

# Labour Law amendments give new families more time to bond

In November last year, the Labour Law Amendment Act, 2015 was passed by Parliament. While the media has mostly focused on the right to longer leave for new fathers, the provisions cover a broader spectrum of concerns.



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“It’s not just good news for fathers-to-be,” says Cathie Webb, Director at the South African Payroll Association (SAPA). “It’s also a breakthrough for same-sex couples, especially men, who were never legally entitled to the time needed to introduce a child into their family and bond with it.” In the past, fathers were only given three days family responsibility leave, paid by their employer.

## Parental, adoption and commissioning parental leave

The new law allows an employee who is the parent of a child to take at least 10 consecutive days of parental leave, which commences on the day the child is born or adoption is granted. If an adopted child is below the age of two, an employee is entitled to at least 10 consecutive weeks of adoption leave, which starts on the day the adoption order is granted. For a surrogate motherhood agreement, a commissioning parent is also allowed at least 10 consecutive weeks of leave, which begins on the date of childbirth.

Only one parent may take adoption or commissioning parental leave (both 10 weeks). The other must take parental leave (10 days). However, the law is clear that which one does which is at the discretion of the parents. “In other words,” notes Webb, “employers cannot pressure an employee into nominating their spouse or partner for the longer leave period. This is a deeply personal decision, the right to which must be respected.”

The Act amends the Basic Conditions of Employment Act, 1997, so that a collective agreement may not reduce an employee's entitlement to parental, adoption or commissioning parental leave.

In all three leave scenarios, an employee must notify their employer in writing at least one month in advance of which date they intend to start leave and which date they will return to work. If that's not possible, for example, in the case of a premature birth, they must inform their employer as soon as they can.

## **UIF benefits**

Parents may now claim parental, adoption or commissioning parental benefits from the UIF. However, only one may apply for adoption or commissioning parental benefits; the other must claim parental benefits. For fathers to claim, they must be legally registered as the child's father as per the Children's Act, 2005. Application for benefits must be made within 6 months of the date of childbirth or adoption.

Webb says that SAPA noticed one omission. It might seem obvious that the right to adoption or commissioning parental leave and benefits would fall away for an employee with a stay-at-home spouse or partner. But the law lacks definitive language dealing with this scenario, and that could lead to confusion.

"Overall, SAPA believes the new legislation is much needed and will contribute to stronger family ties in South Africa," concludes Webb.

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