

GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with a solid line indicate insertions in existing enactments.

(English text signed by the President)
(Assented to 23 November 2018)

ACT

To amend the Basic Conditions of Employment Act, 1997, so as to insert new definitions; to correct an obsolete reference to an Act; to provide for parental, adoption and commissioning parental leave to employees; to provide that a collective agreement may not reduce an employee's entitlement to parental, adoption or commissioning parental leave; to amend the Unemployment Insurance Act, 2001, so as to provide for the right to claim parental and commissioning parental benefits from the Unemployment Insurance Fund; to provide for the application for, and the payment of, parental and commissioning parental benefits from the Unemployment Insurance Fund; to correct an obsolete reference to an Act; to provide that the number of contributors to whom parental and commissioning parental benefits were paid and the amount of such payments be included in the written report from the Director-General to the Minister; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 75 of 1997, as amended by section 1 of Act 11 of 2002, section 40 of Act 65 of 2002, section 26 of Act 68 of 2002, section 25 of Act 52 of 2003, section 53 of Act 11 of 2013 and section 1 of Act 20 of 2013

1. Section 1 of the Basic Conditions of Employment Act, 1997, is hereby amended—
(a) by the insertion before the definition of “agreement” of the following definitions:

“**‘adoption order’** means an adoption order as envisaged in the Children’s Act, 2005 (Act No. 38 of 2005);

‘adoptive parent’ has the meaning assigned to it in section 1 of the Children’s Act, 2005 (Act No. 38 of 2005);”;

- (b) by the substitution for the definition of “employment law” of the following definition:

“**‘employment law’** includes this Act, any other Act the administration of which has been assigned to the Minister, and any of the following Acts:

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- (a) The Unemployment Insurance Act, [1966 (Act No. 30 of 1966)] 2001 (Act No. 63 of 2001);
- (b) the Skills Development Act, 1998 (Act No. 97 of 1998);
- (c) the Employment Equity Act, 1998 (Act No. 55 of 1998);
- (d) the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993); 5
and
- (e) the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993);”; and
- (c) by the insertion after the definition of “prescribe” of the following definition: 10
“**prospective adoptive parent**” means a person who complies with the requirements set out in section 231(2) of the Children’s Act, 2005 (Act No. 38 of 2005);”.

Amendment of section 25 of Act 75 of 1997

2. Section 25 of the Basic Conditions of Employment Act, 1997, is hereby amended by the substitution for subsection (7) of the following subsection: 15

“(7) The payment of maternity benefits will be determined by the Minister subject to the provisions of the Unemployment Insurance Act, [1966 (Act No. 30 of 1966)] 2001 (Act No 63. of 2001).”.

Insertion of sections 25A, 25B and 25C in Act 75 of 1997

3. The following sections are hereby inserted after section 25 of the Basic Conditions of Employment Act, 1997: 20

“Parental leave

25A. (1) An employee, who is a parent of a child, is entitled to at least ten consecutive days parental leave.

(2) An employee may commence parental leave on— 25

- (a) the day that the employee’s child is born; or
- (b) the date—
 - (i) that the adoption order is granted; or
 - (ii) that a child is placed in the care of a prospective adoptive parent by a competent court, pending the finalisation of an adoption order in respect of that child, 30
whichever date occurs first.

(3) An employee must notify an employer in writing, unless the employee is unable to do so, of the date on which the employee intends to— 35

- (a) commence parental leave; and
- (b) return to work after parental leave.

(4) Notification in terms of subsection (3) must be given—

- (a) at least one month before the—
 - (i) employee’s child is expected to be born; or
 - (ii) date referred to in subsection 2(b); or 40
- (b) if it is not reasonably practicable to do so, as soon as is reasonably practicable.

(5) The payment of parental benefits will be determined by the Minister, subject to the provisions of the Unemployment Insurance Act, 2001 (Act No. 63 of 2001). 45

Adoption leave

25B. (1) An employee, who is an adoptive parent of a child who is below the age of two, is subject to subsection (6), entitled to—

- (a) adoption leave of at least ten weeks consecutively; or
- (b) the parental leave referred to in section 25A. 50

(2) An employee may commence adoption leave on the date—

- (a) that the adoption order is granted; or

(b) that a child is placed in the care of a prospective adoptive parent by a competent court, pending the finalisation of an adoption order in respect of that child,

whichever date occurs first.

