

# MATERNITY AND OTHER PARENTAL LEAVE AND BENEFITS

## INTRODUCTION

No employer may discriminate directly or indirectly against anyone on grounds related to pregnancy. Discrimination will only be deemed to be fair if it is intended to promote affirmative action or it is as a result of an inherent requirement of the job. This implies that the job itself must have some crucial characteristic. This indispensable characteristic, however, must relate in an inescapable way to the performing of the job required, in other words; that without which the job cannot be done.

If an employer refuses to allow an employee to resume work after she took maternity leave in terms of any law, collective agreement or her contract of employment, this constitutes dismissal (this does not fall within the category of automatically unfair dismissal).

A dismissal would be seen to be automatically unfair if the reason for the dismissal relates to pregnancy, intended pregnancy or any reason related to pregnancy.

No employer may require or permit a pregnant employee or an employee nursing her child to perform work that is hazardous to her health or to that of the child (including night work). Suitable alternative employment should be offered on terms and conditions that are not less favourable than ordinary terms during her pregnancy and for six months after the birth of the child.

Rest periods should be granted to pregnant employees. Breast-feeding employees should be granted time to breast-feed for at least 30 minutes twice per day.

## MATERNITY LEAVE AND BENEFITS

A pregnant woman may take maternity leave from four weeks before her due date. Pregnant women are entitled to four consecutive months' unpaid maternity leave, which may start at any time from four weeks before an expected date of birth or from an earlier date if a medical practitioner or midwife certifies that leave is necessary for the health of the mother or child.

Employees are prohibited from working during the period of six weeks after the birth of the child unless a doctor certifies that she is fit to do so. An employee who has a miscarriage during the third trimester of pregnancy or bears a stillborn child is entitled to six weeks' maternity leave after the event.

Employees on maternity leave have the right to claim from the UIF and may make an application for maternity benefits at any time before or after childbirth: provided that the application must be made within twelve months after the birth of the child. Employees must apply for benefits at their nearest Department of Employment and Labour (DEL) labour centre in person or organise for someone to go in their place. Employees may be paid at the labour centre of their choice or have the money deposited directly into their bank accounts.

Benefits payable must be determined by multiplying the monthly remuneration by 12 and dividing it by 365. If paid weekly, by multiplying the weekly remuneration by 52 and dividing it by 365. If the contributor's remuneration fluctuates significantly from period to period, the calculation must be based on the average remuneration of that contributor over the previous six months.

The rate at which the benefits are payable is based on a sliding scale between 38–58%. Subject to credits, benefits can be paid to a maximum of 121 days. If there is miscarriage or a stillborn child, the benefits can be paid for a maximum of six weeks after the miscarriage or stillbirth.

## FORMS TO APPLY FOR MATERNITY BENEFITS

The following forms and documents need to be completed and submitted to claim for maternity benefits:

- Form UI-2.3 (application form).
- Form UI-2.7 (if applicable).
- Form UI-2.8 (for banking details).
- Form UI-4 (form will be issued at DEL for further pay).
- 13-digit bar-coded ID or passport.

- Medical certificate from a doctor or birth certificate of the baby.

When employees have completed and submitted the forms to the DEL, the Commissioner of the UIF or the Claims Officer must consider the application. If the application is declined, the employee must be provided with written reasons why it was declined.

## PARENTAL LEAVE AND BENEFITS

The amendments to the BCEA include the removal of "birth of a child" as a statutory ground for taking Family Responsibility Leave. In terms of section 25A of the BCEA, an employee who is a parent of a child will be entitled to 10 consecutive days' unpaid parental leave. Parental leave may commence on the day that the child is born. The 10 consecutive days' parental leave are calendar days, not working days.

An employee who contributes to the Unemployment Insurance Fund may submit an application (form UI 2.9) for parental benefits to the Department of Employment and Labour in terms of section 26B of the Unemployment Insurance Act (UIA).

