wait until your baby is at least 10 days old before you give consent. (Note that an adoption can't go ahead until a child's original birth certificate has been issued, which may take longer than 10 days.)

Your consent must be witnessed by a lawyer who must also sign that he or she has fully explained the legal consequences of the adoption to you before you signed the consent.

After your consent is filed with the Court, the Court issues an "interim order" (making the adoptive parents the parents for six months) and then a final "adoption order".

It is illegal to give or receive any money for an adoption, except with the consent of the Court.



Will my child know if they have been adopted?

If a child is adopted, their original birth certificate is closed and a new birth certificate is made. The new birth certificate records the adoptive parents as the parents as if the child was born to them. The fact that the child is adopted will only be recorded on the birth certificate if the adoptive parents have requested the words “adoptive parents” after their names. Otherwise, it will be up to the adoptive parents to decide what they tell the child and when.

In some situations birth parents and adoptive parents agree to an open adoption. This is where there is ongoing contact between the birth parents and the adoptive family. For more information see “What does ‘open adoption’ mean?” in this section.

If the adoption is a closed adoption, once the child reaches the age of 20 they can apply to the Department of Internal Affairs (Births, Deaths and Marriages office) for a copy of their original birth certificate and take steps to find out about their birth parents.

What does “open adoption” mean?

Open adoption means that the birth parents and the adoptive parents agree to have ongoing contact. It will be up to the birth parents and adoptive parents to decide on the details of the arrangement, such as the type of contact with the child and how often it will happen. There is an increasing trend towards this type of adoption.

However, it’s important to understand the limitations of open adoption. In both legal and human terms open adoption can’t be a joint custody or shared parenting arrangement. The legal process for an open adoption is the same as for a closed adoption and so are the legal consequences. You would need to start proceedings in the Court to enforce an open adoption and even then it would be very difficult to enforce. If the adoptive parents decide to stop passing information to you, or move somewhere where it’s not possible for you to have regular contact with your child, there may be little you can do. You will be relying on the adoptive parents’ goodwill to allow you to keep in contact.



Who can I talk to about adoption?

You can talk to an experienced adoption counsellor, who will be able to help you work through your feelings and make your own decision. Child, Youth and Family Adoption Services employ adoption counsellors, as does Barnardos. Hospital social workers are also able to offer advice. You could also talk to family members and friends that you trust, or to your doctor or midwife.

If I want to adopt out my child, do I need a lawyer?

Yes. Because adoption is a legal process you will need a lawyer. Your local Community Law Centre or Citizens Advice Bureau will be able to give you names of experienced family lawyers.

Will I have to pay the lawyer?

No. Lawyer's fees will be paid by the adoptive parents.

Can my parents or guardians force me to give my baby up for adoption?

No. It is your decision.

If you are pressured to consent, it is possible that the Court may say your consent is not legal. However, it is very rare for the Court to overturn consent once it has been given. You need to think very carefully about whether to sign the consent.

If I decide to give my baby up for adoption, can I change my mind?

You can't consent to the adoption until the child is 10 days old. Once you have signed the consent form, you can change your mind only if the consent has not yet been filed in the Court or handed to the adoptive parents or their lawyer. You need to consider very carefully whether to sign the consent.



Does the baby's father have to give consent for adoption?

The father's consent is only required if:

- he was married to you any time from when you got pregnant until when the baby is born, or
- he has been appointed a guardian of the child by the Court (for information see the section on "Guardianship"), or
- the Court thinks his consent should be required.

A father does not have to wait until the baby is 10 days old to give his consent. He can give it immediately after the baby is born. If there is any doubt about whether a father's consent is needed, the Court will decide.

Are there any ways in which I can be forced to give my baby up for adoption?

If you abandon, neglect or continually ill-treat your baby, or are proved to be unfit to care for your child because of a physical or mental disability, the Court could make an order saying your consent was not needed. This is very rare and can only happen in very serious cases. The Court would only do this if you had been offered support from agencies such as Child, Youth and Family and you were still not able to care for your child with the additional support offered.

The aim of the Children, Young Persons and Their Families Act is to keep a child within the family whenever possible. Child, Youth and Family should first try to help you to keep your baby or to keep in touch with your baby – perhaps by placing your baby in a long-term fostering arrangement, preferably with another family member (for information see the sections on "Child, Youth and Family issues" and "Foster care").

If my child is adopted, can I have any say in how my child will be brought up?

You have the right to say that you want your child to be brought up within a particular religion (even though practically this can be very difficult to enforce). Otherwise, you



will no longer have the right to decide how your child is brought up. This becomes the legal right of the adoptive parents.

In rare situations it may be possible for you to be appointed as an additional guardian for your child (for information see the section on “Guardianship”). This would mean you would still have some say in your child’s upbringing. This would only happen in exceptional circumstances, perhaps to maintain a child’s cultural identity. You would need to talk to a lawyer about this and it may mean you have to pay legal costs over and above what would normally be paid by the adoptive parents.

Who decides who will adopt my baby?

You have the right to choose the adoptive family for your child. Child, Youth and Family Adoption Services will be able to provide profiles for a range of different families. It is possible to arrange an adoption privately but the law requires that the prospective adoptive parents must first be assessed through Child, Youth and Family’s social workers.

Before making an adoption order the Court would also have to be satisfied that the adoptive parents will be suitable people to look after the child and that the adoption will be in the welfare and interests of the child.

Can my parents adopt the baby?

If you consent to this, yes they can. Legally, your baby would then become your brother or sister. You may like to explore your feelings about this with an experienced counsellor.

What about the father’s family? Could they try and adopt my baby?

Yes, but you would still have to give your consent the same way that you would for any other adoptive parents.

I'm not sure I can care for my baby – but I don't want to give my baby up for adoption either. What other legal options do I have?

There are a variety of care arrangements you could consider. The main legal alternative to adoption is for the Court to appoint additional guardians for the child and give those people the day-to-day care of the child (for information see the sections on "Day-to-day care and Contact" and "Guardianship"). The additional guardians will be responsible for the care of your child and will have the legal right to make decisions about your child's upbringing. Sometimes this will happen in the context of a foster care arrangement (for information see the section on "Foster care").

Unlike adoption where your legal relationship with your child ends, in this situation you would still be a legal guardian of your child. This means you can continue to be involved in decisions about your child's upbringing.

In deciding whether to appoint an additional guardian, the Court must treat the welfare and best interests of the child as the first and most important consideration.



Foster care

What is foster care?

Foster care is when a child's day-to-day care is provided by someone other than the child's birth parents. Foster care may be given by family, other people you know, or people arranged through Child, Youth and Family or another approved service provider such as Barnardos or Open Home Foundation. Foster care can be for a short or longer term.