(3) An employee must notify an employer in writing, unless the employee is unable to do so, of the date on which the employee intends to—

(a) commence adoption leave; and

(b) return to work after adoption leave.

(4) Notification in terms of subsection (3) must be given—

(a) at least one month before the date referred to in subsection (2); or

(b) if it is not reasonably practicable to do so, as soon as is reasonably practicable.

(5) The payment of adoption benefits will be determined by the Minister, subject to the provisions of the Unemployment Insurance Act, 2001 (Act No. 63 of 2001).

(6) If an adoption order is made in respect of two adoptive parents, one of the adoptive parents may apply for adoption leave and the other adoptive parent may apply for the parental leave referred to in section 25A: Provided that the selection of choice must be exercised at the option of the two adoptive parents.

(7) If a competent court orders that a child is placed in the care of two prospective adoptive parents, pending the finalisation of an adoption order in respect of that child, one of the prospective adoptive parents may apply for adoption leave and the other prospective adoptive parent may apply for the parental leave referred to in section 25A: Provided that the selection of choice must be exercised at the option of the two prospective adoptive parents.

Commissioning parental leave

25C. (1) An employee, who is a commissioning parent in a surrogate motherhood agreement is, subject to subsection (6), entitled to—

(a) commissioning parental leave of at least ten weeks consecutively; or

(b) the parental leave referred to in section 25A.

(2) An employee may commence commissioning parental leave on the date a child is born as a result of a surrogate motherhood agreement.

(3) An employee must notify an employer in writing, unless the employee is unable to do so, of the date on which the employee intends to—

(a) commence commissioning parental leave; and

(b) return to work after commissioning parental leave.

(4) Notification in terms of subsection (3) must be given—

(a) at least one month before a child is expected to be born as a result of a surrogate motherhood agreement; or

(b) if it is not reasonably practicable to do so, as soon as is reasonably practicable.

(5) The payment of commissioning parental benefits will be determined by the Minister, subject to the provisions of the Unemployment Insurance Act, 2001 (Act No. 63 of 2001).

(6) If a surrogate motherhood agreement has two commissioning parents, one of the commissioning parents may apply for commissioning parental leave and the other commissioning parent may apply for the parental leave referred to in section 25A: Provided that the selection of choice must be exercised at the option of the two commissioning parents.

(7) In this section, unless the context otherwise indicates—

‘commissioning parent’ has the meaning assigned to it in section 1 of the Children’s Act, 2005 (Act No. 38 of 2005); and

‘surrogate motherhood agreement’ has the meaning assigned to it in section 1 of the Children’s Act, 2005 (Act No. 38 of 2005).”

Amendment of section 27 of Act 75 of 1997, as amended by section 4 of Act 11 of 2002

4. Section 27 of the Basic Conditions of Employment Act, 1997, is hereby amended by the repeal in subsection (2) of paragraph (a).

Amendment of section 49 of Act 75 of 1997

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5. Section 49 of the Basic Conditions of Employment Act, 1997, is hereby amended by the insertion in subsection (1) after paragraph (d) of the following paragraphs:

- “(dA) reduce an employee’s entitlement to parental leave in terms of section 25A;
 (dB) reduce an employee’s entitlement to adoption leave in terms of section 25B;
 (dC) reduce an employee’s entitlement to commissioning parental leave in terms of section 25C;”.

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Amendment of section 83 of Act 75 of 1997, as amended by section 20 of Act 11 of 2002

6. Section 83 of the Basic Conditions of Employment Act, 1997, is hereby amended by the substitution for subsection (1) of the following subsection:

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- “(1) The Minister may, on the advice of the Commission and by notice in the *Gazette*, deem any category of persons specified in the notice to be—
 (a) employees for purposes of the whole or any part of this Act, any other employment law other than the Unemployment Insurance Act, [1966 (Act No. 30 of 1966)] 2001 (Act No. 63 of 2001), or any sectoral determination; or
 (b) contributors for purposes of the whole or any part of the Unemployment Insurance Act, [1966 (Act No. 30 of 1966)] 2001 (Act No. 63 of 2001).”.

