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# EMPLOYMENT ALERT

Our programme on Conducting a Disciplinary Enquiry has been accredited by the Services SETA.

## IN THIS ISSUE

### IT TAKES A VILLAGE TO RAISE A CHILD, BUT WHO MIGHT GET THE LEAVE?

Traditional family units across the world have changed. The proposed changes to the Basic Conditions of Employment Act, No 75 of 1997 (BCEA) recognise those changes and the important roles that different people play in raising children in a modern family unit.



[CLICK HERE](#) to view our NEW Employment Strike Guideline

# IT TAKES A VILLAGE TO RAISE A CHILD, BUT WHO MIGHT GET THE LEAVE?

*Family Responsibility Leave is available not only for the birth of a child, but also in the event of death of an immediate family member, spouse or life partner or the illness of a child.*

*Section 25B proposes the insertion of "Adoption Leave". Currently, there is no provision for such leave in the BCEA.*



Traditional family units across the world have changed. The proposed changes to the Basic Conditions of Employment Act, No 75 of 1997 (BCEA) recognise those changes and the important roles that different people play in raising children in a modern family unit.

Currently, new fathers are not specifically provided with leave following the birth of their child. If a new father wishes to take leave after the birth of his child, he would have to take Family Responsibility Leave as provided for in s27 of the BCEA. Currently, s27 of the BCEA provides for three days paid leave per annual leave cycle. Family Responsibility Leave is available not only for the birth of a child, but also in the event of death of an immediate family member, spouse or life partner or the illness of a child.

However, Family Responsibility Leave is subject to several limitations. Firstly, the father must have worked for his employer for a period of at least four months, and must work for at least four days a week before he is entitled to such leave. If a father were to find himself in the unfortunate situation where he has already taken Family Responsibility Leave (for whatever reason) in that leave cycle, he may very well have to apply for Annual Leave, if he has any available.

The Labour Laws Amendment Bill [PMB 5 – 2015] (Bill) proposes the insertion of three new sections on leave.

Firstly, the Bill proposes the insertion s25A into the BCEA, and provides for "Parental Leave". The section would allow a male or female parent ten days' leave on the birth or adoption of a child.

Secondly, s25B proposes the insertion of "Adoption Leave". Currently, there is no provision for such leave in the BCEA. On granting of an adoption order, s25B would entitle an employee to either ten weeks' consecutive leave; alternatively, the Parental Leave referred to in s25A. Should two parents be granted an adoption order, one will be eligible for Adoption Leave, and the other for Parental Leave. The determination of which parent claims which leave is left to the election of the parents. What is notable is that this leave is available to any persons, regardless of their sex, gender, and/or sexual orientation, who adopt a child younger than the age of two at the time of the adoption order.

Finally, s25C proposes "Commissioning Parental Leave". Again, this is a completely uncharted area of leave for the BCEA to cover. A parent who is a commissioning parent in a surrogate motherhood agreement would also be entitled to ten weeks' Commissioning Parental Leave or Parental Leave. If two persons are the commissioning parents in the surrogate motherhood agreement, then the commissioning parents must elect which parent will take Parental Leave and which will get Commissioning Parental Leave.

# IT TAKES A VILLAGE TO RAISE A CHILD, BUT WHO MIGHT GET THE LEAVE?

CONTINUED

*An employee need only inform the employer in writing of their intention to take any of the aforementioned leave, as well as the duration thereof, at least one month before the expected date of birth or adoption of the child.*



An employee need only inform the employer in writing of their intention to take any of the aforementioned leave, as well as the duration thereof, at least one month (or as soon as is reasonably practicable) before the expected date of birth or adoption of the child.

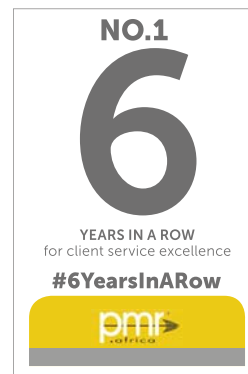
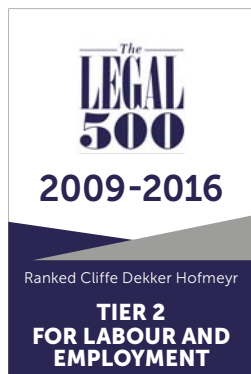
If an employee takes leave under any of these subsections, the employee is entitled to benefits under the UIF scheme, subject to a determination by the Minister of Labour.

