

LEAVE



ANNUAL LEAVE

Employees who work for 24 hours or more a month for the same employer may take annual leave.

As a general rule annual leave must be taken no later than 6 months after the end of the annual leave cycle. An employee may apply for leave in terms of the employer's leave procedures. An employer should, where reasonable, accommodate such a leave application. In some instances, depending on the nature of a collective agreement or contract of employment in place, a proportion of leave is expected to be taken during an annual shutdown period. Employees have a right to unpaid leave and must apply in writing.

The BCEA states that the employer may not require or permit an employee to take annual leave during any other period of leave to which the employee is entitled under chapter 3 (Leave) or while the employee is serving notice.

An employee may not work during leave or be paid instead of leave, except when leaving the job or by agreement. The employer's leave policy or a collective agreement may indicate whether and for how long an employee may accumulate leave not taken during the annual leave cycle.

PAYMENT FOR ANNUAL LEAVE

An employee must be paid at least the equivalent of the remuneration that she or he would have received for working for a period equal to the period of annual leave. This is calculated at the employee's rate of remuneration immediately before the beginning of the period of annual leave and in accordance with section 35 of the BCEA.

Leave pay should be paid before the leave starts or on the employee's normal payday, if so agreed. On termination of employment, an employer must pay an employee, if the employee has been in employment longer than four months, in respect of the employee's annual leave entitlement during an incomplete annual leave cycle, one day's remuneration for every 17 days on which the employee worked or was entitled to be paid.

LEAVE DAYS - ENTITLEMENT

The BCEA states that employees are entitled to leave as follows:

- 21 consecutive days' annual leave on full remuneration in respect of each annual leave cycle; or
- by agreement, one day of annual leave on full remuneration for every 17 days on which the employee worked or was entitled to be paid;
- by agreement, one hour of annual leave on full remuneration for every 17 hours on which the employee worked or was entitled to be paid.

A collective agreement or contract of employment may allow for additional days of leave. Public Holidays are separate from annual leave.

SICK LEAVE

Sick leave works in a three-year cycle. An employee who works for 24 hours or more for the same employer may take one day's paid sick leave for every 26 days worked during the first six months of employment, and thereafter, an employee may take the number of days she or he normally works in a six-week period during every three-year cycle less then number of days already taken in the first six weeks.

An employee may be requested to produce a valid medical certificate if he/she has been absent from work for more than two days in a row or more than twice in an eight-week period. Some workplaces require such a certificate when the employee is absent on a Friday or a Monday. Such a requirement must be made known to employees through a contract, policy, procedure, collective agreement, etc.

If the employee does not have a valid medical certificate, the employer does not have to pay the employee. The medical certificate must be issued and signed by a medical practitioner or any other person who is certified to diagnose and treat patients and who is registered with a professional council established by an Act of Parliament. In certain instances, a certificate of indisposition may be issued by practitioners registered with the Allied Health Services Act 63 of 1982 or the Traditional Health Practitioners Act 22 of 2007.

MATERNITY LEAVE

An employee may take at least four months' unpaid maternity leave. This leave may start at any time from four weeks before the expected date of birth or when a doctor or midwife certifies that leave is necessary for the health of the mother or the child. An employee must notify the employer in writing, if she can write, of the date on which she wants to start maternity leave.

An employee must not work for six weeks after delivery, unless a doctor or midwife certifies that she is fit to do so. An employee who has a miscarriage during the last three months of pregnancy or who bears a stillborn child is also entitled to six weeks' maternity leave, whether the employee had started maternity leave at the time.

LEAVE



An employee who is pregnant or nursing her child is not allowed to perform work that is hazardous to her or her child.

FAMILY RESPONSIBILITY LEAVE

An employee who has been with an employer for longer than four months and who works for at least four days a week for the same employer may take three days' paid family responsibility leave during each year of employment. The reasons for this leave may include the following:

- when the employee's child is sick; and
- in the event of the death of the employee's spouse, life partner, parent, adoptive parent, grandparent, child, adopted child or sibling (brother or sister).

PARENTAL LEAVE OTHER THAN MATERNITY LEAVE

Please note that like maternity leave, parental leave, adoption leave and commissioning parental leave are unpaid, unless otherwise provided in a contract of employment or collective agreement.

Parental leave

An employee who is a parent of a child will be entitled to 10 consecutive days' unpaid parental leave. The current provisions of the BCEA regarding four months' maternity leave remain unchanged.

The introduction of parental leave replaces the three days of paid paternity leave previously provided for in the BCEA. (The family responsibility benefits associated with the illness of a child, or the death of a close family member, remain unchanged.)

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 apply for parental benefits to the Department of Employment and Labour in terms of section 26B of the Unemployment Insurance Act (UIA).

Adoption leave

This category relates to the adoption of a child who 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 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 apply for adoption benefits to the Department of Employment and Labour under section 26B of the UIA.

Commissioning parental leave – 10 consecutive weeks

Commissioning parental leave relates to surrogate motherhood. The commissioning parent who will primarily be

responsible for looking after the child (primary commissioning parent) will be entitled to unpaid commissioning parental leave.

If there are two commissioning parents, they can choose: if 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.

An employee who contributes to the Unemployment Insurance Fund may apply for Commissioning parental benefits to the Department of Employment and Labour in terms of section 29 B of the UIA.

DISPUTE RESOLUTION

If a dispute about leave is not resolved internally it may be referred to the Department of Employment and Labour.

A dispute relating to non-payment for statutory leave taken may also be referred to the CCMA provided the employee earns under the BCEA threshold. The LRA 7.11 application form can be downloaded from the CCMA Website (<https://www.ccma.org.za/advicecategories/ccma-referral-forms/>).

RELEVANT LEGISLATION

- Basic Conditions of Employment Act 77 of 1997 (as amended).
- Unemployment Insurance Act 63 of 2001 (as amended)