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Amendment of section 1 of Act 63 of 2001, as amended section 1 of Act 32 of 2003

7. Section 1 of the Unemployment Insurance Act, 2001, is hereby amended—

- (a) by the insertion before the definition of “actuary” of the following definition: 25
 “**‘adoption order’** means an adoption order as envisaged in the Children’s Act, 2005 (Act No. 38 of 2005);”; and
 (b) by the insertion after the definition of “prescribe” of the following definition:
 “**‘prospective adoptive parent’** means a person who complies with the requirements set out in section 231(2) of the Children’s Act, 2005 (Act No. 38 of 2005);”.

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Amendment of section 12 of Act 63 of 2001, as amended section 4 of Act 32 of 2003

8. Section 12 of the Unemployment Insurance Act, 2001, is hereby amended—

- (a) by the insertion in subsection (1) after paragraph (c) of the following paragraph:
 “(cA) parental benefits as contemplated in Part DA of this Chapter;”; 35
 (b) by the deletion in subsection (1) at the end of paragraph (d) of the word “and” and by the insertion after paragraph (d) of the following paragraph:
 “(dA) commissioning parental benefits as contemplated in Part EA of this Chapter; and”; and 40

- (c) by the addition in subsection (3) of the following paragraphs:
- “(cA) For the purpose of Part DA, parental benefits must be paid at a rate of 66% of the earnings of the beneficiary at the date of application, subject to the maximum income threshold set in terms of paragraph (a); 5
 - (cB) For the purpose of Part E, adoption benefits must be paid at a rate of 66% of the earnings of the beneficiary at the date of application, subject to the maximum income threshold set in terms of paragraph (a); and
 - (cC) For the purpose of Part EA, commissioning parental benefits must be paid at a rate of 66% of the earnings of the beneficiary at the date of application, subject to the maximum income threshold set in terms of paragraph (a).” 10

Amendment of section 13 of Act 63 of 2001, as amended by section 5 of Act 32 of 2003 and section 5 of Act 10 of 2016 15

9. Section 13 of the Unemployment Insurance Act, 2001, is hereby amended—
- (a) by the substitution for subsection (3) of the following subsection:
- “(3) (a) Subject to [subsection (5)] subsections (5) and (5A), a contributor’s entitlement to benefits in terms of this Chapter accrues at a rate of one day’s benefit for every completed [five] four days of employment as a contributor subject to a maximum accrual of 365 days benefit in the four year period immediately preceding the day after the date of ending of the period of employment in terms of this Chapter. 20
 - (b) Unemployment benefits must be paid to the unemployed contributor regardless of whether or not the contributor has received benefits within that four year cycle, if the contributor has credits.”; and 25
- (b) by the insertion after subsection (5) for the following subsection:
- “(5A) (a) The days of benefits that a contributor is entitled to in terms of subsection (3) may not be reduced by the payment of— 30
 - (i) parental benefits in terms of Part DA;
 - (ii) adoption benefits in terms of Part E; or
 - (iii) commissioning parental benefits in terms of Part EA, of this Chapter.
 - (b) The payment of parental benefits, adoption benefits or commissioning parental benefits may not affect the payment of unemployment benefits.”. 35

Amendment of section 24 of Act 63 of 2001, as amended by section 8 of Act 32 of 2003 and section 9 of Act 10 of 2016

10. Section 24 of the Unemployment Insurance Act, 2001, is hereby amended by the substitution for subsection (5) of the following subsection: 40
- “(5) A contributor who has a miscarriage during the third trimester or bears a still-born child is entitled to a full maternity benefit of [17 to 32] 17.32 weeks;”.

