



## Regsdienste Nuusbrieff | Legal Services Newsletter

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#### PATERNITY LEAVE

The Labour Laws Amendment Act, No 10 of 2018, published on 27 November 2018, amended the paternity leave provisions under the Basic Conditions of Employment Act, No 75 of 1997 (BCEA) and related regulations.

This amendment became enforceable in 1 January 2020.

Hereunder follows a comparison between employees employed by the School governing body and those employed by the Department.

#### Staff appointed in terms of the Basic Conditions of Employment Act

The new amendments entitle a spouse or life partner of a person who gives birth to their child, to take 10 uninterrupted days off as “paternity leave”.

This leave has to be applied for a month in advance (or as soon as otherwise reasonably possible) by the spouse or life partner and it commences on the date that the child is born. As with maternity leave, this is unpaid leave that can be recouped at a set percentage from the Unemployment Indemnity Fund (UIF). The claimable amount is 66% pro rata of the applicant’s normal salary.

(Note: With a slight variation, this also includes individuals who adopt a child under the age of 2.)

#### VADERSKAP-VERLOF

Die Wysigingswet op Arbeidswette, 10 van 2018, soos gepubliseer op 27 November 2018, het die bepalings rakende vaderskapverlof kragtens die Wet op Basiese Diensvoorwaardes 75 van 1997 (WBD), tesame met die Regulasies daartoe, gewysig.

Hierdie wysiging het op 1 Januarie 2020 in werking getree.

Hieronder word die posisie van Beheerliggaam opvoeders en Departementele opvoeders vergelyk.

#### Personeel aangestel kragtens die Wet op Basiese Diensvoorwaardes

Die nuwe wetswysigings bepaal dat ‘n gade of lewensmaat van ‘n persoon wat geboorte skenk aan hul kind, geregtig is op 10 ononderbroke dae se “vaderskapverlof”.

Daar moet 1 (een) maand vooraf (of so spoedig as wat andersins redelik moontlik is), aansoek gedoen word vir sodanige verlof deur die gade of lewensmaat, welke verlof sy aanvang op die kind se geboortedatum sal neem. Soos in die geval van kraamverlof, sal sodanige vaderskapverlof geld as onbetaalde verlof, wat dan verhaal kan word teen ‘n vasgestelde persentasie vanaf die Werkloosheidsversekering-fonds (UIF). Die eisbedrag sal gelykstaande wees aan 66% *pro rata* van die eiser se gewone maandelikse salaris.

(LW: Met voorsiening vir geringe verskille, sal voormelde ook diegene insluit wat ‘n kind onder die ouderdom van 2 jaar aanneem.)

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| <p><b>Staff appointed in terms of the Employment of Educators Act (EEA)</b></p> <p>The leave of educators employed in terms of the EEA by the various provincial departments of education is regulated through collective agreements and is codified in the PAM document (See Chapter H – at H.8 in the PAM).</p>  | <p><b>Personeel aangestel kragtens die Wet op Indiensneming van Onderwysers</b></p> <p>Die verlof van opvoeders wat, kragtens die WIO, deur die onderskeie Provinsiale Onderwysdepartemente aangestel is, word geregleer deur kollektiewe ooreenkomste en word gekodifiseer in die PAM-dokument (sien Hoofstuk H.8 van Hoofstuk H van die PAM).</p>   |
| <p>In short, the PAM stipulates that a person whose spouse or life partner gives birth can take –</p> <ul style="list-style-type: none"> <li>• 3 days <u>paid</u> paternity leave, as well as</li> <li>• convert 5 family responsibility leave days to <u>paid</u> paternity leave. This effectively gives a person 8 <u>paid</u> paternity leave days per leave cycle.</li> </ul> <p>It is trite that the main aim of the BCEA is to set the base limit of what an employee is entitled to. Thus an employee’s conditions of service cannot be less favourable than those stipulated in the BCEA. Subsequently, it can be said that the current stipulations in the PAM are not reconcilable with the provisions of the BCEA.</p> <p>But, the paternity leave provided for in the PAM document is <u>paid leave</u> and makes provision for instances when said 3 days of paternity leave per year run out. An argument can thus be made that the PAM provisions may be slightly more advantageous than the new provisions in the BCEA.</p> | <p>Ter opsomming, word daar in die PAM gestipuleer dat ‘n persoon, wie se gade of lewensmaat geboorte skenk, geregtig is daarop om –</p> <ul style="list-style-type: none"> <li>• 3 dae <u>betaalde</u> vaderskapverlof mag neem, sowel as</li> <li>• 5 familieverantwoordelikhedsverlof te omskep in <u>betaalde</u> vaderskapverlof. Derhalwe word daar aan ‘n individu, in effek, 8 <u>betaalde</u> vaderskapverlofdae per verlofsiklus toegestaan.</li> </ul> <p>Dit is ‘n geykte beginsel dat die hoofdoelwit van die WBD is om perke daar te stel aangaande ‘n werknemer se minimum regte. Derhalwe kan ‘n werknemer se diensvoorwaardes nie minder regte aan die werknemer verleen, of minder gunstige diensvoorwaardes daarstel, as die diensvoorwaardes waarvoor daar in die WBD voorsiening gemaak word nie. Hierbenewens kan daar ook gesê word dat die huidige bepalings van die “PAM”, teenstrydig is met die bepalings van die WBD (soos gewysig).</p> <p>Desnieteenstaande, is die vaderskapverlof waarvoor daar in die “PAM”-dokument voorsiening gemaak word, wel vir <u>betaalde verlof</u>, en word daar voorsiening gemaak vir gevalle waar die 3 dae vaderskapverlof opgebruik word. Daar kan derhalwe geredeneer word dat die “PAM”-bepalings tot ‘n mate meer voordelig is as die bepalings van die WBD.</p> |
| <p><b>What is the position in the interim?</b></p> <p>The position in regard to staff employed in terms of the EEA is that the provisions of the PAM as stated here above remains until amended in terms of a new collective agreement concluded in the PSCBC as it is a transverse issue that affects all sectors in the Public Service. The same is applicable to employees employed under the Public Service Act 1994. Ie That the status quo remains.</p>  | <p><b>Wat is die <i>interim</i> regsposisie?</b></p> <p>Die regsposisie met betrekking tot personeel wat kragtens die WIO aangestel is, is dat die bepalings van die PAM, soos hierbo vermeld, van krag bly tot tyd en wyl dit gewysig word deur ‘n nuwe kollektiewe ooreenkoms in die “PSCBC”, aangesien dit ‘n oorkoepelende aangeleentheid is wat oor verskeie sektore van die Staatsdiens strek. Dieselfde geld vir personeel aangestel onder die Staats Diens Wet – 1994. D.w.s die status quo word gehandhaaf.</p>  |