



THE LABOUR LAWS AMENDMENT BILL

After much speculation and waiting, history was made in Parliament on 28 November 2017, when the National Assembly (“NA”) passed the Labour Laws Amendment Bill (“Bill”), which introduced the right to ‘parental leave’, ‘adoption leave’ and ‘commissioning parental leave’, all three types of leave which were not statutorily regulated. The aforementioned Bill also provides for the payment of parental benefits, adoption benefits, as well as commissioning parental benefits from the Unemployment Insurance Fund (“UIF”). The Bill has now been referred to the National Council of Provinces (“NCOP”) for approval. If passed, it will be directed to the President, who will sign it into law.

The amendments contained in the Bill will certainly have an impact on our clients. Due to the fact that the Bill is likely to be adopted into law as is, it is now the perfect time to review the important aspects of the Bill and the application thereof in our legal system, in order to ensure that you are made aware of these changes prior to the amendments being put into operation.

1. Parental leave

The Bill introduces the concept of parental leave. It provides that an employee, who is a parent of a child, is entitled to at least ten (10) consecutive days’ parental leave. A father’s name must appear on a child’s birth certificate in order for the father to qualify for parental leave.

2. Adoption leave

An employee, who is an adoptive parent of a child who is below the age of two, is entitled to adoption leave of at least ten (10) weeks consecutively, or parental leave as per paragraph 1 hereof. If an adoption order is 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 parental leave – the selection of choice must be exercised at the option of the two adoptive parents.

3. Commissioning parental leave

An employee, who is a commissioning parent in a surrogate motherhood agreement, is entitled to commissioning parental leave of at least ten (10) weeks consecutively, or parental leave as referred to paragraph 1 hereof. 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. This selection must be exercised by the two commissioning parents.

4. Section 27 of the Basic Conditions of Employment Act

The Bill, further, amends section 27 of the Basic Conditions of Employment Act No. 75 of 1997 ('BCEA') by the repeal in subsection (2) of paragraph (a). In other words, family responsibility leave no longer applies when an employee's child is born.

5. Section 49 of the BCEA

According to the Bill, a collective agreement concluded in a bargaining council may not reduce an employee's entitlement to parental leave, adoption leave, and commissioning parental leave.

6. Unemployment Insurance Act

The Bill introduces various amendments to the Unemployment Insurance Act No. 63 of 2001 ('UIA'). The aforementioned amendments are aimed at allowing those who take parental leave, adoption leave, or commissioning parental leave to claim benefits when such leave is taken.

7. Conclusion

The above mentioned content is the most important from the amendments to our legal system which have been introduced by the Bill. It follows that employers need to start making preparations to amend and alter contracts of employment and policies in order to cater for the amendments. Due to the fact that the payment of these benefits will be from the UIF, it follows that the payroll departments are also likely to be affected.

For more information and/or assistance in preparing for these anticipated changes, please contact our office on 021 914 3321 / info@masconsulting.co.za.

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