What legal rights do foster parents have over my child?

Foster care describes a care arrangement, rather than a legal status. The particular legal arrangement will depend on the circumstances. When foster care is arranged through Child, Youth and Family, the Court will grant Child, Youth and Family additional guardianship and day-to-day care of your child. This then gives Child, Youth and Family the right to place your child in a foster care arrangement.

Foster parents will be responsible for caring for your child, but they don't have any legal rights over your child – you remain your child's legal guardian. If a foster family have had your child in their care for a long period of time they could apply to the Court for additional guardianship and for day-to-day care, in place of Child, Youth and Family (this is called "Home for Life"). You would still remain a guardian unless the Court decided you were no longer fit to be a guardian. The situation has to be very serious for the Court to decide to remove someone as a guardian, so this does not happen very often. (For more information see the section on "Guardianship").

Do I have to pay for my child to get foster care?

Foster parents appointed by Child Youth and Family or arranged through a foster care agency are usually paid a government-funded allowance for giving foster care.

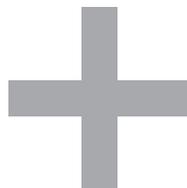
If your child is placed in an informal foster care situation (perhaps with family or friends), you will have to work out with the people providing care whether they expect any payment from you for the care of your child.



Whāngai

Whāngai describes an informal adoption situation where a child is cared for within that child's whānau or extended family according to tikanga Māori (Māori custom). Usually the relationship with the child's birth parents is still maintained. Whāngai arrangements are not formally recognised by the law, so like foster care, whāngai describes a care arrangement rather than a legal status. This means that unless there is an adoption order by the Court, the birth mother remains the legal guardian of the child.

A child who is brought up within a whāngai arrangement may have rights to Māori Land. This isn't an automatic right, however. The Māori Land Court must be satisfied that whāngai should be included and it may require evidence from the whānau about this.



Establishing legal fatherhood (Paternity)

What is paternity?

Paternity is the legal word for fatherhood of a child.

Why is paternity important?

Establishing paternity can be important for many reasons, including the psychological and emotional well-being of those involved and the child's sense of personal identity. Paternity can also affect a number of important legal rights and responsibilities, for example:

- a father's entitlement to day-to-day care of, or contact with, a child
- a mother's entitlement to receive full Sole Parent Support or the Young Parents Payment
- a father's responsibility for paying Child Support
- a child's right to inherit property from the person they believe is their father
- a child's right to New Zealand citizenship (if this is based on the father's citizenship).

How does paternity affect a mother's Work and Income benefit?

If a woman who is getting the Young Parents Payment or Sole Parent Support does not establish the paternity of her child, Work and Income can reduce her benefit payment. Work and Income want to know who the father is so that he can be made to pay Child Support to Inland Revenue (for information see the section on "Financial support").

If you are on the Young Parents Payment or Sole Parent Support and you refuse to tell Work and Income who the father of your child is you may receive less money per week. However, in some cases your benefit won't be reduced, for example if:

- 
- you don't know who the father is (in which case you will need to talk to Work and Income and explain your situation)
 - your child was conceived as a result of rape or incest
 - naming the father would put you or your child at risk of violence
 - you have some other "compelling circumstance" justifying why you haven't identified the other parent, and there's no real likelihood of child support being collected from them even if you did take active steps to identify them.

How is paternity established?

A man will be presumed to be the father of your child if:

- he was married to you at the time of the child's birth or if the child was born within 10 months of the marriage ending, or
- he has admitted he is the father (either by words or actions), or
- he is named on the child's birth certificate as the father of the child, or
- he signs an Acknowledgement of Paternity, which is also signed by the mother and is witnessed by a lawyer.

A Paternity Order or a Declaration of Paternity from the Court are conclusive evidence that a man is the father of a child.

Can I put the father's name on my baby's birth certificate without his permission?

No. Generally speaking, both parents of a child must sign the birth registration form. However, you may be able to submit a birth certificate signed only by you if you can satisfy the Registrar of Births, Deaths and Marriages that:

- you have conceived the child through assisted human reproduction (AHR) and so are the only legal parent, or
- the father is unknown, dead, missing, of unsound mind or unable to sign because of a medical condition (evidence will need to be provided for this),
or

- 
- it's not possible to obtain the father's signature because he is overseas, and he can't be contacted within a reasonable period of time, or
 - requiring the father to sign the form would cause either of you unwarranted distress (for example, in situations of domestic violence).

You will not be able to submit the birth certificate, with or without the fathers' name, if you don't meet one of these exceptions.

My baby's father refuses to acknowledge paternity. What can I do?

As long as you are not married to the father, and the child is under six, you can apply for a Paternity Order in the Family Court. You will need a lawyer to help you do this. A Paternity Order is conclusive evidence of paternity for Child Support and for relevant Work and Income benefit applications.

If you can't afford a lawyer to make a Paternity Order application you may be able to get legal aid to cover the costs. Legal aid is financial help provided by the government to help people who can't afford to pay their legal costs (for information see the section on "Getting legal help").

Can anyone else apply for a Paternity Order on my behalf?

Yes. If you are under 16, anyone who has the role of providing you with day-to-day care can apply for a Paternity Order (for example, if you are still living at home your parents could apply). Alternatively, you can give your written consent for a social worker to make the application on your behalf.

Can a man apply for a Paternity Order declaring him to be the father of my child?

A man can't apply for a Paternity Order, but he can apply to the Family Court or the High Court for a Declaration of Paternity. He can also apply for a declaration of non-paternity – stating that he is not the father of your child.



How does the Court establish paternity?

The Court needs to be convinced that it is “more probable than not” that the man is the father. The Court will look at things like:

- the history of your relationship with the man and whether other people knew about your relationship
- the likely dates of sex with the man compared with the date of the baby’s birth
- whether or not you had any other sexual partners around the time of your child’s conception (to establish whether anyone else could be the child’s father)
- whether the man has acknowledged paternity, either through his words or actions.

Often, the Court will recommend that DNA tests be done to help determine paternity. These involve either blood samples or mouth swab samples being taken from you, from the alleged father, and from your child. The samples are then sent to a specialist laboratory for tests to compare DNA. The tests determine if the man is more likely than not to be the father of your baby or if he is unlikely to be the father.

Do I have to pay for DNA testing?

Usually you will share the costs of DNA testing with the alleged father. If paternity is established, your lawyer could ask for your share of the costs to be paid back to you by the father.

If you can’t afford your legal costs you may be able to get legal aid to cover part of the cost of the DNA testing. Legal aid is financial help provided by the government to help people who can’t afford to pay their legal costs (for information see the section on “Getting legal help”).

