



December 2017

LABOUR LAW AMENDMENT ACT MAJOR CHANGES TO BE SEEN IN THE CURRENT LEAVE STRUCTURE

Since October 2015, MP Cheryllyn Dudley has been the driving force behind the Labour Law Amendment Bill (“the Bill”) which is expected to revolutionise the current leave structure and parental rights in South Africa. This comes after a fresh approach to maternity leave was sanctioned by the Labour Court on 26 March 2015 in the case of MIA v State Information Technology Agency (Pty) Ltd (“the MIA case”).

The facts of the MIA case in short are as follows; The employee who, in terms of the Civil Union Act 2006, was a partner in a same-sex partnership, applied for maternity leave as he was about to become a father in terms of a surrogacy agreement, which agreement was made an order of the High Court. After some deliberation, the employer granted the employee two months adoption leave and two months unpaid leave, which the employee did not agree with. The employee proceeded to take the matter to the Labour Court in that he was of the opinion that his employer was being unfair and discriminatory in that the employer was of the opinion that maternity leave could only be granted to female employees.

The Labour Court *inter alia* found that the right to maternity leave cannot be solely linked to the welfare of the mother, after giving birth, but that such rights should also be considered in the best interests of the child. The court further observed in passing that the legislation dealing with maternity leave, should be amended as the current legislation operates from the basis that only females are allowed maternity leave and such approach is not in line with the right to equality.

The Bill, which was passed by Parliament on the 30th of November 2017, is set to do just that, amend the current legislation (i.e Basic Conditions of Employment Act, 1997 (BCEA) and Unemployment Insurance Act, 2001 (UIA)). *In addition* to the current provision for maternity leave of 4 months, the Bill, will see 3 new sections added and various further amendments made to the BCEA. Such amendments will include:-

1. **Parental Leave** – an employee who is a legal parent of a child will be entitled to 10 consecutive days parental leave;
2. **Adoption Leave** – an employee who is an adoptive parent of a child aged 2 years or younger will be entitled to either 10 consecutive weeks leave or parental leave of 10 consecutive days;



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- 3. Commissioning Parental Leave** – an employee that is a commissioning parent in a surrogate motherhood agreement will be entitled to either 10 consecutive weeks leave or parental leave of 10 consecutive days.

It is important to note that with both Adoption and Commissioning Parental Leave, provision is made for when both parents are employed by the same employer. The one parent will therefore be entitled to apply for 10 consecutive weeks leave and the other parent for 10 consecutive days leave.

In respect of the payment of such leave, the Bill is, as mentioned above, further set to amend the UIA in that the employees will be able to claim parental benefits from the UIF for such newly provided for leave periods.

In conclusion, the Bill is expected, should all go well, to become law in the latter part of 2017 alternatively early 2018 and is most definitely set to revolutionise South African Law in terms of maternity leave. Businesses and employers are therefore advised to start preparing for the possibility of a range of differing parental leave requirements going forward.



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