

New Parental Leave Regime

Effective from 3 October 2025, pending legislation within 36 months



The core rules (at a glance)

If both parents are employed			If only one parent is employed or the parent is single
They share 4 months + 10 days of parental leave in total	They may take it concurrently or consecutively	If they cannot agree, it should be split as equally as possible	That employed parent is entitled to 4 consecutive months

Purpose of Amendment

- Equal, gender-neutral parental leave that supports early child-nurturing regardless of how the child joins the family.

Categories and entitlements

Birthing Parent (biological mother)	Biological Parents (two employed parents)	Adoptive Parents	Commissioning Parents (surrogacy)
- Part of the shared entitlement above. - May start leave up to 4 weeks pre-birth, or earlier if medically necessary. - No work for 6 weeks post-birth unless medically certified fit. - In apportioning shared leave, give practical preference for preparation and recovery from birth. - Counts toward the total of 4 months + 10 days if both parents are employed.	- Together receive 4 months + 10 days to divide. - Can be taken together or one after the other. Disagreement – split as equally as possible. - Each parent’s portion (having regard to mandatory 6-week period for the birthing parent) must be a single, uninterrupted sequence of consecutive days.	- Shared 4 months + 10 days between the two adoptive parents (if both employed). - Leave starts on the court placement/adoption order. Age cap: The court found the two-year cap unconstitutional in principle, but it remains in effect during the suspension period until Parliament sets a new standard. - Provide employer with written notice and adoption order/placement when available.	- Shared 4 months + 10 days between the commissioning parents (if both employed) Leave starts on the child’s birth in terms of the surrogacy agreement. Provide employer written notice (≥ 4 weeks before expected birth) and confirm the agreement once available.

How to share the leave

- Parents agree how to divide: may take concurrently or consecutively.
- If no agreement: Split as equally as possible.

Notice and proof

- Give written notice to employer at least 4 weeks before starting leave (or as soon as practicable):
 - Intended start and return dates.
 - Any shared arrangement (notify both employers).
- Adoption: Include the court order/placement once available.
- Surrogacy: Provide the surrogacy agreement confirmation when available.
- Employers may verify arrangements with the other employer with the employees’ consent and POPIA compliance.

Special scenarios and health protections

- Miscarriage (third trimester) or stillbirth: The birthing parent is entitled to 6 weeks’ leave after the event.
- Pregnancy health: Start earlier than 4 weeks pre-birth if medically certified necessary.
- UIF Benefits: No interim change by the court; existing Unemployment Insurance Act 63 of 2001 (UIA) rules apply for now.

Timeline and next steps

UIF Benefits	36 months	Employers
Constitutional Court confirms unconstitutionality; interim regime applies immediately.	For Parliament to amend the Basic Conditions of Employment Act 75 of 1997 (BCEA) and UIA.	Update policies (replace “maternity/adoption/commissioning” leave references with “parental leave”; adjust paid-leave schemes accordingly). Policies may require a further update dependent on Parliament passing legislation.

Quick definitions

Parental Relationship	Commissioning Parent
Parents who have or will have parental rights and responsibilities over the child (birth, adoption, surrogacy).	A parent in terms of a valid surrogacy agreement.

