

# Employment Law

## ALERT

11 SEPTEMBER 2023



INCORPORATING  
**KIETI LAW LLP, KENYA**

### IN THIS ISSUE

#### Possibility of gender-neutral maternity leave

In late August 2023 the Gauteng High Court heard argument in the case of *Van Wyk and Others v the Minister of Employment and Labour and Others* under case number 2022-017842 which could have a significant impact on employees' entitlement to maternity leave.



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## Possibility of gender-neutral maternity leave

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Werner and Ika Van Wyk's application against the Minister of Employment and Labour advances a gender-neutral reading of the term "employee" in the provision of the Basic Conditions of Employment Act 75 of 1997 (BCEA) relating to maternity leave so as to apply to parents irrespective of whether they have given birth. This reading would extend the right to four months maternity leave beyond an employee who gives birth to a child.

If this argument is unsuccessful, the Van Wyks are asking in the alternative for a declaration that the maternity leave provisions of the BCEA are unconstitutional and invalid to the extent that they exclude parents who have not given birth to the child. Judgment in the matter has yet to be handed down.

Given the constitutional nature of the challenge, the judgment may require confirmation by the Constitutional Court.

While the case elicits diverse views as to its merits, its constitutional significance and importance within the workplace in South Africa cannot be overlooked. Depending on the relief granted, if any, it may result in a much wider pool of employees who are entitled to take four months maternity leave to care of their newborn child. This may have an operational impact on employers from a planning and capacity perspective as well as cost implications, particularly if the employer pays its employees while they are on maternity leave.

**Gillian Lumb and Alex van Greuning**



SAVE THE DATE

## Annual Employment Conference 2023



Wednesday, 25 October 2023



09h00 – 13h00

**Further information to  
follow soon.**

## OUR TEAM

For more information about our Employment Law practice and services in South Africa and Kenya, please contact:



### Aadil Patel

Practice Head & Director:  
Employment Law  
Joint Sector Head:  
Government & State-Owned Entities  
T +27 (0)11 562 1107  
E aadil.patel@cdhlegal.com



### Anli Bezuidenhout

Director:  
Employment Law  
T +27 (0)21 481 6351  
E anli.bezuidenhout@cdhlegal.com



### Jose Jorge

Sector Head:  
Consumer Goods, Services & Retail  
Director: Employment Law  
T +27 (0)21 481 6319  
E jose.jorge@cdhlegal.com



### Fiona Leppan

Director:  
Employment Law  
T +27 (0)11 562 1152  
E fiona.leppan@cdhlegal.com



### Gillian Lumb

Director:  
Employment Law  
T +27 (0)21 481 6315  
E gillian.lumb@cdhlegal.com



### Imraan Mahomed

Director:  
Employment Law  
T +27 (0)11 562 1459  
E imraan.mahomed@cdhlegal.com



### Phetheni Nkuna

Director:  
Employment Law  
T +27 (0)11 562 1478  
E phetheni.nkuna@cdhlegal.com



### Desmond Odhiambo

Partner | Kenya  
T +254 731 086 649  
+254 204 409 918  
+254 710 560 114  
E desmond.odhiambo@cdhlegal.com



### Hugo Pienaar

Sector Head:  
Infrastructure, Transport & Logistics  
Director: Employment Law  
T +27 (0)11 562 1350  
E hugo.pienaar@cdhlegal.com



### Thabang Rapuleng

Counsel:  
Employment Law  
T +27 (0)11 562 1759  
E thabang.rapuleng@cdhlegal.com



### Hedda Schensema

Director:  
Employment Law  
T +27 (0)11 562 1487  
E hedda.schensema@cdhlegal.com



### Njeri Wagacha

Partner | Kenya  
T +254 731 086 649  
+254 204 409 918  
+254 710 560 114  
E njeri.wagacha@cdhlegal.com



### Mohsina Chenia

Executive Consultant:  
Employment Law  
T +27 (0)11 562 1299  
E mohsina.chenia@cdhlegal.com



### Jean Ewang

Consultant:  
Employment Law  
M +27 (0)73 909 1940  
E jean.ewang@cdhlegal.com



### Ebrahim Patelia

Legal Consultant:  
Employment Law  
T +27 (0)11 562 1000  
E ebrahim.patel@cdhlegal.com



### Nadeem Mahomed

Professional Support Lawyer:  
Employment Law  
T +27 (0)11 562 1936  
E nadeem.mahomed@cdhlegal.com

## OUR TEAM

For more information about our Employment Law practice and services in South Africa and Kenya, please contact:



**Asma Cachalia**

Senior Associate:  
Employment Law  
T +27 (0)11 562 1333  
E asma.cachalia@cdhlegal.com



**Rizichi Kashero-Ondego**

Senior Associate | Kenya  
T +254 731 086 649  
T +254 204 409 918  
T +254 710 560 114  
E rizichi.kashero-ondego@cdhlegal.com



**Jordyne Löser**

Senior Associate:  
Employment Law  
T +27 (0)11 562 1479  
E jordyne.loser@cdhlegal.com



**Leila Moosa**

Senior Associate:  
Employment Law  
T +27 (0)21 481 6318  
E leila.moosa@cdhlegal.com



**Christine Mugenyu**

Senior Associate | Kenya  
T +254 731 086 649  
T +254 204 409 918  
T +254 710 560 114  
E christine.mugenyu@cdhlegal.com



**JJ van der Walt**

Senior Associate:  
Employment Law  
T +27 (0)11 562 1289  
E jj.vanderwalt@cdhlegal.com



**Malesale Letwaba**

Associate:  
Employment Law  
T +27 (0)11 562 1710  
E malesale.letwaba@cdhlegal.com



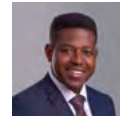
**Biron Madisa**

Associate:  
Employment Law  
T +27 (0)11 562 1031  
E biron.madisa@cdhlegal.com



**Faryn Nana**

Associate:  
Employment Law  
T +27 (0)11 562 1051  
E faryn.nana@cdhlegal.com



**Kgodisho Phashe**

Associate:  
Employment Law  
T +27 (0)11 562 1086  
E kgodisho.phashe@cdhlegal.com



**Tshepiso Rasetlola**

Associate:  
Employment Law  
T +27 (0)11 562 1260  
E tshepiso.rasetlola@cdhlegal.com



**Taryn York**

Associate:  
Employment Law  
T +27 (0)11 562 1732  
E taryn.york@cdhlegal.com

**BBBEE STATUS:** LEVEL ONE CONTRIBUTOR

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](mailto: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](mailto:ctn@cdhlegal.com)

**NAIROBI**

Merchant Square, 3<sup>rd</sup> floor, Block D, Riverside Drive, Nairobi, Kenya. P.O. Box 22602-00505, Nairobi, Kenya.

T +254 731 086 649 | +254 204 409 918 | +254 710 560 114

E [cdhkenya@cdhlegal.com](mailto:cdhkenya@cdhlegal.com)

**STELLENBOSCH**

14 Louw Street, Stellenbosch Central, Stellenbosch, 7600.

T +27 (0)21 481 6400 E [cdh Stellenbosch@cdhlegal.com](mailto:cdh Stellenbosch@cdhlegal.com)

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