Men Are Also Entitled To The Same Maternity Leave Benefits

The High Court in the Gauteng Division, Johannesburg handed a judgment in terms of which Sections 25, 25A, 25B, and 25C of the Basic Conditions of Employment 75 of 1997 (BCEA) as well as Sections 24, 26A, 27, and 29A are declared inconsistent with Section 9 and 10 of the Constitution.

However, the order is suspended for 2 (two) years for the Government to rectify the legislation.

Werner van Wyk and Ika van Wyk are a married couple, and they launched an application that certain Sections in both the Basic Conditions of Employment Act (BCEA), as well as the Unemployment Insurance Act (UIF) dealing with maternity leave, be declared unconstitutional.

The basis of the application was that there are discrepancies between the treatment of mothers and fathers, birth mothers as well as mothers and parents in both the BCEA and UIF concerning maternity leave and benefits.

The facts are briefly that Mr van Wyk and Ms van Wyk are the parents of the new baby. Ms van Wyk was self-employed and as such the said provision did not apply to her. However, Mr Van Wyk as a father was only entitled to a maximum of 10 (10) days. As such he took unpaid leave since he wanted more time with his baby. He was not entitled to maternity benefits in terms of the UIF Act.

The position is different for mothers in that they are entitled to 4 (four) months of maternity leave and paternity benefits in terms of the UIF.

The order read as follows:

1. All parents of whatever stripe enjoy 4 (four) months' consecutive parental leave, collectively.
2. The Sections of the BCEA and UIF are found to be inconsistent with the Constitution.

All stripes of parents are:

1. Parents in natural birth, or
2. Parents who adopt a child younger than 2 (two) years, or
3. Parents in commission arrangements.

Therefore, all parents are entitled to equal maternity leave and benefits.

Employers need to take note of the judgment and accordingly adjust their leave policies to be in line with these developments.

The judgment is also going to have cost implications for employers as employees will be away for longer periods.

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