Can someone refuse to undergo DNA testing?

Yes. An alleged father can refuse to have the test, but the Court can take their refusal into account in making its decision.

If a man refuses to have a DNA test, the Court could consider that he is refusing because he is likely to be the father and doesn't want it proved. If he refuses testing, but other factors point to him being the father, the Court can decide that a standard of reasonable proof has been reached and make a Paternity Order.

Can I give my child the father's surname even though he refuses to acknowledge the child?

If the father of your child refuses to sign the birth certificate, then you will need to choose the name yourself and you can, if you want to, give your child the father's surname. The father can't apply to have the child's name changed unless he becomes a guardian (for more information, see the section on "Guardianship"). The court will only change a child's name if it is in the best interests of the child – the parents' feelings do not affect the decision.



Guardianship

What is guardianship?

Guardianship of a child means having the duties, powers, rights and responsibilities that a parent has for bringing up the child.

The father and the mother of a child are usually joint guardians of the child. Parents are often referred to as natural guardians. However, in some circumstances the mother may be the sole guardian of the child (for information see “Am I my child’s guardian?” and “Is the father of my child a guardian?” in this section).

What are the responsibilities of a guardian?

A guardian’s responsibilities include contributing to the child’s intellectual, emotional, physical, social, cultural and other personal development and helping to make the important decisions in a child’s life.

The important decisions guardians make about their child’s upbringing include naming a child, where a child will live, and decisions about a child’s education, religion and medical treatment. This may mean deciding these things on behalf of a child or, if the child is old enough, helping the child make decisions about the important things affecting them.

Am I my child’s guardian?

As a mother, you are always the natural guardian of your child (unless the baby was conceived by assisted human reproduction (AHR) in which case different rules apply).



Is the father of my child a guardian?

The father is a natural guardian if you were married, in a civil union, or living together in a de facto relationship any time between when the baby was conceived and when the baby was born.

If a child's father is not a natural guardian, then he can become a guardian of the child if both you and he agree in writing to record him as the father on your child's birth certificate, or if he applies to the Court to become a guardian. The Court must appoint him a guardian if he applies, unless it would not be in the welfare and best interests of the child. If you did not think he should be a guardian it would be up to you to prove that it wouldn't be in the child's best interests for him to be a guardian. For example, if the father had been violent or abusive, this may be a reason for him not to be appointed a guardian.

What happens if the father and I split up? Is he still a guardian?

If the father is a natural guardian, or he has been added as a guardian by the Court or by signing the birth certificate, then he remains a guardian, even if you are not together. This means you still need to talk to each other and make the important decisions together about bringing up your child.

What happens if guardians disagree?

If guardians can't agree on decisions about a child, they can use Family Dispute Resolution (FDR) to try to resolve the disagreement. If that doesn't work, they can apply to the Court for it to make the decision. The welfare and best interests of the child will guide the Court in any decision it makes.



When does guardianship end?

You remain a guardian of your child until the first of any of the following happens:

- your child reaches 18 years of age
- your child gets married or enters into a civil union
- your child lives with another person in a de facto relationship.

Guardianship also ends if a guardian is removed by the Court, but this happens very rarely (for information see “When can guardians be removed?” in this section).

Can anyone else be a guardian of my child?

Usually it is the natural biological parents of a child that are the child’s guardians, but additional guardians can be appointed by the Court if one or both of the parents apply. In deciding whether to appoint an additional guardian, the Court must treat the welfare and best interests of the child as the first and most important consideration.

The Court or Child, Youth and Family may sometimes be appointed a guardian of a child, if the natural guardians are not fulfilling their responsibilities towards the child.

Does this mean I could appoint my parents as additional guardians?

Yes, if you want your parents (or grandparents or other family members, for example) to help you with bringing up your child and to formalise this responsibility you can apply to the Court for them to be appointed as additional guardians. If the baby’s father is a guardian, he would have to agree to your parents being appointed. If he doesn’t agree, the application would need to go to a full Court hearing and the Court would decide.

You need to remember that once your parents are appointed guardians they will remain guardians, unless there is a very serious reason why they should be removed. This means that, until your child turns 18, you will need to work together to make decisions about your child’s upbringing.



If my child is living with the additional guardians, do I still have a say in how my child is brought up?

You are still a legal guardian of your child. This means you must be involved in all important decisions concerning your child, even if your child is no longer living with you.

If I have a new partner, can they become a guardian of my child?

In some situations you may be able to appoint a new spouse or partner as an additional guardian. Your new partner would have to have been sharing day-to-day care of your child for at least one year. The child's father would also have to agree to the appointment, even if he is not a guardian himself.

There are also a number of restrictions that apply. For example, your new partner will not be eligible to be appointed if they have been involved in Court cases about the care of children, or have been the alleged abuser in a domestic violence case (for information see the section on "Protection from domestic violence"), or have been convicted of an offence involving harm to children. There are also restrictions stopping your new partner being appointed as an additional guardian if you have or your child has been involved in various Family Court cases or the child already has an additional guardian.

If you and your partner don't qualify for this, you both may still apply to the Court on the grounds that it is in the child's welfare and best interests for your partner to be appointed an additional guardian.

When can guardians be removed?

A guardian can only be removed if the Court is satisfied that removal is in the best interests of the child. It is only in very rare and serious situations that a parent would be removed as a child's guardian, and the parent would also have to be unwilling or unable to be a guardian.



Day-to-day care and Contact

What is day-to day care?

Day-to-day care means having responsibility for the child's daily living arrangements, such as the child's safety, making sure the child gets to school and that he or she is properly fed. Day-to-day care used to be called custody.

What is contact?

Contact means the child spending time with a parent or another person who does not have day-to-day care of the child. Contact used to be called access.

Do I have automatic day-to-day care of my child?

Responsibility for day-to-day care is linked to guardianship. As the mother of the child you are the legal guardian and so you are responsible for the child's day-to-day care. However, the father may also be a legal guardian (for information see the section on "Guardianship"). If he is a guardian, he will also have a say in the day-to-day care of the child. If you and the father are not living together, both of you need to decide how your child will be cared for.



What if the father of my child and I can't agree on day-to-day care or contact?

You can use the Family Dispute Resolution (FDR) service to help you to reach an agreement. FDR involves meeting with the father and a trained mediator. If you are on a benefit or a low wage, FDR will be free.

If you don't reach agreement at FDR mediation, you can apply to the Family Court for a Parenting Order.

You will also have to do the free Parenting Through Separation course before you can apply for a Parenting Order. That course can also help you to reach an agreement. You do not attend this course with the father of your child, but you can take a support person with you.

