

Anticipating changes to labour legislation during 2018

South Africans were expecting that a national minimum wage (NMW) would be implemented on 1 May 2018. This did not happen, but the NMW is still likely to be implemented during the course of this year. We can also expect some other changes to labour legislation. How will this affect employers and employees?

The publicity surrounding the implementation of a NMW has eclipsed some other important changes to labour legislation that have been in the pipeline for some time. These relate to changes in respect of parental leave, as well as improvements to unemployment benefits. There are also some changes to collective bargaining and strike law in the pipeline. We shall only focus on a few points that are worthy of note at this stage.

National Minimum Wage

The National Minimum Wage Bill with its NMW of R20 per hour, has been passed by the National Assembly. Although it still needs to be sent to the National Council of Provinces for scrutiny we can expect implementation in the not too distant future. While there are some sectors where the current minimum wages will have to be adjusted upwards immediately upon implementation of the NMW, the implementation in the case of farm/forestry, domestic and expanded public works programme workers will be delayed for a further two years.

In the meantime there are a few other points that employers should take note of. Employers will not be permitted to unilaterally change working hours due to the implementation of the NMW. Employers will also be restricted in the way that they structure the remuneration package – the NMW excludes allowances that are paid to enable employees to work (such as transport and equipment), or payment in kind (such as board or accommodation), as well as bonuses, tips or food. There is provision for employers to apply for exemption by means of an efficient electronic system, but how exactly the exemption process will work we will only know in due course, as the regulations are yet to be published.

Parental, adoption and surrogacy leave

The Basic Conditions of Employment Act (BCEA) is due to change to make provision for three new categories of leave.

The first category is *parental leave* that relates to the birth of a child. An employee who is a parent of a child will be entitled to 10 consecutive days' parental leave. This will effectively replace the three days' paternity leave currently provided for in the BCEA. Leave may commence on the day the child is born or the day that an adoption order is granted. The employee will have to give at least one month's

2/...

written notice of the date of the expected date of birth or adoption, as well as when the leave is due to commence and when the employee will return.

The second category is *adoption leave* that relates to the adoption of a child that is below the age of two. Adoptive parents are entitled to ten consecutive days' leave, commencing on the day that the adoption order is granted. The notice requirements will be the same as for parental leave.

Finally there is the so-called *commissioning parental leave* that relates to surrogate motherhood. The surrogate parent who will primarily be responsible for looking after the child (primary commissioning parent) will be entitled to commissioning parental leave. If there are two surrogate parents, they can choose: if the one takes commissioning parental leave, the other can take normal parental leave. The one who takes commissioning parental leave will be entitled to 10 consecutive weeks' leave. The other would be entitled to 10 consecutive days' normal parental leave. In both cases leave can commence on the date of the birth of the child. The notice requirements will be the same as for parental and adoption leave.

The good news from an employer's point of view, is that remuneration will be covered by the Unemployment Insurance Fund. The current right to three days' paid 'paternity' leave will fall away.

We shall deal with the finer details of these changes and their practical implications once the implementation date of the amendments is known.

Unemployment Insurance

The Unemployment Insurance Act (UIA) will be amended to make provision for the payment of employees when they take leave in terms of the new categories mentioned above.

While the current provisions of the BCEA regarding maternity leave will remain unchanged, mothers on maternity leave will receive increased benefits in terms of the UIA. They will receive 66% of their earnings, subject to the maximum income threshold. A specific provision has been added that the payment of maternity benefits will not affect the payments of unemployment benefits. So, if a mother loses her job, she will still have access to all the other unemployment benefits that she has accrued.

Foreign nationals and employees employed in terms of learnership agreements will be able to claim benefits.

There are several other beneficial changes to the UIA, but we shall deal with these in more detail as soon as we clarify on the implementation date.

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