



EMPLOYMENT

Summary of Recently Proposed Legislative Amendments: Basic Conditions of Employment Act and Unemployment Insurance Act

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Introduction

On 26 February 2026, the Minister of Employment and Labour ("**Minister**") published, by way of the Government Gazette, a copy of the Labour Law Amendment Bill, 2025 and its Memorandum of Objects, along with the Labour Relations Amendment Bill, 2025 and its Memorandum of Objects.

The Labour Law Amendment Bill contains proposed amendments to the Basic Conditions of Employment Act^[1] ("**BCEA**"), the Unemployment Insurance Act^[2] ("**UI Act**"), the National Minimum Wage Act^[3] ("**NMWA**"), and the Employment Equity Act^[4] ("**EEA**"). The Labour Relations Amendment Bill contains proposed amendments to the Labour Relations Act^[5] ("**LRA**").

Whilst both the Labour Law Amendment Bill and the Labour Relations Bill propose several amendments to the aforesaid legislation, we highlight in this update some of those proposed amendments to the BCEA and UI Act which are likely to be of particular interest to employers.

A full copy of the Labour Law Amendment Bill, Labour Relations Amendment Bill alongside their Memorandum of Objects can be accessed, and read it full, at the Department of Employment and Labour's website at https://www.labour.gov.za/DocumentCenter/Bills/Labour%20Relations%20Act,%202025_Labour%20Law%20Amendment%20Bill,%202025.pdf

BCEA

Employees required to be available for work

The amendment seeks to introduce provisions regulating the minimum conditions for **employees required to be available for work**. This category of employment is sometimes referred to as "on call contracts", "zero hour contracts", "min-max contracts", "flexitime contracts", and "if and when contracts". It applies to an employee who is required to "(a) work only when the employer makes work available to the employee and (b) be available to accept work that the employer makes available."

The employee must be provided with written particulars of employment, which must stipulate their maximum hours of work for a specific period, the period in which they must be available to work, and the notice period required for the employee to report to work and for the cancellation of work. Should the employer fail to provide the employee with sufficient notice of cancellation, the employer will be liable to remunerate the employee for the cancelled hours of work.

An employer may not prevent or restrict an employee, who has fulfilled their obligations to be available for work to that employer from working for another individual, unless the employer has genuine operational reasons for such restrictions and those reasons are recorded in the employee's written particulars of employment. The Labour Relations Amendment Bill provides examples of what operational reasons would include.

Employees who are employed on this basis must be treated on the whole no less favourably to employees who perform similar work but to whom this provision would not apply, unless there is a justifiable reason for such different treatment.

The memorandum indicates that the above provision only applies to employees who earn below the threshold set in terms of section 6(3) of the BCEA.^[6] In addition, the provision does not apply to an employer who has less than 10 employees. These provisions are aimed at providing protection to "on call" workers, whilst simultaneously providing for an employers need for flexibility when faced with a variable demand for work.

Parental leave

In line with the Constitution of the Republic of South Africa and the recent landmark Constitutional Court judgement, *Van Wyk and Others v Minister of Employment and Labour*^[7], the Labour Law Amendment Bill proposes the insertion of extensive provisions regulating **parental leave** in the BCEA.

Employees entitled to parental leave include, parents of a newborn child, adoptive parents of child who is six years old or younger, as well as a commissioning parent. The age for adopted children has been increased from the current statutory provision, which entitles adoptive parents to parental leave where the adopted child is two years old or younger. Additionally, a commissioning parent denotes a parent of a child who is born as result of a surrogate agreement. The provisions relating to parental leave also finds application for an employee who has suffered a miscarriage or bears a still-born child.

An employee is entitled to four consecutive months of parental leave if the employee is a single parent or if they are the only employed party in the parental relationship. Alternatively, if both parties to the parental relationship are employed, then they are collectively entitled to four months and ten days parental leave.

Commencement of parental leave and notice of leave

The provisions regulate the commencement of parental leave for a female employee expecting the birth of a child, and also prevents a female employee from returning to work within 6 weeks after giving birth to the child, save for where a medical practitioner or midwife has certified to the contrary.

