

STATUTORY MINIMUM LEAVE ENTITLEMENTS I.T.O. THE BASIC CONDITIONS OF EMPLOYMENT ACT

ANNUAL LEAVE

Minimum leave entitlement

- Employees are entitled to minimum leave that is the equivalent of 3 consecutive weeks (i.e. 21 *consecutive* days that would include weekends) within every leave cycle of 12 months. This is only really applicable if the employee will be taking all of their leave in one go after the 12 months' cycle has been completed.
 - Most employees do not take all of their leave at one time, and therefore it is important to calculate the leave entitlement according to working days and not consecutive (calendar) days.
 - In terms of how many working days' leave an employee is entitled to, this depends on how many days per week an employee works. An employee who works 5 days a week, will be entitled to 15 (5x3) *working days'* leave per year; an employee who works 6 days a week, will be entitled to 18 (6x3) *working days'* leave per year. It works out the same in the end - this calculation is important for when an employee wants to take occasional days leave, e.g. to make a long weekend.
 - Leave for part-time employees who work only some days or hours in a week, is calculated at a rate of 1 working day's leave for every 17 days worked; or 1 hour's leave for every 17 hours worked.
- The leave accrues every month during the 12-month cycle.
 - The leave for a 5-day worker accrues at 1,25 day per month.
 - The leave for a 6-day worker accrues at 1,5 day per month.
- An employee's accrued leave days may not be encashed. Payment for the minimum statutory leave is only allowed if the employee's employment is terminated before he/she has had a chance to take the leave.
- However, an employee may also not save up / accumulate leave instead of taking it, to get a big pay-out upon termination of employment. All of the minimum statutory leave must be used within 6 months after the completion of the 12-month cycle, or it will be forfeited.

- It is up to the employer to decide when employees can take their leave – depending on operational demands and schedules. However, the employer must ensure that an employee is allowed to take their leave before the 6 months period has expired.
- The employee may not be required or permitted to take annual leave during his/her notice period.

SICK LEAVE

Entitlement

- An employee's sick leave cycle runs for 36 months at a time, from the date of starting employment with the employer.
- For each sick leave cycle, the minimum sick leave entitlement is the number of days the employee would normally work during a period of 6 weeks. For example: 36 working days' sick leave for 6-day workers; or 30 working days' sick leave for 5-day workers, over the 3-year-period.
- During the first 6 months of employment, the employee's sick leave accrues at a rate of 1 working day for every 26 days worked. After 6 months, the whole entitlement for the first 3-year cycle kicks in (e.g. 30/36 days minus any days taken already) and is valid until the end of the 3-year cycle.
- If the employee's sick leave is exhausted before the end of the cycle, further absences due to illness during that cycle will be unpaid leave (unless the employer has a policy allowing for additional sick leave or that the employee may put in annual leave).
- If an employee is off sick frequently, it could lead to an incapacity (ill health) investigation by the employer and could potentially result in the dismissal of the employee.

Proof of incapacity

- Sick leave only applies if the employee is too ill to perform his/her duties or to come to work. It is not applicable to doctors' appointments or clinic visits, unless the employee is also booked off by the doctor for the day of the appointment.
- The employer can require proof of the employee's incapacity before granting paid sick leave (medical certificate) – however, only if the employee has been absent from work for more than two consecutive days or on more than two occasions during an eight-week period.

- Medical certificates must be issued and signed by a medical practitioner or such other person who is certified to diagnose and treat patients, and who is registered with a professional council. The contents of the certificate must comply with the rules of the Health Professions Council of South Africa including that the doctor must have personally examined the employee and must certify that in his/her professional opinion, the employee is unable to perform his/her duties for a specific period.
- The employer is not entitled to insist on knowing the diagnosis ('medical condition' is sufficient), unless the employee consents to sharing the private medical information.
- However, the employer is entitled to determine the validity of the medical certificate and to check with the doctor. If a certificate has been obtained fraudulently or falsified in any way, the employee can be disciplined (which may include dismissal) for dishonesty.