(You can apply straight to the Court in urgent situations or where FDR would not be safe for you).

Find Family Dispute Resolution and Parenting Through Separation providers using the Family Court's "Find a Service Provider" page: www.justice.govt.nz/family-justice/about-children/making-decisions-about-children/new-process/justice-providerslist.

Does it cost to apply for a Parenting Order?

Yes. There is a filing fee for an application for a Parenting Order (unless you're eligible for legal aid). You can also make an application to waive the fee if you're unable to pay it.

How does the Court decide about the care arrangements for a child?

In making a decision about the care arrangements for a child, the first and most important consideration for the Court is the welfare and best interests of the child. The Court recognises the importance of both parents being involved in the child's life. The Court will make arrangements that provide for a continued relationship with both parents unless this is not in the child's best interests.



If I make an agreement with the father of my child, how do I make sure he sticks to it?

If you and the father have reached an agreement about the care of your child, you can apply to the Family Court to have the agreement made into a Court order. You will need a lawyer to help you with this (for information see the section on “Getting legal help”). The agreement can then be enforced like any other Court order. The Court can also make a range of orders penalising a parent for not sticking to the conditions of a Parenting Order.

Can someone else, for example my parents or the father’s parents, apply for a Parenting Order?

Other people, such as extended family members, may be able to get permission from the Court to apply for a Parenting Order. There are specific situations where another family member may be eligible to apply. For example, if the father of your child has been refused contact with the child by the Court, or he is making no attempt to have contact, then his parents are eligible to apply for a Parenting Order. In deciding about day-to-day care and contact the Court will always consider what is in the best interests of the child.

What if the father has been violent to me or my child?

Violence against you or your child is a crime. You could report this to the Police and you can also get legal protection against domestic violence by getting a Protection Order (for information see the section on “Protection from domestic violence”). If you have a Protection Order against the father, he won’t be allowed to live with or see you or your child, unless you agree.

If the father has been violent the Court will not give him day-to-day care of your child and he will not be allowed contact with your child (other than supervised contact), unless the Court believes that your child will be safe. Supervised contact means that contact with your child will be supervised or overseen by an approved organisation, or by a suitable person approved by the Court, such as a relative or friend of the family.



Protection from domestic violence

What is domestic violence?

Domestic violence is violence between people in a domestic relationship. A domestic relationship can include a boyfriend and girlfriend relationship, spouses, partners, flatmates and family relationships. Domestic violence happens in same sex as well as heterosexual relationships.

Domestic violence includes physical, sexual, psychological and economic abuse. Psychological abuse does not have to involve physical contact. It includes things like intimidation, harassment, damage to property and threats of abuse.

What is a police safety order?

A police safety order (PSO) provides immediate, short-term protection if you're at risk from domestic violence. A PSO can be issued by the police "on the spot". The police don't need your consent to issue a PSO. A PSO means the person the order is made against must leave the home, and stay away from you, for up to five days.

What is a Protection Order?

A Protection Order is a legal order granted by the Family Court. This order is the main way that the law tries to protect people from future domestic violence.



Who can apply for a Protection Order?

Anyone who has experienced domestic violence can apply for a Protection Order. The person who applies for a Protection Order is called the applicant.

In some cases, if you need help, another person might be able to apply on your behalf. If you are under 16 years of age you will need an adult to act as your representative. If you are 16 years old you can choose either to apply through a representative or make your own application.

Who can a Protection Order be made against?

A Protection Order can be made against any person who is or has been in a domestic relationship with you. The person the application is made against is called the respondent.

A Protection Order can't, however, be made against someone who is under 17, unless they are or have been married, in a civil union, or a de facto relationship. This means that if the father of your child is under 17 and he has been violent to you, you will only be able to apply for a Protection Order against him if he is or was married, in a civil union or de facto relationship, either with you or with someone else.

Will a Protection Order protect my child?

Yes, if your child usually lives with you then they will be covered by the Protection Order.

If I get a Protection order will the respondent be able to have contact with my child?

When an application is made for a Protection Order and the respondent is a guardian of your child (for information see the section on "Guardianship"), the Family Court will want to know what the care arrangements are for your child. If the respondent



has used physical or sexual abuse against you or your child, the Court will not let the respondent have day-to-day care of the child.

The Court will also not allow the respondent to have contact with your child (other than supervised contact), unless the Court is satisfied that your child will be safe. Supervised contact means that contact with your child will be supervised or overseen by an approved organisation, or by a suitable person approved by the Court, such as a relative or friend of the family.

How will a Protection Order help?

A Protection Order sets out a number of conditions that the person who has been violent towards you must follow. These include:

- Non-violence conditions – The respondent must not physically, psychologically, or sexually abuse or threaten to abuse you, your child, or anyone else protected by the Protection Order. They must not damage or threaten to damage your property or encourage anyone else to do these things.
- Non-contact conditions – The respondent must not make any form of contact with you (for example, visiting, telephoning, writing or texting) unless it is an emergency, or if contact is allowed under a Parenting Order or agreement, or under a special condition of a Protection Order, or the contact is necessary for attending a Family Group Conference. You can suspend the non-contact conditions if you expressly agree to live together with the respondent. These conditions automatically come back into force if you withdraw your consent.
- Attend a stopping violence programme – The respondent must attend an approved stopping violence programme which is aimed at changing the respondent's attitude and behaviour to prevent further violence.
- Weapons and firearms – The respondent must hand in any weapons (legal or illegal) and any firearms licence they have to the Police. Weapons include firearms, airguns, pistols and explosives.
- Special conditions – The Court may also impose special conditions that are reasonably necessary to protect you from further domestic violence.



If the respondent breaches the Protection Order they are breaking the law. The Police can arrest them.

If I apply for a Protection Order, will there be any support for me and my child?

There are free education and support programmes available for you and your child. You can attend any time within three years of getting a Protection Order (this timeframe can be extended by the Court). These programmes are aimed at providing information to help you and your child have a better understanding of domestic violence, and how to keep safe.

What proof does the Court need to grant a Protection Order?

You will have to provide evidence to the Court to prove “on the balance of probabilities” (that it is more likely than not to be true) that the respondent is using or has used domestic violence against you or your child. The Court must also be satisfied that the Protection Order is necessary for your protection.

Do I need a lawyer to apply for a Protection Order?

Applying for a Protection Order can be challenging, especially if the person who has been violent towards you defends or challenges your application. While it is possible to apply for a Protection Order on your own, it is generally a good idea to use a lawyer (for information see the section on “Getting legal help”).

How much will it cost to apply for a Protection Order?

There is no application fee for a Protection Order but if you use a lawyer, the lawyer will charge fees.