Insertion of Part DA in Act 63 of 2001

11. The following Part is hereby inserted in the Unemployment Insurance Act, 2001, after section 26:

“Part DA: Parental benefits

Right to parental benefits 5

26A. (1) Subject to section 14, a contributor who is the parent of a child is entitled to the parental benefits contemplated in this Part if the application is made in accordance with the prescribed requirements and the provisions of this Part and if the contributor—

- (a) has been registered as the father of the child in terms of the Births and Deaths Registration Act, 1992 (Act No. 51 of 1992); 10
- (b) is the—
 - (i) parent of a child below the age of two in an adoption order; or
 - (ii) prospective adoptive parent of a child below the age of two, in terms of a court order that placed the child in the care of the prospective adoptive parent, pending the finalisation of the adoption order in respect of that child; or 15
- (c) is the parent of a child who has been born as a result of a surrogate motherhood agreement referred to in the Children’s Act, 2005 (Act No. 38 of 2005): 20

Provided that the contributor did not claim the adoption benefits referred to in section 27 or the commissioning parental benefits referred to in section 29A in respect of the child.

(2) The entitlement—

- (a) contemplated in subsection (1)(a) and (c) commences on the date of childbirth; and 25
- (b) contemplated in subsection (1)(b) commences on—
 - (i) the date that the competent court grants the adoption order; or
 - (ii) the date that a child is placed in the care of a prospective adoptive parent by a competent court, pending the finalisation of an adoption order in respect of that child, 30
 whichever date occurs first.

(3) When taking into account any parental leave paid to the contributor in terms of any other law or any collective agreement or contract of employment, the parental benefit may not be more than the remuneration the contributor would have received if the contributor had not been on parental leave. 35

(4) For purposes of this section the maximum period of parental leave is ten consecutive days.

(5) A contributor is not entitled to benefits unless he or she was in employment, whether as a contributor or not, for at least 13 weeks before the date of application for parental benefits. 40

Application for parental benefits

26B. (1) An application for parental benefits must be made in the prescribed form at an employment office. 45

(2) The application must be made within 12 months after—

- (a) the date of childbirth; or
- (b) the date that—
 - (i) a competent court grants the adoption order; or
 - (ii) a child is placed in the care of a prospective adoptive parent by a competent court, pending the finalisation of an adoption order in respect of that child, 50
 whichever date occurs first.

(3) The claims officer must investigate the application and, if necessary, request further information regarding the period the applicant was not working in order to care for the child.

(4) If the application complies with the provisions of this Chapter, the claims officer must—

(a) approve the application;

(b) determine—

(i) the amount of the benefits for purposes of section 13(3); and

(ii) the benefits the applicant is entitled to in terms of section 13(4);

(c) authorise the payment of the benefits; and

(d) stipulate how the benefits are to be paid.

(5) If the application does not comply with the provisions of this Chapter, the claims officer must advise the applicant in writing that the application is defective and of the reasons why it is defective.

Payment of parental benefits

26C. The Director-General must pay the parental benefits to the contributor at the employment office at which the application was made or any other employment office determined by the applicant at the time of application.”.

Amendment of section 27 of Act 63 of 2001, as amended by section 9 of Act 32 of 2003

12. Section 27 of the Unemployment Insurance Act, 2001, is hereby amended—

(a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) the child has been—

(i) adopted in terms of the [**Child Care Act, 1983 (Act No. 74 of 1983)**] Children’s Act, 2005 (Act No. 38 of 2005); or

(ii) placed in the care of a prospective adoptive parent by a competent court, pending the finalisation of an adoption order in respect of that child;”;

(b) by the substitution for subsection (2) of the following subsection:

“(2) The entitlement contemplated in subsection (1) commences on the date—

(a) that a competent court grants an adoption order [**for adoption in terms of the Child Care Act, 1983 (Act No. 74 of 1983)**] Children’s Act, 2005 (Act No. 38 of 2005); or

(b) that the child is placed in the care of a prospective adoptive parent by a competent court, pending the finalisation of an adoption order in respect of that child,

whichever date occurs first.”;

(c) by the substitution for subsection (4) of the following subsection:

“(4) When taking into account any adoption leave paid to the contributor in terms of any other law or any collective agreement or contract of employment, the adoption benefit may not be more than the remuneration the employer would have paid the contributor if the contributor had been at work.”; and

(d) by the addition of the following subsections:

“(5) For purposes of this section the maximum period of adoption leave is ten consecutive weeks.

