

Parental Leave, Adoption Leave And Commissioning Parental Leave

Employees are legally entitled to parental leave; adoption leave and commissioning parental leave as from 1 January 2020, in terms of section 17 of the Labour Laws Amendment Act of 2018.

Here is what you need to know about the different categories of parental leave:

Parental leave – 10 consecutive days

An employee who is a parent of a child will be entitled to 10 consecutive days' parental leave. This applies irrespective of the gender, which means it would include parents in same sex relationships. Parents should take note of the comparative benefits, i.e. for mothers who give birth (maternity leave), a person who adopts a child (adoption leave) or a commissioning parent in a surrogate motherhood agreement (commissioning parental leave) – see below.

The current provisions of the BCEA regarding four months' maternity leave remain unchanged (but with increased financial benefit – see below).

The introduction of parental leave effectively replaces the three days' paid paternity leave previously provided for in the BCEA. (The family responsibility benefits associated with the illness of a child or the death of a close family member remain unchanged.)

Parental leave may commence on the day that the child is born.

The 10 consecutive days parental leave are calendar days, not working days. For example, if the child is born on a Tuesday, the father may take leave from that Tuesday until the following Thursday.

Adoption leave – 10 consecutive weeks

The second category relates to the adoption of a child that is below the age of two.

A single adoptive parent is entitled to 10 consecutive weeks' adoption leave. If there are two adoptive parents, only one would be entitled to 10 consecutive weeks' adoption leave. However, the other adoptive parent would be entitled to 10 consecutive days' normal parental leave (see above). It is up to the adoptive parents to decide who takes adoption leave and who takes normal parental leave.

Leave may commence on the day that the adoption order is granted, or the day that a competent court places the child in the care of a prospective adoptive parent.

Commissioning parental leave – 10 consecutive weeks

The third category of leave is the so-called commissioning parental leave that relates to surrogate motherhood. The commissioning parent who will primarily be responsible for looking after the child (primary commissioning parent) will be entitled to commissioning parental leave.

If there are two commissioning parents, they can choose: if the one takes commissioning parental leave, the other can take normal parental leave. The one who takes commissioning parental leave will be entitled to 10 consecutive weeks' commissioning parental leave. The other parent would be entitled to 10 consecutive days' normal parental leave.

In both cases leave can commence on the date of the birth of the child.

The amendments do not make provision for any leave that may be taken by the surrogate mother. While she would probably not be entitled to the normal four months' maternity leave, she would in all likelihood be entitled to at least six weeks' maternity leave envisaged by section 25(3) of the BCEA.

Notification

The employee must give at least one month's written notice of –

- the expected date of birth, as well as when the leave is due to commence and when the employee will return to work; or
- in the case of adoption, the date on which adoption order is granted or the day that a competent court places the child in the care of a prospective adoptive parent.

If, for some reason or other, it is not possible for the employee to give such notice, the employee must notify the employer as soon as is reasonably practicable.

Unemployment insurance benefits

Paid or unpaid?

All three of the new categories of leave above are unpaid, as is the case with maternity leave. However, employees that take this leave may claim benefits from the Unemployment Insurance Fund. In order to qualify an employee has to have been employed for at least 13 weeks.

When to claim

Claims for parental benefits must be made within 12 months after the date of the birth of the child, adoption order, or court order that places the child in the care of a prospective adoptive parent.