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SELECT COMMITTEE ON PETITIONS AND EXECUTIVE UNDERTAKINGS: CONTENT OF PATERNITY LEAVE PETITION

1. CONTENT OF PETITION

The petition was submitted to the National Council of Provinces (NCOP) on 3 July 2014. The petitioner is Hendri Petrus Terblanche (Terblanche) a 38 year old Financial Manager from Brackenfell, Cape Town. Simply put, the petition is a request by Terblanche to the NCOP to amend the Basic Conditions of Employment Act (Act 75 of 1997) (BCEA) to include 10 days paid paternity leave for fathers in South Africa at the birth or adoption of a child.

Terblanche was prompted to submit this petition after his wife gave birth to premature and underweight twin boys who spent a total of 218 days in intensive care. Terblanche visited his sons in intensive care during this period and he noticed that a lot of fathers (much like him) only managed to spend a few hours with their children before having to rush back to work for the simple reason that they were not entitled to paternity leave.

2. RELIEF SOUGHT

As already stated above, the petitioner seeks the Committee's assistance in introducing amending the BCEA and effectively introducing paternity leave for fathers in South African law. At present, the law prioritises maternity benefits when it comes to the birth or adoption of a child and there is no specific provision granting fathers paternity leave. The closest to paternity leave for fathers (biological and adoptive) is family responsibility leave.

Family responsibility leave is afforded to fathers in terms of section 27 of the BCEA. Section 27(2) of the BCEA affords an employee 3 days paid leave when the employee's child is born or sick or in the event of the death of a spouse, parent, grandparent, child, grandchild or sibling. This means that if a father takes the 3 days paid leave, he will not be entitled to any further paid family responsibility in any given year. Moreover in terms of section 27(1) paid family responsibility leave is due only to those fathers who have been with an employer for longer than 4 months and who work for that employer for at least four weeks a day. Mothers, on the other hand, are entitled to at least 4 consecutive months of maternity leave in terms of section 25 of the BCEA. In fact section 25 of the said Act is wholly dedicated towards providing maternity leave for mothers.

The BCEA is not the only piece of legislation in our law that prioritises maternity benefits. The Labour Relations Act (Act 66 of 1995) (LRA) provides that the dismissal of an employee on the account of her pregnancy, intended pregnancy or any reason related to an employee's



pregnancy constitutes an automatic dismissal.¹ Moreover, the definition of "dismissal" in section 186 of the LRA includes the refusal by an employer to allow an employee to resume work after taking maternity leave. Furthermore, sections 34 and 37 of the Unemployment Insurance Act (Act 30 of 1966) provide for the payment of mothers on maternity leave.

3. REASONS FOR RELIEF SOUGHT

According to the petitioner, the introduction of paternity leave for fathers in South Africa is beneficial to both parents as well as the children concerned on a number of levels. To illustrate this, the petitioner includes in his petition a number of research findings made in other countries around the benefits associated with fathers being granted paternity leave.

The research findings, for instance, indicate that in Sweden a high take up of parental leave by Swedish fathers is linked to increased contact with children in the event that their parents separate. The research findings further point to the fact that Swedish fathers who took 120 days or more of leave in the 1990s reported that this enabled them to develop closer emotional relationships with their children and this made them feel responsible for childcare even after the leave period was over. Research findings from Israeli and the US, show that fathers who take longer paternity leave not only remain focussed on their children after they their birth but also remain supportive towards their partner as well as place a higher value on their family life.

Also in support of the petition, the petitioner makes the following arguments in favour of fathers being granted paternity leave:

- Paternity leave enables mothers to take shorter maternity leave and this is very helpful for mothers.
- Paternity leave may improve both the fathers' and mothers' physical and mental health and this has positive spin offs for employers.
- Paternity leave is one way in which the caring responsibilities of fathers may be increased and enhanced.

Furthermore, according to the petitioner the only negative aspect to providing for paternity leave in terms of the law is the actual cost to the employer however this cost is minimal when compared to the overall benefits of introducing paternity leave.

4. STATUS OF PETITION

The Committee has yet to consider the content of the petition and decide on the best possible course of action for its resolution.

5. RECOMMENDATIONS TO THE COMMITTEE

It is recommended that the Committee consider the petition because the petition seeks to introduce an important amendment to existing law namely, the amendment of the BCEA to

¹ Section 187(1)(e) of the LRA.



permit fathers to take up 10 days paid paternity leave at the birth or adoption of a child. The legislative amendment proposed in the petition is important because it would permit fathers to take paternity leave and be an acknowledgement of the role that fathers play in the early stages of childhood.

Moreover, it is interesting to note that South Africa pales in comparison to countries such as Australia, Sweden, Kenya and Cameroon which offers fathers a considerable number of days for paternity leave. Australia for example offers working fathers 14 days paid paternal leave whereas Sweden affords both parents 480 days leave. Kenya affords fathers 14 days paid leave and Cameroon affords them up to 10 days paid paternity leave per year, 3 days of which are mandatory.

