

Basic Conditions of Employment and additions to parental leave



A summary of the intended additions to the Basic Conditions of Employment Act as proposed for parental leave, adoption leave and commissioned parental leave.

Maternity leave in Basic Conditions of Employment

At present, the *Basic Conditions of Employment Act* (BCEA) makes provision for 4 months' unpaid maternity leave for all female employees. Fathers will have to apply for family responsibility leave after the birth of their child.

Family responsibility leave in Basic Conditions of Employment

Family responsibility leave, however, is much less favourable. Only 3 days are granted and it is only available to employees who had been working with the employer for more than 4 months and then only if the employee works for the employer for more than 4 days a week. Family responsibility leave is also available when a child is ill or in the event of the death of an immediate family member, spouse or life partner. This means that when a father's child is born, he might already have exhausted his family responsibility leave and would need to apply for annual leave for the birth of his child. The BCEA does not deal with Adoption or Commissioned Parenting.

The *Labour Law Amendment Bill (PMB 5-2015)* intends to insert **3 new sections** into the BCEA which will deal with Parental, Adoption and Commissioning Parental leave.

The 3 sections proposed are Sections 25 A, 25 B and 25 C, which entail the following:



Parental Leave - Section 25 A

In terms of this section, mothers as well as fathers can apply for leave upon the birth or adoption of a child. A parent will be entitled to 10 days' leave after the birth or adoption of a child.



Adoption Leave - Section 25 B

The proposed insertion of this section would allow a parent of an adoptive child to take 10 consecutive weeks' leave upon the adoption order being granted, or in the alternative Parental leave as per Section 25 A. If both parents are involved in the adoption order, one parent would be eligible for Parental leave and the other for Adoption leave. Whoever takes which will be for the parents to decide. The only factor that will play a role is the age of the child. The child needs to be younger than two years. Gender, race or sexual orientation would not be a considering factor upon granting this type of leave.



Commissioning Parental leave - Section 25 C

In the case of surrogacy, the surrogate mother carries the child for the parent/s, who will be known as the commissioning parent/s. According to this section, a Commissioning Parent will be entitled to 10 weeks' Commissioning Parental leave or Parental leave as proposed in Section 25 A. Once again, as in the case of Adoption leave and if two parents are involved, one of them would be entitled to Parental leave and the other to Commissioning Parental leave. The parents will decide between themselves who would apply for which kind of leave.

Responsibility of the employer and employee

An employer needs to be informed of an employee's intention to take any of the above types of leave. The notice must be in writing and should be given at least one month before the expected date of birth or adoption. The notice should also deal with the duration of the leave. The position that currently applies to maternity leave will also apply to the proposed leave as referred to above. Unless there is an agreement to the contrary, an employer will not be liable to pay the employee during the leave period, but the employee would be entitled to benefits under the UIF scheme, subject to determination by the Minister of Labour.

The Labour Laws Amendment Bill (PMB 5-2015) is a private bill that will hopefully be passed by Legislature. Currently the BCEA terms still applies.

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