If you are on a benefit or low income you may be eligible for legal aid. Legal aid is financial help provided by the government to help people who can't afford to pay their legal costs (for information see the section on “Getting legal help”).



Will the respondent know I am making an application for a Protection Order?

Not necessarily. If the situation is urgent an application can be made without giving the respondent notice and the Court can grant a temporary Protection Order quickly. This is called an ex parte or without notice application. To apply without notice you will have to show that delay would cause undue hardship or harm to you or your child. A temporary Protection Order lasts for three months, but if the respondent doesn't defend this, it will become a final, permanent order.

If the application is made on notice then the respondent is told about your application before the Court makes a decision. This means the respondent has a chance to defend the application. Your lawyer will be able to help you decide what type of application to make.

If I apply for a Protection Order against the person I am living with, then do I have to move out?

No, you don't have to move out. Initially you might go somewhere else to keep safe, like a Women's Refuge, but you can apply to the Court for a property order that will give you the right to live in the house you share with the respondent, and will require the respondent to move out.

There are different possible orders depending on your circumstances. An Occupation Order gives you the right to live in a property without the respondent, where either you or the respondent own or partly own the property. If you were renting a property together with the respondent then you can apply for a Tenancy Order so that you can keep living in the flat without the respondent. You can't apply for a Tenancy Order if there are other tenants on the tenancy agreement.

The Court will only make an Occupation or Tenancy Order if it is necessary for your protection, or is in your child's best interests. The Court must also consider the reasonable accommodation needs of everyone who might be affected by the Order. Usually one of these orders will only be temporary so that you and the respondent



have time to sort out where you will live and how you will split up any property you own together.

You can also apply for a Furniture Order so that you can have some or all of the furniture and appliances from the home you shared with the respondent. The respondent can't remove or destroy any of these things and the Police can go with you when you return to get the furniture.

What if I still want to live with the respondent but want the violence to stop?

You can choose to live together with the respondent. If you do this, the non-contact conditions of the Protection Order are suspended. However, the other conditions of the Protection Order, including the non-violence conditions, stay in place. You can also change your mind and decide you don't want to keep living with the respondent, in which case the non-contact conditions will come back into force.

What can I do if the respondent breaks the conditions of the Protection Order?

Breaching a Protection Order is a criminal offence. You should report any breach to the Police. As well as being charged with breaching the Protection Order, the respondent can also be charged with any other crime committed at the same time, for example, assault.

The police may arrest the respondent, and charge them with breaching the Protection Order.

The maximum penalty for breaching a protection order is two years in prison (except if the breach is failure to attend a programme, when the maximum penalty is six months in prison or a \$5,000 fine).

What if I am served with an application for a Protection Order or a temporary Protection Order?

It is important to read the documents carefully to ensure that you understand their contents and obey them. You have the right to respond to the contents of the documents. There can be strict deadlines for doing this. It is recommended that you use a lawyer.

What if I don't want to have a Protection Order in place any more?

You can apply to the Court to have the Protection Order cancelled (discharged). The judge will need to be convinced that the order is no longer needed for your protection.

Is there anyone I can talk to privately about domestic violence?

You can ring your local Women's Refuge and ask to speak to someone. Women's Refuge provides 24-hour support, advocacy and accommodation for women and their children experiencing domestic violence. It is up to you whether you give any personal details. In some areas there are refuges especially for Māori women and Asian women, and increasingly there are refuges for men as well.



Child, Youth and Family issues

What is Child, Youth and Family?

Child, Youth and Family (CYF) is the government agency responsible for making sure children and young people aged up to 17 years are safe and are protected from abuse and neglect. CYF is supposed to help families find ways to care for their children. When families can't properly care for or protect their children, CYF is supposed to provide care and protection for them.

What if I think my child is in danger at home?

It's important to know that people over 18 who know that child abuse is occurring in their own home (for example, by their partner or parent), must take reasonable steps to protect the child from death, serious harm or sexual assault – for example, by reporting the crime to CYF or the Police. If you don't take reasonable steps to protect a child from death, serious harm or sexual assault, you're committing a crime and could face up to 10 years in prison.

What if someone complains to CYF about how I am looking after my child?

The complaint will be investigated by a social worker and/or the Police. As part of the investigation a social worker or a Police officer will come and talk to you and your family to try and find out if there is any basis for the complaint, for example if there has been any abuse or neglect of your child. The social worker or Police officer must decide whether or not they believe that your child is in need of care or protection.

If someone complains to CYF about my parenting, can I find out who it was?

No. That person's name is protected under the Privacy Act.



What should I do if CYF wants to investigate my family?

It's important to work with your CYF social worker, and not to avoid communicating with them. You may be able to make some immediate changes that help satisfy the CYF social worker that your home is a safe place for your child. If you think CYF wants to take your child away, it is important to see a lawyer as soon as possible, and also to access help and advocacy from an independent local social work service. Visit your local community law centre to get initial legal help (www.communitylaw.org.nz).

What happens if CYF decide my child is not in need of care and protection?

CYF will not take any further action.

What happens if CYF believe my child is in need of care and protection?

If CYF decide your child might be in need of care and protection, they will organise a Family Group Conference (FGC) to look at how your child can be protected and cared for.

What happens at an FGC?

An FGC is a meeting for you and your family to discuss with social workers and others what needs to be done to make sure your child is safe and well cared for.

First, all the people involved in the FGC share information about what has been happening and what the issues are. You and members of your child's extended family then talk privately about how your child can be cared for and kept safe. The family reports back its decisions and everyone has to decide and agree on whether there is a care and protection problem and whether the proposed plan will keep the child safe.

CYF should try to help keep a child within the family whenever possible. CYF should also try and assist you to keep your baby or to keep in touch with your baby – perhaps



by placing your baby in a long-term foster care arrangement, preferably with another family member (for information see the section on “Foster care”).

If agreement can't be reached, the case may go to the Family Court for a solution to be worked out.

Can CYF take my child away from me before we have an FGC?

In very serious situations, where the Police or a CYF social worker believes that your child is in danger of harm, they can take your child into CYF care straight away. You will be able to give your views on what should happen to your child, as part of the Family Court process.

What happens to my child if CYF removes them from me?

Your child would be placed in the care of CYF and the matter would be taken to Court within five days. The Court will decide whether your child should be returned to your care, whether to give the day-to-day care of your child to another appropriate person, or whether to make a declaration that your child is in need of care and protection along with various Court orders to make sure your child is safe. In general, an FGC must also be held before the Court makes a decision.

Can I see my child if CYF removes them from my care?

You could apply to the Court to have contact with your child. The Judge would look at all the circumstances of the case and make a decision based on the best interests of your child.

