



FURNITURE BARGAINING COUNCIL

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CIRCULAR 02/20

TO ALL EMPLOYERS AND EMPLOYEES

Parental Benefits from 1 January 2020

On 23 December 2019, the Minister of Labour announced that the amendments to the Basic Conditions of Employment Act, 1997 (Act 75 of 1997)(hereinafter referred to as the BCEA), in relation to **parental leave, adoption leave and commissioning parental leave (surrogacy arrangements)** to employees, shall become effective on 1 January 2020 as sections 25A, 25B and 25C respectively. Subject to certain notification requirements by the employee, these leave categories will be payable by the Unemployment Insurance Fund (UIF) AND NOT BY THE EMPLOYER.

These amendments have now been promulgated with the consequence that employers, from the 1st of January 2020, are obliged to grant employees leave in terms of these provisions, when applicable. These amendments shall form part of our Collective Agreement and all employers in the scope of this Council have to adhere to these amendments as from the 1st of January 2020.

Parental Leave of 10 consecutive days (section 25A)

In terms of the Labour Laws Amendment Act, 2018 (Act 10 of 2018), an employee is entitled to at least **10 (ten) consecutive days** parental leave:

1. from the date that the child is born; **or**
2. when there are two adoptive parents and the one parent not taking adoption leave in terms of section 25B, from the date when the court granted an adoption order or from the date when the court placed the child in the care of the prospective adoptive parent, pending finalisation of the adoption order; **or**
3. when there are two commissioning parents in a surrogate motherhood agreement and the one parent not taking commissioning parent's leave in terms of section 25C, from the date of the child's birth.

Parental leave entitles an employee to 10 consecutive days' leave (not 10 working days).

"Adoptive parent" means a person who has adopted a child in terms of any law.

A "prospective adoptive parent" means a person that complies with the requirements set out in the Children's Act of 2005.

Based on the aforementioned it is evident that both male and female employees may qualify for parental leave depending on the circumstances. However, if the employee gave birth to the child, she will not qualify for parental leave. Such employee is entitled to 4 months' unpaid maternity leave.

Adoption Leave of 10 consecutive weeks (section 25B)

In terms of the Labour Laws Amendment Act, 2018 (Act 10 of 2018) an employee is entitled to at least **10 (ten) consecutive weeks** adoption leave from the date when the court granted an adoption order or from the date when the court placed the child in the care of the prospective adoptive parent, pending finalisation of the adoption order if:

1. the employee is an adoptive parent;
2. the child is below the age of 2 (two) years;
3. the employee has not also been granted parental leave under section 25A.

Adoptive parental leave entitles one of the parents to 10 weeks' consecutive unpaid adoption leave. If an adoption order is made in respect of two adoptive parents, **only one parent may apply for adoption leave and the other parent for parental leave.**

Commissioning Parent Leave of 10 consecutive weeks (section 25C)

In terms of the Labour Laws Amendment Act, 2018 (Act 10 of 2018) an employee is entitled to at least **10 (ten) consecutive weeks'** commissioning parent leave from the date of the child's birth if:

1. the employee is a commissioning parent in a surrogate motherhood agreement; and
2. the employee has not also been granted parental leave under section 25A.

As indicated, the leave above will not be paid by the employer, and employees will therefore have to submit claims to the Unemployment Insurance Fund (UIF) to qualify for payment during the periods of absence from work.

In terms of the Unemployment Insurance Act as amended, an employee is entitled to 66% of his or her regular earnings at the date of the application, subject to the maximum income threshold.

Contributors will not be entitled to be paid from the Unemployment Insurance Fund for parental benefits if they were not employed and contributing towards the fund during the 13 weeks' period prior to applying for such benefit.

It is important to note that, in order to qualify for the payment of parental benefits from the Unemployment Insurance Fund, a male employee will have to adduce proof of him being the father of the child by virtue of a birth certificate with his name and surname appearing on it.

A further requirement in terms of the Amendment Act is that an employee must notify his or her employer in writing of the date that such leave is to commence and when the employee will return to work. Notice must be given by the employee in respect of all three categories of leave for parental benefits and must be given to the employer at least one month prior to taking such leave. In the case of:

- parental leave, when the child is expected to be born; or
- adoption leave, when the adoption order is granted; or
- adoption leave before the adoption order is granted, when the child is placed in the care of a prospective adoptive parent; or
- commissioning parent leave, when the child is expected to be born from the surrogate mother.

Kindly ensure that the provisions of this Circular are complied with. Do not hesitate to contact the Council's Inspectorate Department should you require any additional information.

Please do not contact any junior staff members of the Council in this regard.

A COPY OF THIS CIRCULAR MUST BE DISPLAYED ON YOUR ESTABLISHMENT'S NOTICE BOARD