FAMILY RESPONSIBILITY LEAVE

- Three working days' paid leave (total) per year for any of the following:
 - death of immediate family member;
 - when the employee's child is sick.The employee may also take this leave in half-days.
- Note that Paternity leave will now fall under the new Parental Leave and no longer be part of this section.
- This leave entitlement applies only to employees who have been employed for longer than 4 months; and who works on at least 4 days a week for the employer.
- The employer can require proof of the event before the paid leave is granted.

MATERNITY LEAVE

Entitlement

- An employee is entitled to take a minimum of 4 consecutive months' maternity leave. (An employee who has a miscarriage or stillbirth is entitled to 6 weeks' maternity leave after the miscarriage or stillbirth.)
 - There is no obligation in law for the employer to pay the employee during maternity leave.
 - The employee can however qualify for UIF benefits during maternity leave.

Commencement and duration of maternity leave

- An employee may commence maternity leave any time from 4 weeks before the expected birth date; or from a date that a medical practitioner or midwife certifies that it is necessary for the health of the employee or the unborn child.
- No employee may work for 6 weeks after the birth of her child, unless medically certified that she is fit to do so.
- The employee must notify the employer beforehand, in writing, of when she intends to start her maternity leave and when she intends to return from maternity leave. She must do this in terms of the law at least 4 weeks before the start of the maternity leave – although some employers may require a longer period of notice in terms of their policies or the employee's employment contract.

Protection of employees before and after birth of a child

- An employee who is pregnant or nursing her child, may not be required or permitted to perform work that is hazardous to her health or that of her child.
- During pregnancy and for 6 months after the birth, the employer must offer suitable alternative employment to the employee if she would normally have to do night work or work hazardous to the health of her or her child, if it is practicable for the employer to do so.
- The Code of Good Practice on The Protection of Employees During Pregnancy and After the Birth of a Child, issued in terms of the BCEA, is aimed at protecting pregnant and post-pregnant employees.
- Arrangements should be made for employees who are breastfeeding to have breaks of 30 minutes twice per day for breastfeeding or expressing milk each working day for the first six months of the child's life.

OTHER PARENTAL LEAVE

These new categories of leave were introduced in 2019, to make provision for longer paternity leave, but also specifically for parents in non-traditional relationships; or who may be adopting or have surrogacy arrangement.

All of this leave is unpaid (just like maternity leave), unless the employer has a policy to provide for (part) payment during these periods of leave. The parents can however claim UIF benefits, subject to certain conditions.

Parental leave (includes paternity leave)

- An employee who is a parent of a child is entitled to at least 10 consecutive days' parental leave. This includes paternity leave. Where an employee is one of two parents who both qualify for adoption leave or commissioning surrogacy leave, parental leave applies to the parent who does not take the adoption- or surrogacy leave. The parents must exercise this choice.

Adoption leave

- An employee who is an adoptive parent of a child below the age of two is, entitled to either
 - adoption leave of at least 10 consecutive weeks; or
 - parental leave of 10 days as referred to above.
- An employee may commence adoption leave on the date on which—
 - the adoption order is granted;
 - the child is placed in the care of a prospective adoptive parent by a competent court, whichever date occurs first.
- If an adoption order is made in respect of two adoptive parents, one of them may apply for Adoption Leave and the other adoptive parent may apply for the Parental Leave.

Commissioning parental (surrogacy) leave

- An employee who is a commissioning parent in a surrogacy agreement is entitled to –
 - Commissioning Parental Leave of at least 10 consecutive weeks; or
 - Parental Leave of 10 days as referred to above.
 - An employee may commence Commissioning Parental Leave on the date that a child is born by virtue of a surrogate motherhood agreement.
 - If a surrogate motherhood agreement involves two commissioning parents, one of them may apply for Commissioning Parental Leave and the other commissioning parent may apply for Parental Leave.
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