(6) A contributor is not entitled to benefits unless he or she was in employment, whether as a contributor or not, for at least 13 weeks before the date of application for parental benefits.”.

Amendment of section 28 of Act 63 of 2001

13. Section 28 of the Unemployment Insurance Act, 2001, is hereby amended by the substitution for subsection (2) of the following subsection:

- “(2) The application must be made within [six] 12 months after the date—
- (a) of the adoption order [of the adoption, but the Commissioner may accept an application after the six month period on good cause shown]; or 5
 - (b) that a child is placed in the care of a prospective adoptive parent by a competent court, pending the finalisation of an adoption order in respect of that child, 10
- whichever date occurs first.”. 10

Insertion of Part EA in Act 63 of 2001

14. The following Part is hereby inserted in the Unemployment Insurance Act, 2001, after section 29:

“Part EA: Commissioning parental benefits

Right to commissioning parental benefits 15

- 29A.** (1) Subject to section 14, only one contributor of the commissioning parents is entitled to the commissioning parental benefits contemplated in this Part in respect of each child and only if—
- (a) the child has been born as a result of a surrogate motherhood agreement referred to in the Children’s Act, 2005 (Act No. 38 of 2005); 20
 - (b) the period that the contributor was not working was spent caring for the child; and
 - (c) the application is made in accordance with the prescribed requirements and the provisions of this Part. 25
- (2) The entitlement contemplated in subsection (1) commences on the date of childbirth.
- (3) When taking into account any commissioning parental leave paid to the contributor in terms of any other law or any collective agreement or contract of employment, the commissioning parental benefit may not be more than the remuneration the contributor would have received if the contributor had not been on commissioning parental leave. 30
- (4) For purposes of this section the maximum period of commissioning parental leave is ten consecutive weeks.
- (5) A contributor is not entitled to benefits unless he or she was in employment, whether as a contributor or not, for at least 13 weeks before the date of application for commissioning parental benefits. 35

Application for commissioning parental benefits

- 29B.** (1) An application for commissioning parental benefits must be made in the prescribed form at an employment office. 40
- (2) The application must be made within 12 months after the date of childbirth.
- (3) The claims officer must investigate the application and, if necessary, request further information regarding the period the applicant was not working in order to care for the child. 45
- (4) If the application complies with the provisions of this Chapter, the claims officer must—
- (a) approve the application;

- (b) determine—
 - (i) the amount of the benefits for purposes of section 13(3); and
 - (ii) the benefits the applicant is entitled to in terms of section 13(4);
 - (c) authorise the payment of the benefits; and
 - (d) stipulate how the benefits are to be paid.
- (5) If the application does not comply with the provisions of this Chapter, the claims officer must advise the applicant in writing that the application is defective and of the reasons why it is defective.

Payment of commissioning parental benefits 10

29C. The Director-General must pay the commissioning parental benefits to the contributor at the employment office at which the application was made or any other employment office determined by the applicant at the time of application.”

Amendment of section 58 of Act 63 of 2001 15

15. Section 58 of the Unemployment Insurance Act, 2001, is hereby amended by the substitution in subsection (12) for paragraph (c) of the following paragraph:
 “(c) the number of contributors to whom illness, maternity, parental, adoption and commissioning parental benefits, respectively, have been paid and the total amount of such payments; and”.

Substitution of long title of Act 63 of 2001

16. The Unemployment Insurance Act, 2001, is hereby amended by the substitution for the long title of the following long title:
“To establish the Unemployment Insurance Fund; to provide for the payment from the Fund of unemployment benefits to certain employees, and for the payment of illness, maternity, parental, adoption, commissioning parental and dependant’s benefits related to the unemployment of such employees; to provide for the establishment of the Unemployment Insurance Board, the functions of the Board and the designation of the Unemployment Insurance Commissioner; and to provide for matters connected therewith.”.

Short title

17. This Act is called the Labour Laws Amendment Act, 2018, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.