



## **LABOUR LAWS AMENDMENT BILL SIGNED INTO LAW BY PRESIDENT RAMAPHOSA**

The amendments introduce adoption leave, parental leave and commissioning parental leave

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On 23 November 2018, President Cyril Ramaphosa signed the Labour Laws Amendment Bill into law. These amendments will give employees the right to take parental leave, adoption leave and commissioning parental leave, all of which were not previously statutorily regulated. The Bill also provides for the payment of parental benefits, adoption benefits, as well as commissioning parental benefits from the Unemployment Insurance Fund ("UIF"). The amendments have been made with the best interests of children given paramount importance.

These changes will certainly have an impact on all employers, including our clients. Now is the perfect time to review the important aspects of the Bill and its application 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 Labour Laws Amendment Act ("the Act") 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. Where an employee is granted maternity leave, adoption leave or commissioning parental leave, her or she will not be entitled to parental leave in respect of the same child.

An employee must be reflected as a parent on a child's birth certificate in order to qualify for parental leave. An employee may commence parental leave on the day that his or her child is born, on the day that an adoption order is granted or on such day that the child is placed with the prospective adoptive parents, pending the finalisation of an adoption order.

### **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 described above. The employee must be reflected as an adoptive parent on an adoption order in order to qualify for adoption leave.

If an adoption order is made in respect of two adoptive parents, one of the parents may apply for adoption leave and the other may apply for parental leave. The selection of choice must be exercised at the option of the two adoptive parents. As set out above under parental leave, adoption leave may be taken from the day on which the adoption order is granted or from the day that the child is placed with the prospective adoptive parents, pending the finalisation of the adoption order.

### **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. If a surrogate motherhood agreement has two commissioning parents, one of the parents may apply for commissioning parental leave and the other may apply for parental leave. Again, this selection must be exercised by the two commissioning parents. Commissioning parental leave may be taken from the day on which the child is born.

### **4. The BCEA**

The Act, further, amends the Basic Conditions of Employment Act 75 of 1997 ("the BCEA") by repealing section 27(2)(a) thereof, with the effect that family responsibility leave no longer applies when an employee's child is born.

Section 49 of the BCEA is amended to provide that a collective agreement concluded in a bargaining council may not reduce an employee's entitlement to parental leave, adoption leave and commissioning parental leave.

### **5. Unemployment Insurance Act**

The Act introduces various amendments to the Unemployment Insurance Act 63 of 2001, which are aimed at allowing those who take parental leave, adoption leave or commissioning parental leave to claim benefits when such leave is taken.

Benefits are payable to an employee who takes parental leave, adoption leave or commissioning parental leave provided that the employee is registered as a parent on the child's birth certificate, is an adoptive parent of a child below the age of two in terms of an adoption order (or is a prospective adoptive parent in terms of a court order) or is the parent of a child born as a result of a surrogate motherhood agreement, respectively.

Above, we have set out the most important aspects of the Act in respect of their effect on our legal system and on employment relations. 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 and ensure that employees are treated fairly. Due to the fact that the payment of these benefits will be from the UIF, payroll departments are also likely to be affected.

The amendments will have a significant effect in ensuring equal treatment of families in the LGBTQI community and is an important development in the progression towards achieving gender equality in the workplace.

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