

Better benefits on the cards for working parents

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The Labour Laws Amendment Bill was passed by the National Assembly in Parliament on 28 November 2017. The Bill seeks to amend the Basic Conditions of Employment Act, 75 of 1997 (BCEA) and the Unemployment Insurance Act 63 of 2001 (UIA) to provide for minimum periods of leave entitlement to employees who are parents but not the mother of a child, employees who adopt a child as well as employees who become parents through a surrogacy arrangement. The BCEA currently only caters for four months maternity leave and for three days' paid family responsibility leave in certain circumstances, including the birth of a child.



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If the Bill is passed into law, employers will need to ensure that their existing leave policies and procedures are in line with the proposed amendments. Employers who offer enhanced maternity leave benefits (such as paid maternity leave), will also need to consider the extent to which such enhancements can and should be extended to adoptive parents or commissioning parents.

The material proposed amendments to the BCEA are set out below:

- **Parental leave:** an employee, who is a parent of a child, is entitled to 10 consecutive days' parental leave. Parental leave can be taken from the day on which the child is born or on the date on which an adoption order is granted or on such day that the child is placed with the prospective adoptive parents, pending the finalisation of the adoption order.

- **Adoption leave:** an employee who is an adoptive parent of a child who is below the age of two years is entitled to 10 consecutive weeks of adoption leave or parental leave. Adoption leave can be taken from the date on which an adoption order is granted or on such day that the child is placed with the prospective adoptive parents, pending the finalisation of the adoption order. In cases where an adoption order is made, or a prospective adoption order is pending in respect of two parents, one parent is entitled to take adoption leave and the other parent will be entitled to take parental leave.
- **Commissioning parent leave:** an employee who is a commissioning parent in a surrogate motherhood agreement is entitled to 10 consecutive weeks of commissioning parental leave or parental leave. Commissioning parental leave can be taken from the date on which the child is born. In cases where a surrogate motherhood agreement has two commissioning parents, one of the commissioning parents may apply for commissioning parental leave and the other may apply for parental leave.

The material proposed amendments to the UIA are set out below:

- Unemployment benefits are to be payable to employees who take parental, adoption or commissioning parent leave provided that the employee is registered as the father on the birth certificate, is a parent of a child below the age of two on an adoption order (or is a prospective adoptive parent in terms of a court order) or is the parent of a child born as a result of a surrogate motherhood agreement.
- Benefits that are payable to persons claiming under the UIA are enhanced by providing that a contributor's entitlement to benefits accrues at a rate of one day's benefit for every completed six days of employment subject to a maximum of 365 days' benefit in the four-year period preceding the application for the benefit. If an employee has credits and seeks to claim such leave, unemployment benefits must be paid regardless of whether or not that employee had claimed in the preceding four-year period.
- Benefits entitlements of a mother who has a miscarriage in her third trimester or bears a still born child are also enhanced. Currently provision is made for unemployment benefits to be paid for a period of 6 weeks - the Bill seeks to increase this to 17.32 weeks.

What remains to be seen is whether the passing of the Bill is a catalyst for further collective bargaining on the subject of parental leave, with employees and trade unions seeking to bargain for parental rights in excess of the statutory minimum contemplated by the Bill; and whether steps will be taken to align section 187(1)(e) of the Labour Relations Act, Act 66 of 1995 (which renders a dismissal automatically unfair if the reason for the dismissal is a woman's pregnancy or intended pregnancy) to the protections offered in the Bill by, for example, broadening the application of the section to protect employees as a consequence of their adopting or entering into a surrogacy agreement.

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