

January 2019

The Labour Laws Amendment Act 10 of 2018 (the Amendment Act) was assented to on 23 November 2018. The Act introduces amendments to the Basic Conditions of Employment Act 75 of 1997 and the Unemployment Insurance Act 63 of 2001.

It is to come into effect on a date yet to be announced.

Basic Conditions of Employment Act (BCEA)

The Amendment Act introduces key provisions to BCEA relating to parental leave, adoption leave and commissioning parental leave.

An employee who is a parent of a child is entitled to parental leave of 10 consecutive days through the introduction of section 25A. Parental leave is only available to parents who are not entitled to maternity leave.

Section 25B provides for adoption leave. An employee who is an adoptive parent is entitled to 10 consecutive weeks. Adoption leave is available to an adoptive parent of a child who is below the age of two.

Both these categories of leave are unpaid but subject to benefits from the Unemployment Insurance Fund (UIF).

In the event of an adoptive order being made in respect of two adoptive parents, one of the adoptive parents may apply for adoption leave and the other adoptive parent may apply for the parental leave.

Section 25C introduces commissioning parental leave, which is available to a commissioning parent in a surrogate motherhood agreement from date of childbirth. Commissioning parental leave shall be 10 consecutive weeks. If a surrogate motherhood agreement has two commissioning parents, one of the commissioning parents may apply for commissioning parental leave and the other commissioning parent may apply for parental leave.

Unemployment Insurance Act (UIA)

The Amendment Act amends the UIA to provide for the application for, and the payment of, parental, adoption and commissioning parental benefits from the UIF.

Payment of parental, adoption and commissioning parental benefits shall be determined by the Minister subject to the provisions of the UIA. The leave will therefore not be deemed as automatically paid leave.

A parent (defined to include an adoptive parent of a child who is less than two years old, prospective adoptive parent, and parent of a child born as a result of a surrogate motherhood agreement) shall be entitled to benefits under the UIA provided they were in employment, whether as a contributor or not to the UIA, for at least 13 weeks before the date of the application for benefits. The UIA defines a contributor to mean a natural person who is or was employed, to whom the Act applies in terms of section 3, and who can satisfy the Commissioner that he or she has made contributions for purposes of this Act.

- An application for benefits must be made within 12 months of childbirth, adoption order or placement of the child in the prospective adoptive parent's care.
- Parental, adoption and commissioning parental benefits shall be payable at a rate of 66% of the beneficiary's earnings at the date of application subject to the determined maximum income threshold. Payment of these benefits may not affect the payment of unemployment benefits.
- In terms of section 24(5), a contributor who has a miscarriage during the third trimester or bears a still-born child is entitled to a full maternity benefit of 17.32 weeks.
- The Amendment Act has revised the provision dealing with accrual of unemployment benefits. They will now accrue at four days (no longer than five), subject to a maximum of 365 days in the 4-year period immediately preceding the day after the date employment ended.

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