

New leave laws may increase mine employee costs

By [Lize Louw](#)

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The implementation of the Labour Laws Amendment Act from 1 January 2020 is welcome from an equality perspective but may have cost implications for mining companies.



Image source: Getty Images

From 1 January 2020, South Africa's workplace environment celebrated a breakthrough in the push for equality, with the implementation of new parental leave laws. The amendments may have particular implications for mining companies, whose employees already typically enjoy far more leave days and leave benefits than the Basic Conditions of Employment Act (BCEA) prescribe. Mining companies will need to consider and take expert legal advice on some practical aspects and potential consequences of the new leave laws.

The LLAA introduces three new leave entitlements for employees: parental leave, adoption leave and commissioning parental leave. The LLAA provides that these leave entitlements are unpaid. Qualifying employees are eligible to apply to the Unemployment Insurance Fund (UIF) for income replacement benefits during the leave periods.

An employee who is a parent of a child is entitled to 10 consecutive days parental leave. Parental leave can be taken from the day on which the child is born.

An employee who is an adoptive parent of a child below the age of two years is entitled to 10 consecutive weeks of adoption leave. Adoption leave can be taken from the date on which an adoption order is granted or the day that the child is placed with the prospective adoptive parents, pending the finalisation of the adoption order. If an adoption order is made or a prospective adoption order is pending for two parents, one parent is entitled to take adoption leave and the other parent will be entitled to take parental leave.

An employee who is a commissioning parent in a surrogate motherhood agreement is entitled to 10 consecutive weeks of commissioning parental leave. Commissioning parental leave can be taken from the date on which the child is born. When a surrogate motherhood agreement has two commissioning parents, one of the commissioning parents may apply for commissioning parental leave and the other may apply for parental leave.



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At this stage, the UIF system can only process claims for employees who take parental leave, not for adoption or commissioning parental leave. The fund has not indicated when it will be ready to process those claims.

Section 27 of the BCEA, which deals with family responsibility leave, has been amended to be in line with the provisions of the LLAA. It is no longer possible for employees to take family responsibility leave at the birth of their children. They will be able to take parental leave.

The BCEA prescribes four months unpaid maternity leave. Many mining companies however provide paid maternity leave of more than four months. Although the current provision for the three new forms of leave is unpaid, we believe there is likely to be pressure from mining unions and employees to make it a paid benefit, especially at mining companies where maternity leave is paid.

Mining companies need to consider what leave policies and employment contracts need to be amended, and how the additional leave will affect productivity and costs. It is particularly important for companies that already pay maternity leave to consider whether the new leave provisions will also be paid.

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