If the Court places my child in the care of someone else, will I ever be able to have my child back?

It will depend on whether the Court believes your child will be safe in your care and what the Court believes is in your child's best interests. The Court can order you to go to counseling or order that support or services be provided to your child. The Court might allow your child to be returned to your care if you have support. If your situation improved and you felt you could properly care for your child, you could apply to the Court to have your child back in your care. The Court would investigate all the circumstances before making a decision.



Criminal issues

I am under 16. Will criminal proceedings be started against my baby's father because I had sex before I was 16?

This depends on the circumstances. If the baby's father is under 17 years of age, and you had sex willingly, it is unlikely that Police Youth Aid would feel it was in the best interests of either of you to charge him with an offence. However, if he is over 17 he could be charged because it's a criminal offence to have sex with a female under 16 years of age, even if you said you were willing. If you are under 16 the law is that you cannot consent to sex.

The Police are more likely to prosecute if there is a larger age gap and they think you may have been pressured into having sex.

If you did not have sex willingly, the man committed an extremely serious crime (called rape) and you should talk to someone you trust about this.



Financial support

What is Child Support?

Child Support is money paid by a parent who is not living with their child (the “liable parent”) for the financial support of that child. To find out more, or to apply, contact Inland Revenue Child Support.

Can I apply for Child Support?

You can apply for Child Support against a liable parent if you are the sole or principal caregiver of your child, or you share the care of your child equally with another person.

Will the father of my child have to pay Child Support?

He will be liable to pay Child Support if he does not live with you and:

- his name is on the birth certificate as the father, or
- he was married to you and the child was born during your marriage, or
- he legally adopted the child, or
- a Court has found him to be the father, or
- he has admitted to be the father in writing, or
- the Court has declared him to be a step-parent, or
- he is the natural father of the child and has been appointed a guardian by the Court.

My child’s father is still at school. Will he have to pay Child Support?

Yes, if he falls into one of the above categories. The Child Support Act doesn’t give an exemption because the father is still at school. However, he will probably only have to pay the minimum amount of Child Support.



What if the father refuses to pay?

It will accumulate as a debt until he starts earning or receiving a benefit. At that stage Inland Revenue Child Support can authorise his employer or Work and Income to make automatic deductions from his wages or benefit.

How long does the father have to keep on paying Child Support?

He has to keep paying Child Support until your child does any one of the following:

- turns 19 years old
- is adopted
- gets married, enters a civil union or de facto relationship or becomes financially independent.

How much Child Support will he have to pay?

There is a formula for working out how much Child Support he will have to pay. The formula looks at his income, the number of children he is supporting, whether he shares care of your child, and also takes into account a living allowance for him.

Will I be able to get financial support from Work and Income?

Whether or not you are eligible for any financial support from Work and Income will usually depend on your income, your family circumstances, whether or not you have a partner, and your age.

Always discuss your situation thoroughly with staff at Work and Income. Your individual circumstances are extremely important and should be taken into account. You can also get additional support and information from your local benefit rights service, Citizens Advice Bureau or Community Law Centre.



Possible Work and Income benefits you may be eligible for include:

- Young Parent Payment – for parents aged 16, 17 or 18. You will usually have to be in full-time education or training, or be available for it. Work and Income can also require you to do other things, such as attending a budgeting programme; going to interviews with Work and Income or Youth Service provider organisations; or cooperating with Work and Income or Youth Service providers in managing how your benefit is spent – this means, in particular, attending budgeting discussions and providing information about your finances and spending.
- Sole Parent Support – for sole parents aged 19 or over who have children under the age of 14 (if the youngest child has turned five, the parent must be available for and looking for part-time work – “the part-time work test”).
- Jobseeker Support (for people aged 18 or older who have a partner and dependent children of any age).

For more information, see the “Benefit Rights” section of the Community Law Manual online: www.communitylaw.org.nz.

Can I get financial support for the costs of childcare?

Yes, Work and Income can help with childcare costs so that you can return to full-time education.

If you are under 19 and have a child under five, and are in full-time education, training or work-based learning, you may be able to get the Guaranteed Childcare Assistance Payment (GCAP) to assist with the cost of childcare.

What are Working for Families Tax Credits?

Working for Families Tax Credits (previously called Family Assistance) are payments made by Work and Income (if you’re on a benefit) or Inland Revenue (if you’re working) to families with dependent children. These payments are to help with your day-to-day family costs and are intended to make it easier to work and raise a family. There are a range of different types of payments.

To be eligible for Working for Families Tax Credits you must be the principal caregiver for your child and be aged 16 years or older.

If you are under 16 and living with your parents, they might be able to claim Working for Families Tax Credits for both you and your baby.



Education

Do I have to continue with my education if I am pregnant or have a baby?

The Education Act says that you must continue with your education by attending a registered school until you are 16 years of age. This is the case even if you are pregnant and even after you have had your baby. In addition, Work and Income will generally require you to be in suitable training or education if you are receiving the Youth Payment or Young Parent Payment (for further information see the section on “Financial support”).

Can the school ask me to leave because I’m pregnant?

No. It is against the law for your school to ask you to leave because you are pregnant or are parenting a child. You have a right to your education.

Can I take my baby to school?

Some schools have childcare facilities at the school or nearby. If there are no childcare facilities you will need to make your own arrangements for the care of your child. You should discuss your circumstances with your school counsellor.

You could also consider changing schools or look at other options for continuing your education, such as:

- Teenager/mother education units – these are special education units for teenage mums where you are supported as a student and as a parent. There is usually childcare on-site and sometimes you can take your baby to class too.
- Correspondence School – this means you study at home using books and digital learning tools. You can organise your study around caring for your child.

You can also ask Work and Income for financial assistance with childcare while you attend school (for information see the section on “Financial support”).

What help can I be given to continue my education?

You can ask for a meeting between you and your family, and the school principal and school counsellor to discuss the best options for you in your particular circumstances.

If you need financial assistance to help you continue with your education this may be available through Work and Income (for information see the section on “Financial support”).



Living independently

I'm pregnant and I want to move into a flat with my boyfriend. Can my parents stop me?

If you are under 16, you can only leave home if your parents agree and they make adequate arrangements for your care (for example, accommodation, clothing, food and medical care).

Once you have turned 16 you don't need your parents' permission to leave home. However, your parents remain your legal guardians until you are 18 and if they have serious concerns about how you are living, they could apply to the Court for an order directing you to return home or to live somewhere else. It will have to be a serious situation as the Court will not normally make an order for someone over the age of 16.

