



SmartMoves
Human Capital

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Over the last few months, Government has made a number of changes to labour legislation. These include changes to the Basic Conditions of Employment Act (1997), the Unemployment Insurance Act (2001), the Labour Relations Act (1995) and the National Minimum Wage Act (2018).

The two changes most likely to affect employers are discussed below.

Both changes came into effect on 1 January 2019.

Parental Leave

(Amendment to the Basic Conditions of Employment Act)

The purpose of the amendment is to provide for parental, adoption and commissioning parental leave; and to confirm that a collective agreement concluded in a bargaining council may not reduce an employee's entitlement to said leave. Amendments to the Unemployment Insurance Act (2001) consequently provide for the application for, and the payment of, parental benefits from the Unemployment Insurance Fund (UIF).

An employee, who is a parent not covered by Maternity Leave, is entitled to at least 10 consecutive days of **Parental Leave** commencing on the day their child is born; or the day the adoption order is granted; or the day the child is placed in the employee's care, whichever comes first.

An employee who is an adoptive parent, or prospective adoptive parent, of a child under the age of 2, is entitled to 10 consecutive weeks of **Adoption Leave** which may commence on the day the child is born; or the day the adoption order is granted; or the day the child is placed in the employee's care by a competent court pending the finalisation of an adoption order, whichever date occurs first. If an adoption order is made in respect of 2 adoptive parents, only one of the adoptive parents may apply for Adoption Leave and the other may apply for Parental Leave.

In cases where an employee becomes a parent as a result of a surrogate motherhood agreement, the employee is entitled to 10 consecutive weeks of **Commissioning Parental Leave**. The commissioning parent may commence this leave on the day the child is born.

Parental, adoption, and commissioning parental leave must be applied for at least one month before the child is born or adopted, or failing this, as soon as is reasonably practicable. The employee must notify the employer in writing, unless unable to do so, of the date on which the employee intends to commence leave as well as the date on which they plan to return to work.

The implementation of parental leave also means that Family Responsibility Leave is no longer applicable in the case of the birth of the employee's child.

The Amendments to the Unemployment Insurance Act (2001) included an increase in benefits payable to employees by the UIF in terms of maternity and parental benefits. Benefits will now be paid at a rate of 66% of the salary of the employee at the date of application, subject to the maximum income threshold.

A UIF contributor who suffer a miscarriage during the 3rd trimester of pregnancy, or who bears a stillborn child, will now also be entitled to the full Maternity Benefit of 17.32 weeks (4 months).

National Minimum Wage Act (2018)

This new legislation, which came into effect on 1 January 2019 after being ratified by President Ramaphosa in November last year, aims to combat income inequality and help efforts to eradicate poverty, by raising the earnings of approximately half of the labour force. The Act applies to all workers except for those in the National Defence Force, Intelligence Agency, and Secret Service.

The new minimum wage will be set at R20 per hour for the majority of workers. This equates to approximately R3500 per month for those employees who work an average of 40 hours per 5-day week. There will be a phase-in period for farm workers and domestic workers who will initially be entitled to a minimum wage of R18 per hour and R15 per hour respectively. Expanded public works programme workers will be entitled to a minimum of R11 per hour.

The Act also makes provision for a Commission which will review the national minimum wage annually.

The national minimum wage will not replace the minimum wages that have been agreed to through collective bargaining agreements, unless the agreed-upon wage is less than the new national minimum wage. No employer may pay wages which are less than the prescribed national minimum.

Employers may not unilaterally alter the wages, hours of work, or other conditions of employment in connection to the implementation of the national minimum wage. In other words, employers may not reduce the benefits to which the employee is entitled as per the employment contract, in order to recover the cost of the increased wage. This would be an unfair labour practice.

In certain circumstances, an Employer may apply for an exemption from paying the national minimum wage so long as there is a specified wage amount for a specified period of less than one year. This will be subject to the review and approval of the Commission.