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EMPLOYMENT ALERT

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Planning for public holidays in 2020

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Parental Benefits finally introduced

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Planning for public holidays in 2020

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South Africa has 13 official public holidays and in 2020, enjoys 14 as one falls on a Sunday.

The public holidays for 2020 are:

- New Year's Day: Wednesday, 1 January
- Human Rights Day: Saturday, 21 March
- Good Friday: Friday, 10 April
- Family Day: Monday, 13 April
- Freedom Day: Monday, 27 April
- Workers' Day: Friday, 1 May
- Youth Day: Tuesday, 16 June
- National Women's Day: Sunday, 9 August
- National Women's Day Holiday: Monday, 10 August
- Heritage Day: Thursday, 24 September
- Day of Reconciliation: Wednesday, 16 December
- Christmas Day: Friday, 25 December
- Day of Goodwill: Saturday, 26 December; and
- New Year's Day: Friday, 1 January 2021

National Women's Day (9 August) is the only public holiday that falls on a Sunday. The next day, Monday 10 August, becomes an additional public holiday in terms of the Public Holidays Act. Both 9 August and 10 August are thus public holidays. Two consecutive public holidays can have a significant impact on working arrangements and shifts, especially in workplaces that run a 24/7/365 operation. Employers should consider the effect on the workplace and implement measures to address the impact on work. Employers should also consider

collective agreements and Bargaining Council agreements that impact public holidays, working arrangements and shifts.

Section 18 of the Basic Conditions of Employment Act, No 75 of 1997 provides that an employer may not require an employee to work on a public holiday except in accordance with an agreement. It also prescribes the calculation for wages for work on the day.

In terms of section 2(2) of the Public Holidays Act, any public holiday shall be exchangeable for any other day which is fixed by agreement or agreed to between an employer and employee.

Employees who are on strike on public holidays are not entitled to any remuneration. They are only entitled to be remunerated for public holidays if they "ordinarily worked" on the public holiday (see section 16 of the Basic Conditions of Employment Act, No 75 of 1997). As they would not ordinarily work on any day during the strike, they would not ordinarily work on a public holiday that falls in the strike period. Thus, they are not entitled to remuneration for the public holiday during the strike.

Employers can expect requests for additional leave days on Monday, 15 June, Friday 25 September and around Wednesday, 16 December as these dates are convenient to employees who wish to create long weekends.

For additional information contact CDH' Employment Law practice area.

Faan Coetzee

CDH is a Level 1 BEE contributor – our clients will benefit by virtue of the recognition of 135% of their legal services spend with our firm for purposes of their own BEE scorecards.

The amendments to the BCEA make provision for parental leave, adoption leave and commissioning parent leave (surrogacy arrangements).

Parental Benefits finally introduced

On 1 November 2019, the provisions of the Unemployment Insurance Act 63 of 2001 (UIA) were amended to pave the way for the introduction of parental leave benefits.

However, the November amendments did not yet entitle employees to these benefits, as the implementation date of the corresponding sections under the Basic Conditions of Employment Act 75 of 1997 (BCEA) had not yet been promulgated.

On 23 December 2019, the Minister of Labour announced the implementation date of those relevant BCEA sections as 1 January 2020. The amendments to the BCEA make provision for parental leave, adoption leave and commissioning parent leave (surrogacy arrangements).

The new sections in the BCEA regulating these benefits are sections 25A, 25B and 25C which provides for the following:

Parental leave (section 25A)

Without specifying the gender, an employee who is a parent of a child is entitled to at least 10 consecutive days parental leave which will commence on the infant's date of birth or the date of an adoption order being granted, or the date that a child is placed in care of a prospective adoptive parent pending finalisation of an adoption order.

Interestingly, section 25A(3) provides that an employee must notify his/her employer in writing (where possible) of the date the employee intends to commence with parental leave and return to work after parental leave.

Adopting parent/s (section 25B)

An employee who is an adoptive parent of a child below the age of two years is entitled to at least 10 weeks adoption leave consecutively or to parental leave as contemplated in section 25A.

The date as to whether adoption leave commences and the requirement to notify the employer is similar to those requirements set out under section 25A.

If an adoption order is made in respect of two adoptive parents, only one of the adoptive parents may apply for adoption leave whilst the other will only be entitled to apply for parental leave under section 25A.

Commissioning parent/s (section 25C)

An employee who is a commissioning parent in a surrogate motherhood agreement is entitled to at least 10 consecutive weeks commissioning parent leave which may commence on the birth of the infant.

At least one month's written notice should be given to the employer of the employee's intention to commence commissioning parental leave and the intended date of return to work.

Similar to the provisions of section 25B, in the case of two commissioning parents, only one is entitled to commissioning parental leave whereas the other will be required to apply for parental leave under section 25A which is limited to 10 days.

Generally speaking, parental leave, adoption leave and commissioning parental leave will be paid under the auspices of the UIA at a rate of 66% of the earnings of the beneficiary at the date of application, subject to a maximum income threshold.

Both employers and employees should take note of these provisions as employers may wish to update its workplace policies and/or contracts of employment and employees should be informed of their obligation to provide the employer with written notice of their intention to commence with parental, adoption or commissioning parental leave.

Michael Yeates and Steven Adams

EMPLOYMENT

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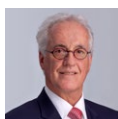


OUR TEAM

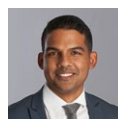
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