The employee is required to notify their employer, in writing, of the date on which they intend to commence parental leave and the date of their return to work. Such notification must be given four weeks before the intended commencement of leave, or if this is not reasonably practicable, then the employee must notify their employer as soon as reasonably practicable. If the employees in a parental relationship have different employers, then both employees must provide their employer with the

abovenamed notice, as well as submit any agreement concerning parental leave concluded in terms of section 25B to their employers which sets out the respective periods of parental leave for both employees.

Exercise of right to parental leave if two parents are employees

Section 25B of the proposed amendment provides that if both parents are employees, then they must submit the abovenamed notice and conclude an agreement to be submitted to both their employers.

If an agreement cannot be concluded, then the employee who has given birth may elect to take four months parental leave, and the other parent is entitled to 10 days parental leave. Alternatively, the employee who has given birth can elect to take less than four months parental leave, which would then entitle the other parent to take the portion of leave remaining, four months and ten days in aggregate for them both.

If the parties to a parental relationship who are entitled to parental leave as result of a surrogate agreement or adoption cannot agree on the apportionment of leave, then the leave will be apportioned in a manner which is as close to equal as possible.

Increased Severance Pay

There is a proposal to increase the entitlement to **severance pay** from the amount presently provided for in the BCEA, being the equivalent of one week's remuneration for every completed year of service. An employer will be required to pay an employee severance pay which is equal to at least two week's remuneration for every completed year of continuous service with that employer. This provision does not apply retrospectively. The Bill provides that "*the entitlement to severance pay equal two week's remuneration only applies to a completed year of service with that employer which commenced **after** the commencement of the Amendment Act*".^[8]

It should be noted section 41(4) of the BCEA still remains in effect. This provision stipulates that an employee is not entitled to severance pay where that employee has unreasonably refused to accept the employer's offer of alternative employment with that employer or any other employer.^[9]

Employer's contribution to a benefit fund

Should an employer **fail to pay a contribution to a benefit fund**, such as pension benefits, this failure will be treated the same as an employer's failure to pay any amount owing to an employee in terms of the BCEA, except that in any compliance order, Court order or arbitration award the employer must be directed to make the outstanding payment to the benefit fund concerned. The Labour Court, CCMA, and Bargaining Council, to which a dispute has been referred due to an employer's failure to pay contributions under the Pension Funds Act 24 of 1956, will be empowered to direct the employer to pay the outstanding amount to the Fund as well as the interest which has accrued on the outstanding amount.

Consolidated disputes

Clause 12 of the Labour Law Amendment Bill proposes to consolidate disputes in Labour Court proceedings and arbitration. Where an employee institutes proceedings for an unfair dismissal in respect of any claim under employment law, the proposed amendment provides that the Labour Court or the arbitrator hearing the matter is entitled to also determine any claim for an amount owing to the employee in terms of the BCEA or NMWA. This allows for certain disputes under the BCEA/NMWA and employment law to be jointly adjudicated.

UI ACT

Parental benefits

While the BCEA is silent on the **payment of parental benefits**, the UI Act provides the relevant regulatory framework. The UI Act provides that parental benefits must be paid at 66% of the earnings of the beneficiary at the date of application.

Further to the above, a 'contributor' will be entitled to receive parental benefits if they are pregnant, in a parental relationship with a person who gives birth to a child (irrespective of whether the mother is a contributor), an adoptive parent/prospective adoptive parent, or a commissioning parent.

The amendment further regulates the period for which such benefits can be claimed as well as the application for parental benefits and the payment thereof.

Conclusion

The Labour Law Amendment Bill proposed to introduce several changes to various pieces of employment legislation. Several of these changes are likely, if implemented, to have an impact upon employers. Employer's should, then, consider such proposed amendments in detail and whether they intend raising any objection(s) to same. Employers are reminded that any such objections must be raised by no later than **28 March 2026**, in the stipulated manner.

Please contact Werksmans' [Employment](#) practice area for any further information required.

[1] Act 75 of 1997.

[2] Act 63 of 2001.

[3] Act 9 of 2018.

[4] Act 55 of 1998.

[5] Act 6 of 1995.

[6] The current threshold is R261 748,45 per annum.

[7] [2025] ZACC 20.

[8] Section 16 of the Labour Law Amendment Bill, 2025.

[9] Section 41(1) of the BCEA.



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