## FORMS TO APPLY FOR PARENTAL BENEFITS

An applicant for parental benefits, when making the application, must submit –

- an identity document; (b) a full birth certificate of the child with full details of parents; (c) a surrogate motherhood agreement in terms of the Children's Act, 2005 (Act No. 38 of 2005); or (d) an interim court order placing the child in the care of the prospective adoptive parent pending the finalisation of an adoption order in respect of that child; (e) details of a valid bank account, in the form of UI 2.8; and (f) remuneration received by the employee whilst still in employment, in the form of UI 2.7.

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## ADOPTION LEAVE AND BENEFITS

This category relates to the adoption of a child that is below the age of two.

A single adoptive parent is entitled to 10 consecutive weeks' unpaid adoption leave. If there are two adoptive parents, only one would be entitled to 10 consecutive weeks' adoption leave. However, the other adoptive parent would be entitled to 10 consecutive days' normal parental leave (see information on parental leave above). It is up to the adoptive parents to decide who takes adoption leave and who takes normal parental leave.

Leave commences on the day that the adoption order is granted, or the day that a court places the child in the care of an adoptive parent.

An employee who contributes to the Unemployment Insurance Fund may submit an application for adoption benefits to the Department of Employment and Labour in terms of section 26B of the UIA.

## COMMISSIONING PARENTAL LEAVE AND BENEFITS

Commissioning parental leave relates to surrogate motherhood. If there are two commissioning 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' unpaid commissioning parental leave. The other parent would be entitled to 10 consecutive days' normal unpaid parental leave (see information on parental leave above).

## FORMS TO APPLY FOR COMMISSIONING PARENTAL BENEFITS.

An employee who contributes to the Unemployment Insurance Fund may submit an application for commissioning parental benefits to the Department of Employment and Labour in terms of section 29 B of the UIA using form UI 2.9.

An applicant for commissioning parental benefits, when making the application must submit –

- (a) an identity document;
- (b) a surrogate motherhood agreement in terms of the Children's Act, 2005 (Act No. 38 of 2005);
- (c) details of a valid bank account in the form of UI 2.8; (d) remuneration received by the employee whilst still in employment, in the form of UI 2.7; and (e) birth certificate of the child with full details of parents.

## REGISTRATION OF EMPLOYEES

Employers must register themselves and their workers with the Unemployment Insurance Fund (UIF) and pay the contributions before the 7<sup>th</sup> of every month to the UIF or to the South African Revenue Services (SARS). The contributions amount to 1% of the employee's pay together with 1% contribution from the employer. Non-contributing employees will not qualify for UIF.

## DISPUTE RESOLUTION

In a case where an employee is dissatisfied with the decision of a Commissioner or Claims Officer, she can lodge an appeal by submitting a UI-12 form to the regional Appeals Committee at the respective labour centre. If the matter remains unresolved, it may be referred, using form UI-13 to the National Appeals Committee.

The appeal may be submitted to the following address:

- The UIF, 230 Lillian Ngoyi Street, ABSA Towers, Pretoria Central, Pretoria 0052
- Fax: 08 713 3000
- E-mail: [uifcomplaints@labour.gov.za](mailto:uifcomplaints@labour.gov.za) or [webmaster2@labour.gov.za](mailto:webmaster2@labour.gov.za)

Dismissal disputes related to pregnancy should be referred to the CCMA for conciliation within 30 days, and if not settled, within a further 90 days for arbitration or to the Labour Court for adjudication (in the case of an automatically unfair dismissal claim).

Where the employee has not been dismissed, but wishes to lodge an unfair discrimination dispute, the matter must be referred to the CCMA for conciliation within six months of the discriminatory act.

Where the affected employee earns less than or equal to the BCEA threshold, that employee may elect to refer an unresolved dispute either for arbitration at the CCMA or adjudicated by the Labour Court. Employees who earn above the BCEA threshold may refer their unfair discrimination disputes to the CCMA for conciliation.

Should the matter remain unresolved, the dispute may be referred to the Labour Court for adjudication (or to arbitration by consent if both parties agree in writing).

## RELEVANT LEGISLATION

- Basic Conditions of Employment Act 75 of 1997, as amended
- Constitution of the Republic of South Africa, 1996, as amended
- Labour Relations Act 66 of 1995, as amended
- Code of Practice on the Protection of Employees During Pregnancy and After the Birth of a Child
- Unemployment Insurance Act 63 of 2001, as amended