

ANNUAL LEAVE ACCRUAL DURING MATERNITY LEAVE

Question: Does annual leave accrue during maternity leave?

Answer: Yes

Brief explanation:

Section 20(1) of the Basic Conditions of Employment Act provides that an employee's "annual leave cycle" is the period of 12 months

- immediately following commencement of employment; or
- the completion of that employee's prior leave cycle.

Section 20(2) provides further that an employee is entitled to 21 (calendar) days' leave per leave cycle.

Nowhere in the section does it state that the accrual of leave is delayed by or suspended during maternity leave. The logical conclusion is, therefore, that annual leave accrues during maternity leave.

It is arguable that Subsection 20(2)(b) provides for an alternative approach. According to this subsection the parties may agree that leave accrues at 1 day's/hour's annual leave on full remuneration for every 17 days/hours that the employee worked, or was entitled to be paid. If the parties enter into such an agreement, it could be argued that leave would not accrue during maternity leave, because the employee did not work and was not entitled to be paid. However, such an approach is problematic. It is likely to be regarded as discrimination against a woman due to pregnancy, or family responsibility, in terms of Section 6 of the Employment Equity Act.

In conclusion, employers are advised to allow annual leave to accrue normally during maternity leave.

Article provided by Jan Truter from Labourwise

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