If you decide to live independently you will have to consider how you will manage financially. To be eligible for the Youth Payment or Young Parent Payment you must either be married, in a civil union or de facto relationship, or you need to prove to Work and Income that exceptional circumstances mean your parents can't financially support you.

What can I take with me when I leave home?

You can take:

- personal clothing and toiletries
- anything you have bought with your own money
- any gifts made to you
- any items bought especially for you
- personal documents, for example, school reports, your birth certificate
- anything your parents have agreed you can take.

Can I sign a tenancy agreement if I'm under 18?

Yes, but you will probably find that some landlords are reluctant to rent a flat to you, because there can be difficulties in enforcing a contract against people under 18. Because of this you may find that a landlord will want your parents or some other adult to sign the tenancy agreement as guarantors. This means they become liable for any unpaid rent or damage to property.



Health issues

What health care can I get while I'm pregnant?

You can get health care and support from a midwife or doctor from early pregnancy up until four to six weeks after your baby is born – this is called maternity care. Pregnant women are required to choose a Lead Maternity Carer (LMC) who coordinates their maternity care. Your LMC could be a midwife, a doctor or a specialist obstetrician.

Do I have to pay for visits to a doctor or midwife?

Most maternity care from your doctor or midwife is free, however you may have to pay for antenatal or childbirth education classes (there are usually free options available) and you may have to pay for an ultrasound scan. If you choose to go to a private obstetrician you will have to pay, but if you are referred then that will be free as well.



After your baby is born, Plunket can give you free advice about caring for your baby (as part of the WellChild / Tamariki Ora programme) and visits to the doctor are often free for children under six years.

What if I am an overseas student?

You are only eligible for free maternity care if you are a New Zealand citizen or a permanent resident, or your partner is a New Zealand citizen or a permanent resident. If you are not eligible you may be charged for medical help during your pregnancy, labour, and birth, and for care after your baby arrives.

Can a doctor or midwife pass on information to my parents (or to my partner)?

The information you give your doctor is personal and your doctor can't pass information about you or your treatment to anyone else without your consent, except in specific circumstances.

The doctor or midwife might be able to pass on your information if you are under 17 and they think you have been physically or sexually abused. If this is the case the doctor or midwife could report it to the Police or to Child, Youth and Family, but not to your parents. If a doctor or midwife has reasonable grounds to believe that there is a serious risk of harm to you (whether self-harm or harm caused by another person), they may be able to inform your parents or other appropriate authorities if this would help keep you safe.

Your doctor or midwife is under a professional obligation to keep any information about you confidential. If you have any concerns about information being passed to your parents or guardian, or to your partner, discuss this with your doctor or midwife.

Can I see my medical records?

Yes, and you can ask for your own copy.

Can anyone else see my medical records?

Only the staff who are involved with your medical care or with the administration of the medical clinic. They are not allowed to disclose your information to another person unless it is part of your treatment or you give consent.

What if I am not happy with my doctor or midwife?

You can change your doctor or midwife without giving a reason. You can give permission to your new doctor or midwife to get your medical notes from your previous doctor or midwife. However, you should always feel free to talk to your doctor or midwife about anything that is bothering you or that you're uncomfortable about. Remember, also, that you can take a friend or support person along with you when you visit your doctor or midwife.

Is there anywhere I can complain if I am not happy with my medical treatment?

Yes, you can complain directly to the Health and Disability Commissioner, the Medical Council of New Zealand, or the New Zealand College of Midwives (about a midwife). If you are unhappy with your treatment it may be helpful for you to discuss this first with a friend, family member, or other support person, or with a Health and Disability Consumer Advocate (0800 555 050). They could then help you make a complaint.



Employment

If I'm working, can I get fired because I'm pregnant?

No. Your employer can't discriminate against you because you are pregnant. This means they can't fire you or treat you less favourably than another person because of your pregnancy.

If I'm finding my work hard can I ask my employer to give me different duties?

Yes, you should discuss this with your employer. If being pregnant means you can't do your job properly or safely, your employer may temporarily transfer you to another job. If your employer can't find other suitable work for you, you may be asked to go on parental leave early. However, this will not affect your leave entitlements.

Can I get time off work while I'm pregnant or to care for my baby when he or she is born?

Yes. The following are the different types of leave available to workers who are pregnant or who are caring for a baby. There are different entitlements available depending on if you have worked for the same employer for six months or 12 months. More information on parental leave is on the Ministry of Business, Innovation and Employment website (www.dol.govt.nz) or phone them on 0800 20 90 20.

Different types of leave

- Special leave – mothers can take up to 10 days unpaid special leave for reasons related to your pregnancy, for example, midwife or doctor's appointments.
- Maternity leave – mothers can take unpaid maternity leave for 14 continuous weeks, starting up to six weeks before your baby's expected due



date. In some cases maternity leave can start earlier. Your doctor or midwife may direct you to leave work earlier if this is necessary for the health of you or your baby. Your employer can also direct you to start maternity leave early if you can't continue to do your job safely or adequately. If your doctor or employer directs you to start your maternity leave early, you have the right to take eight weeks maternity leave after the expected date of birth, and your maternity leave is extended to allow that. Special rules apply – contact the Ministry of Business, Innovation and Employment (0800 20 90 20) for further details.

- Paid parental leave – mothers can take up to 14 weeks paid leave (to be taken at the same time as any unpaid leave), if you have worked for the same employer for at least six months before your baby's expected due date. Paid parental leave is a government-funded scheme. To receive paid parental leave you must apply to your employer for parental leave, and then apply to Inland Revenue for parental leave payments. You will get paid whichever is the lower of your usual weekly pay or an amount set by the government. You can transfer all or part of your paid parental leave to your partner as long as they are also eligible.
- Partner's/paternity leave – if they are an employee, partners can take either one week (if they have been working for the same employer for six months), or two weeks (if they have been working for the same employer for 12 months). Partners can extend this leave in certain circumstances, if parental leave payments are transferred from a mother to an eligible spouse/partner. Partner's/paternity leave is additional to the periods of maternity and extended leave. Partner's/paternity leave can be taken up to three weeks before the expected due date and three weeks after the actual date of birth. If you and your employer agree, you can start partner's/paternity leave at any other time.
- Extended leave (unpaid parental leave) – you can take unpaid leave of up to 52 weeks (including the 14 weeks unpaid maternity leave or paid parental leave), if you have worked for your employer for at least 12 months. Extended leave can be shared between you and your partner, but the total leave taken must not be more than 52 weeks. You can take leave at the same time or take it one after the other.

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- Read your employment contract to see if you have any additional options at your workplace.

Are there any reasons that paid parental leave payments will end?

