



ISSUE

OCT 2025



IMPORTANT LABOUR LAW DEVELOPMENT - CONSTITUTIONAL COURT JUDGMENT ON PARENTAL LEAVE

Case: *Van Wyk & Others v Minister of Employment and Labour* [2025] ZACC 20

Date: 03 October 2025

Background

- Previously, the BCEA granted 4 months' maternity leave to mothers **and only** 10 days' parental leave to fathers/partners.
- Adoptive parents and commissioning (surrogacy) parents received unequal entitlements depending on circumstances (e.g. age of child, who gave birth).
- The High Court declared these provisions unconstitutional. The Constitutional Court has now **confirmed** this finding.

Court's Findings

- The current leave framework unfairly discriminates on the grounds of sex, gender, and family responsibility.
- This infringes the constitutional rights to equality (s 9) and dignity (s 10).
- Parenthood is not defined by biology alone — all parents who assume parental responsibility under the Children's Act must be treated equally.

Interim Remedy (Effective Immediately)


- **Total leave entitlement** = 4 months + 10 consecutive days, to be **shared** between the parents if both are employed.

- If only one parent is employed → that parent gets the **full 4 months + 10 days**.
- **Sharing rules:** Parents may agree how to split the leave (concurrent, consecutive, or mixed). Each parent must take their share in **one continuous block**. If they cannot agree, the default is an **equal split**.
- **Birth mothers:** May still start up to 4 weeks before the expected date of birth; not permitted to work for 6 weeks post-birth unless certified fit.
- **Adoption & surrogacy:** No more restrictions based on the age of the child or parental category — adoptive and commissioning parents enjoy the same leave rights.
- **Parental responsibility requirement:** Only parents who have assumed parental rights and responsibilities qualify.
- **Suspension & Parliament's role:** Parliament has **36 months** to amend the BCEA and UIF Act to align fully. Until then, these interim rules apply.

Employer Implications

- Update **HR policies and contracts** to remove gender-based distinctions.
- Revise payroll and leave systems to track shared entitlements.
- Train HR and line managers on new procedures and default division rules.
- Communicate clearly to staff to avoid disputes.
- Prepare for further amendments once Parliament enacts remedial legislation.

Regards



Judy Ward

CONTACT DETAILS

Address: 7 Olivier Str, Noordheuwel, Krugersdorp, 1739

Contact no: 082 824 6573

E-mail: judy@ward-es.co.za

Website: www.ward-es.co.za

