

UIF parental benefits effective... but what about paternity leave?

 By Jacques van Wyk

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On 29 October 2019, a proclamation was published in terms of which sections 8(a)(cA), 11, 15 and 16 of the Labour Law Amendment Act 10 of 2018 (LLAA) become effective as of 1 November 2019.



Despite recent media coverage to the contrary, these amendments do not, as yet, create an obligation on employers to provide parental (including paternity leave) leave to employees.

The amendments exclusively relate to the Unemployment Insurance Act 63 of 2001 (the UI Act). The LLAA provisions amending the Basic Conditions of Employment Act 75 of 1997 (BCEA) have not, as yet, come into force. The BCEA provisions are those which will, when enacted, create the right to take parental leave.

So what, then, has become law? This is set out more fully below.

Amendments: Effective 1 November 2019

The UI Act has been amended to provide for the payment of unemployment insurance benefits for those who are on parental leave, and nothing more. A contributor who is the parent of a child is entitled to parental unemployment benefits if the contributor—

- a. has been registered as the father of the child in terms of the Births and Deaths Registration Act 51 of 1992;
- b. is the parent or prospective parent of an adoptive child below the age of two; or
- c. is the parent of a child born as a result of a surrogate motherhood agreement.

The UI Act, in turn, defines a 'contributor' as a natural person—

- a. who is or was employed;
- b. to whom the UI Act applies; and
- c. who can satisfy the Unemployment Insurance Commissioner that he or she has made contributions for the purposes of the UI Act.

The parental unemployment benefit may not be more than the remuneration the contributor would ordinarily receive.



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The maximum period for which the employee will be paid by the Unemployment Insurance Fund will be 10 consecutive days. A contributor is only entitled to these benefits if he or she has been employed for at least 13 weeks before the date on which he/she applied for unemployment benefits.

Unfortunately, the section of the LLAA specifying the amount of the benefit has also, not as yet, come into force.

So what do the amendments mean for employers?

At present, the amendments have little practical impact upon employers. There is no legal obligation to grant parental leave at this stage.

However, these amendments suggest that the implementation of a BCEA entitlement to parental leave are imminent. We are able to assist employers in amending their employees' contracts of employment / employer policies and procedures to prepare for same.

ABOUT JACQUES VAN WYK

Jacques van Wyk is a director in Labour and Employment Law at Werksmans Attorneys. He was named as a recommended lawyer in Labour & Employment by the Legal500 (2010-2012), and co-authored 'Labour Law in Action - A Handbook on the new Labour Relations Act - 1997' with Frances Anderson. Jacques specialises in commercial employment transactions arising during mergers and acquisitions, corporate restructures, executive employee terminations of employment, drafting employment contracts and letters of appointment; disciplinary codes and procedures; and grievance procedures.

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