Unless there is a collective or individual agreement, the position that currently applies for maternity leave will stand i.e. an employer is not liable to pay the

employee during any such leave period. The employee will only receive benefits from the UIF.

If the Bill is accepted, then it would take important and necessary strides to accommodate the wide variety of family units that form part of our society. It must be emphasised that this is a private members Bill, and it is unclear if this Bill will be passed by the Legislature. As it stands, none of the aforementioned provisions apply.

*Fiona Leppan, Craig Thomas and Reabetswe Mampane*



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# Employment STRIKE GUIDELINE

Our Employment practice's new  
EMPLOYMENT STRIKE GUIDELINE  
answers our clients' FAQs.

Topics discussed include strikes, lock-outs and picketing.

 [CLICK HERE TO FIND OUT MORE](#)

CHAMBERS GLOBAL 2014 - 2016 ranks our Employment practice in Band 2: Employment.

Aadil Patel ranked by CHAMBERS GLOBAL 2015 - 2016 in Band 2: Employment.

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Fiona Leppan ranked by CHAMBERS GLOBAL 2016 in Band 3: Employment.



Michael Yeates named winner in the **2015 and 2016 ILO Client Choice International Awards** in the category 'Employment and Benefits, South Africa'.



## OUR TEAM

For more information about our Employment practice and services, please contact:



**Aadil Patel**  
National Practice Head  
Director  
T +27 (0)11 562 1107  
E aadil.patel@cdhlegal.com



**Gillian Lumb**  
Regional Practice Head  
Director  
T +27 (0)21 481 6315  
E gillian.lumb@cdhlegal.com



**Fiona Leppan**  
Director  
T +27 (0)11 562 1152  
E fiona.leppan@cdhlegal.com



**Hugo Pienaar**  
Director  
T +27 (0)11 562 1350  
E hugo.pienaar@cdhlegal.com



**Nicholas Preston**  
Director  
T +27 (0)11 562 1788  
E nicholas.preston@cdhlegal.com



**Samiksha Singh**  
Director  
T +27 (0)21 481 6314  
E samiksha.singh@cdhlegal.com



**Gavin Stansfield**  
Director  
T +27 (0)21 481 6313  
E gavin.stansfield@cdhlegal.com



**Michael Yeates**  
Director  
T +27 (0)11 562 1184  
E michael.yeates@cdhlegal.com



**Anli Bezuidenhout**  
Senior Associate  
T +27 (0)21 481 6351  
E anli.bezuidenhout@cdhlegal.com



**Kirsten Caddy**  
Senior Associate  
T +27 (0)11 562 1412  
E kirsten.caddy@cdhlegal.com



**Ndumiso Zwane**  
Senior Associate  
T +27 (0)11 562 1231  
E ndumiso.zwane@cdhlegal.com



**Sipelelo Lityi**  
Associate  
T +27 (0)11 562 1581  
E sipelelo.lityi@cdhlegal.com



**Anelisa Mkeme**  
Associate  
T +27 (0)11 562 1039  
E anelisa.mkeme@cdhlegal.com

### BBBEE STATUS: LEVEL THREE CONTRIBUTOR

Cliffe Dekker Hofmeyr is very pleased to have achieved a Level 3 BBBEE verification under the new BBBEE Codes of Good Practice. Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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### JOHANNESBURG

1 Protea Place, Sandton, Johannesburg, 2196. Private Bag X40, Benmore, 2010, South Africa. Dx 154 Randburg and Dx 42 Johannesburg.  
T +27 (0)11 562 1000 F +27 (0)11 562 1111 E jhb@cdhlegal.com

### CAPE TOWN

11 Buitengracht Street, Cape Town, 8001. PO Box 695, Cape Town, 8000, South Africa. Dx 5 Cape Town.  
T +27 (0)21 481 6300 F +27 (0)21 481 6388 E ctn@cdhlegal.com

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