



CLAIM FOR NEGOTIATION

SALARY SACRIFICING FOR EARLY CHILDHOOD EDUCATION

A Guide for Women's Reps, Bargaining Teams and Advocates

1. INTRODUCTION

This claim seeks agreement by the employer to establish an arrangement whereby employees who have children in an early childhood education centre/crèche that is owned by the tertiary institution, may voluntarily reduce their gross salary by the cost of that childcare. This process is referred to as Salary Sacrificing.

This means that the cost of the childcare is not subject to PAYE, potentially saving the staff member significant amount of money. Specific examples have been advised of savings of \$170 per week and more.

2. BACKGROUND

The recommendation to implement Salary Sacrificing originally arose out of a joint Auckland University Human Resources/Equity Office/AUS research project entitled "Women Returning to Work".

It was also a key recommendation in the Strategic Review of ECE Centres at Auckland University and was implemented by Auckland University in 2010.

It was agreed to by Victoria University in bargaining in 2012.

3. APPLICABILITY

This is a claim that can be negotiated at any institution where the institution owns an Early Childhood Education Centre/crèche (or similar) which is available for the children of staff.

4. WORDING OF CLAIM

Note: This sample claim is based on the policy established at Auckland University and was used at Victoria.

Salary Sacrificing for Early Childhood Education

The employer shall offer a salary sacrifice arrangement for staff who have children at any of the university-based (polytechnic) early childhood centres. It will consist of an arrangement where the staff member (permanent or with a fixed-term agreement of at least 12 months) agrees to reduce her/his base salary for future pay periods by a specified annual amount, agreed in advance, and a university-based early childhood centre provides the staff member childcare services equivalent in value to the amount of the reduction in the staff member's pay.

An agreed policy shall be established that will set out the processes and implications of the Salary Sacrificing for Early Childhood Education Arrangement.

5. NOTES FOR NEGOTIATION

- This is a voluntary arrangement for staff
- It has benefits (savings) for staff at a time when staff with young children particularly need it
- It has advantages to the institution as it supports and encourages enrolments at institutional centres
- It can support the retention of staff
- The institution can use provisions such as this to promote themselves as a gender friendly employer
- Although it is applicable to both women and men, it is more likely to be taken up by women and thus supports gender equity

6. ISSUES TO BE CONSIDERED

- **A non-cash benefit provided by an employer for staff can be subject to Fringe Benefit Tax (FBT). As at the date of this Guide, where an institution provides an early childhood education service on premises owned or leased by the institution, it is not subject to FBT.**

NB Please check FBT liability at time of negotiations.

Auckland University obtained expert legal and financial advice prior to establishing the scheme. In bargaining it is recommended that the employer be advised to contact Auckland University (Human Resources) to discuss arrangements for obtaining a copy of this advice. They shared this information with Victoria University. (Contact TEU Women's Officer to discuss this)

There are a number of issues that this arrangement may have implications for, which need to be considered by any individual prior to taking up this scheme. They include:

- Eligibility to claim a childcare rebate
- Calculation of ACC entitlements
- Student Loan Deductions; Working for Families etc.
- Income Protection insurance; mortgage applications

7. OPTIONS FOR SETTLEMENT

The Salary Sacrificing arrangement at Auckland University was agreed as a result of several different pieces of work (see Introduction) and was not a result of a specific claim in bargaining.

At Victoria University, it was put forward as a claim and agreed as part of the Terms of Settlement but was not included in the Collective Agreement. If this is the approach that is agreed, there needs to be a clear plan for implementation of this agreement.

Sample wording for Terms of Settlement

Salary Sacrifice for Early Childhood Education

The University will facilitate salary sacrifice arrangements and provide factual information to staff (permanent or with a fixed-term agreement of at least 12 months) who have children at any of the University-based childcare centres, upon individual request by staff wishing to utilise this.

As part of any such arrangement, the staff member will be required to sign an agreement that the arrangement will cease if IRD changes the rules relating to FBT and affecting such salary sacrifice arrangements.

8. RELEVANT BACKGROUND PAPERS AND INFORMATION

- A copy of the comprehensive Auckland University Policy on Salary Sacrificing which includes FAQs
- Appendix 1. Applicable Extract from Income Tax Act 2007
- Appendix 2. Extract from IRD Tax Information Bulletin – Volume Five, Number Two August 1993
<http://www.ird.govt.nz/resources/1/4/140a87004ba388428f41bf9ef8e4b077/tib5-02.pdf>

FEEDBACK

Whenever this Claim is submitted for negotiation, we would appreciate feedback – whether it was able to be achieved, any modifications which may have been negotiated, any additional information and/or arguments which could usefully be added to the document. Thank you.

Prepared by TEU Women's Officer, May 2014, revised Dec 2015

Appendix 1.

Extract from Income Tax Act 2007 (as at June 2014)

CX 23 Benefits provided on premises

- *When not fringe benefit*

(1) A benefit, other than free, discounted, or subsidised travel, accommodation, or clothing, is not a fringe benefit if the benefit is—

 - (a) provided to the employee by the employer of the employee and used or consumed by the employee on the premises of—
 - (i) the employer:
 - (ii) a company that is part of the same group of companies as the employer:
 - (b) provided to the employee by a company that is part of the same group of companies as the employer of the employee and used or consumed by the employee on the premises of—
 - (i) the employer:
 - (ii) the company that provides the benefit.

Premises of person

- (2) In this section, the premises of a person—
- (a) include premises that the person owns or leases:
 - (b) include premises, other than those referred to in paragraph (a), on which an employee of the person is required to perform duties for the person:
 - (c) do not include premises occupied by an employee of the person for residential purposes.

Defined in this Act: [company](#), [employee](#), [employer](#), [fringe benefit](#), [group of companies](#), [lease](#)

Compare: 2004 No 35 s [CX 20](#)

Section CX 23(1)(a): amended (with effect on 5 August 2010), on 21 December 2010, by [section 34](#) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Section CX 23(1)(b): amended (with effect on 5 August 2010), on 21 December 2010, by [section 34](#) of the Taxation (GST and Remedial Matters) Act 2010 (2010 No 130).

Appendix 2.

Extract from *IRD Tax Information Bulletin – Volume Five, Number Two August 1993*

FBT on Employer-paid Child Care

Section 336N - Interpretation: An employer asked about the Fringe Benefit Tax (FBT) implications of either paying childcare agencies directly for the childcare of employee's children, or of reimbursing employees for the cost of the childcare.

Section 336N(1) of the Act defines "fringe benefit" to include "any benefit of any other kind whatever, received or enjoyed by the employee." Where an employer pays or has a liability to pay for the childcare provided to an employee's children, the employer must pay FBT on that benefit. Where the cost of the childcare is paid to the employee by way of reimbursement, the amount of the reimbursement will be taxable in the hands of the employee, so the employer must deduct PAYE from the reimbursement.

Where childcare facilities are provided by an employer on the employer's premises, the value of that childcare is not taxable to the employee, neither is FBT payable by the employer. The provision of the facility by the employer does not come within the definition of "monetary remuneration" so it is not taxable to the employee.

Section 336N(1)(n) specifically exempts from fringe benefit tax any benefit supplied to the employee on the employer's premises.