Payments will continue for 14 weeks, but can end earlier if you:

- transfer your entitlement, or part of your entitlement, to your partner
- return to work before the end of the paid parental leave period
- resign from your job
- are employed on a fixed-term agreement that expires during the paid parental leave period.

Can my partner take any time off work to help me when the baby arrives?

It depends. If your partner has worked for the same employer for 12 months, then they have the right to unpaid leave of up to two weeks around the time of the birth of your child (or one week if they have only worked for six months). As mentioned above, you can also transfer all or part of your paid parental leave entitlement to your partner if they are eligible.

Your partner could also take extended leave (for information see “Different types of leave” in this section). Your partner does not need to be the father of the child to be eligible to take leave.

What happens if I’m not eligible for paid parental leave?

You may qualify for the parental tax credit if, during the eight weeks after the birth of your child, you and/or your partner did not receive any of the following:

- an income-tested benefit from the Department of Work and Income
- New Zealand Superannuation or veteran’s pension
- a student allowance
- weekly accident compensation (for more than three months).



How much is parental tax credit?

The amount of parental tax credit you receive depends on your total family income for the year. You can get up to \$1,200 a year for each newborn child.

You can't receive both paid parental leave and the parental tax credit. Contact Inland Revenue to learn more about your options.

Can I go back to my job after my baby is born?

When you are on leave your employer usually has to keep your job open for you until you come back to work. They can hire a temporary replacement but this person must be told their position is only temporary. However, in some situations your employer may be able to permanently replace you because your position is a key job in the organisation.

If your job can't be kept open during the time you're on parental leave, your employer must give you preference for re-employment after your parental leave ends. This means you get the first chance to take a similar job if it comes up.

Can I breastfeed at work?

Yes. Employers have to provide appropriate facilities and breaks if you want to breastfeed at work (including expressing breast milk). You could choose to breastfeed at work or offsite.

These breaks are unpaid, but you might be able to come to a different arrangement if you talk with your employer.

Breastfeeding breaks are in addition to the standard paid rest breaks and unpaid meal breaks. The rest and meal breaks can also be used as breastfeeding breaks if your employer agrees to this.



Getting legal help

How can I find a lawyer?

Community Law Centres, Citizens Advice Bureau and the New Zealand Law Society can give you details of local lawyers, and can sometimes make recommendations or referrals. Another good way to find a lawyer is by word of mouth among your friends and family. Make sure that the lawyer you choose is experienced in the area of law you need help with.

Use the “Find a Lawyer” tool on the New Zealand Law Society website to find a lawyer near you: www.lawsociety.org.nz/for-the-community/find-lawyer-and-organisation.

Use the “Find a Legal Aid Lawyer” tool on the Ministry of Justice website to find a lawyer who provides legal aid services: www2.justice.govt.nz/find-a-legal-aid-lawyer.

Use the “Find a Service Provider” tool on the Ministry of Justice website to find a lawyer who provides the free Family Legal Advice Service for parenting and guardianship disputes: www.justice.govt.nz/family-justice/about-children/making-decisions-about-children/new-process/justice-providerslist.

Are there things I can do to help prepare for seeing a lawyer?

It’s a good idea to write down all the things you want to know and what you would like the lawyer to do for you. It can also be helpful to write down what has happened and any dates of events you can remember. This will help the lawyer understand the facts



and can give you confidence when talking about your situation. It may also be helpful to take a support person along.

Visit the “Common Questions” section of the Community Law website to read about what kind of service you can expect from a lawyer, and how to make a complaint: www.communitylaw.org.nz/your-local-centre/common-questions.

How much do lawyers cost?

Lawyers’ fees vary. It is important to ask how much it is likely to cost. If you are on a benefit or low income you may be eligible for legal aid. You can also often get free initial legal advice at a Community Law Centre. If you don’t qualify for legal aid, some Community Law Centres may be able to provide ongoing legal help.

What is legal aid?

Legal aid is a government-funded scheme that enables people with limited financial resources to get their own lawyer. Legal aid generally works like a loan and people granted legal aid are usually required to repay some or all of it. Not all lawyers do legal aid work. You can get names of legal aid lawyers from the Ministry of Justice website (www2.justice.govt.nz/find-a-legal-aid-lawyer) or a Community Law Centre. Otherwise ask whether the lawyer provides legal aid when you make the first appointment. You will need to give your lawyer information about your income, assets and expenses so that they can complete the application form. The application form will then be sent by your lawyer to the Ministry of Justice who will decide if you should get legal aid.

When can I get legal aid?

Family legal aid is available for many types of family law court cases (including paternity cases, protection orders and some parenting and guardianship disputes). Legal aid is not available just for getting legal advice. You must be planning on taking your case to Court, even if you manage to settle the dispute out of Court.



What things are taken into account in deciding whether I should get legal aid?

The Ministry of Justice will take into account the following factors:

- your financial circumstances (if you have a partner, their finances will also be taken into account unless the dispute is with your partner)
- whether there are reasonable grounds for taking or defending or being part of the proceedings
- the cost of the case weighed against the possible benefit
- your chance of winning the case
- whether the grant of legal aid is justified.

Will I have to pay any money towards the legal aid?

You will have to pay a \$50 fee to apply for legal aid. This fee will be refunded if you don't get legal aid.

If you are granted legal aid you may have to pay some or all of the legal aid back. How much you will have to repay will depend on your income and property, how much your case costs, and how much money (if any) you win from your case. If you're on a benefit and you don't own anything significant then it's unlikely that you'll have to repay anything.

What is the Family Legal Advice Service?

The Family Legal Advice Service gives you a chance to talk to a lawyer for free (if you qualify) while you are going through the Family Dispute Resolution Service before going to Court.



OTHER RESOURCES FROM COMMUNITY LAW

Community Law Manual

The Community Law Manual sets out comprehensive legal information in a clear, accessible way for everyday users. The Community Law Manual deals with many areas of community and personal life and provides answers and solutions to common legal questions.

Rape Survivors' Legal Guide: Navigating the legal system after rape

This guide provides rape survivors with information about their legal options. It explains the different stages of the legal process, from a decision to report the crime to the police, to the trial and sentence of the offender. It also outlines other steps which may be taken instead of, or in addition to, reporting the crime to the police, such as applying for a protection order, getting financial assistance, and accessing counselling or sexual health services.

Schools and the Right to Discipline

Schools and the Right to Discipline is a comprehensive guide to legal rights and responsibilities involving school issues. It provides information on suspensions and stand-downs; students with disabilities; bullying; school rules; privacy; rights to education; truancy; uniforms; fees; punishments; making complaints; and enrolments and zoning.

**Email: info@wclc.org.nz
Visit: www.communitylaw.org.nz**