



WEEKLY LABOUR BULLETIN

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MATERNITY RIGHTS AND EMPLOYER OBLIGATIONS

INTRODUCTION

The Labour Act [Chapter 28:01], as amended by the Labour Amendment Act, 2023 (Act No. 11 of 2023), provides important protections for pregnant and nursing employees while placing corresponding obligations on employers. Compliance with these provisions promotes fair labour practices and helps avoid unnecessary disputes. This bulletin aims to answer some questions that farmers might have about this provision.

WHO IS ENTITLED TO MATERNITY LEAVE?

In terms of section 18 of the Labour Act, a female employee is entitled to ninety-eight (98) days' maternity leave on full pay upon producing a certificate signed by a registered medical practitioner or a State Registered Nurse certifying that she is pregnant.

Maternity leave may commence not earlier than forty-five (45) days and not later than twenty-one (21) days before the expected date of delivery, unless medical circumstances require otherwise.

IS THERE A QUALIFYING PERIOD BEFORE AN EMPLOYEE BECOMES ENTITLED TO MATERNITY LEAVE?

The Labour Amendment Act, 2023 repealed the previous requirement that an employee complete a qualifying period of service of one year before becoming entitled to paid maternity leave. An eligible employee is therefore entitled to maternity leave regardless of her length of service.

HOW MANY TIMES MAY AN EMPLOYEE TAKE PAID MATERNITY LEAVE?

There is no longer a limit on how many times an employee may take maternity leave. This is because the Labour Amendment Act, 2023 repealed the previous provisions that:

- limited paid maternity leave to three occasions with the same employer;
- required an employee to wait twenty-four (24) months before qualifying for another period of paid maternity leave.

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This therefore means that each time a female employee falls pregnant, they are entitled to maternity leave as stipulated in the Labour Act.

CAN AN EMPLOYER DISMISS AN EMPLOYEE BECAUSE SHE IS PREGNANT?

Pregnancy or the exercise of maternity rights is **not** a lawful ground for terminating employment. If an employee is dismissed for being pregnant, that constitutes discrimination on the grounds of pregnancy, which is an unfair labour practice.

However, a pregnant employee remains subject to the employer's disciplinary code, performance standards, and operational requirements. Where dismissal is contemplated for misconduct, poor performance or operational reasons, the employer must comply with the Labour Act, S.I 41 of 2022 and the rules of procedural fairness. The dismissal must be wholly unrelated to the employee's pregnancy or maternity leave.

WHAT HAPPENS IF A FIXED-TERM CONTRACT EXPIRES DURING MATERNITY LEAVE?

Maternity leave does not automatically extend the duration of a fixed-term contract. Where a fixed-term contract reaches its agreed expiry date during maternity leave, it terminates through the normal effluxion of time. Provided that the expiry is genuine and is not being used to avoid the employer's statutory obligations or to discriminate against the employee because of her pregnancy.

WHAT RIGHTS DOES THE EMPLOYEE HAVE UPON RETURNING TO WORK?

Upon returning from maternity leave, the employee is entitled to resume her employment on terms and conditions that are no less favourable than those that applied before proceeding on maternity leave.

In terms of section 18 (8) of the Labour Act, a nursing mother is entitled to at least one uninterrupted hour or two half-hour periods during each working day for the purpose of breastfeeding or expressing breast milk for a period of six (6) months after returning to work.

This breastfeeding hour:

- Forms part of the employee's paid working time;
- Must not result in any deduction from wages or other employment benefits;

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- Should be reasonably accommodated by the employer while maintaining operational efficiency.

Employers are encouraged to discuss practical arrangements with the employee before she resumes duty to minimise disruption to workplace operations.

WHAT ARE AN EMPLOYER'S OBLIGATIONS?

Employers should:

- Comply with section 18 of the Labour Act by granting maternity leave to qualifying employees.
- Pay the employee her full remuneration during the maternity leave period.
- Preserve the employment relationship during maternity leave.
- Preserve her rights to seniority or advancement and the accumulation of pension rights, and her period of service shall not be considered as having been interrupted by maternity leave.
- Reinstate the employee upon her return to work.
- Comply with section 18 (8) of the Labour Act by allowing the statutory breastfeeding hour for six months after the employee resumes duty.
- Ensure that pregnant and nursing employees are not subjected to discrimination or victimisation.
- Maintain the confidentiality of the employee's medical information.

WHAT RESPONSIBILITIES DOES THE EMPLOYEE HAVE?

Employees should:

- Notify the employer of the pregnancy as early as reasonably practicable.
- Produce the required medical certificate confirming the pregnancy and expected date of delivery.
- Inform the employer of the intended commencement date of maternity leave.
- Return to work upon expiry of maternity leave unless additional authorised leave has been approved.

PRACTICAL TIPS FOR EMPLOYERS

To minimise workplace disruption and ensure compliance, employers are encouraged to:

- Plan in advance for temporary replacement labour where necessary.



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- Maintain regular communication with the employee before and during maternity leave.
- Keep accurate records of maternity leave applications, approvals and return-to-work dates.
- Make reasonable arrangements for the statutory breastfeeding hour.
- Consult whenever uncertainty arises regarding the application of the Labour Act.

CONCLUSION

Maternity protection is a statutory right designed to safeguard the health and wellbeing of both mother and child while preserving the employment relationship. Employers who comply with section 18 of the Labour Act [Chapter 28:01], as amended by the Labour Amendment Act, 2023 (Act No. 11 of 2023), reduce the risk of labour disputes and demonstrate good employment practices. Those who do not comply will be guilty of unfair labour practice.

Disclaimer: This article is issued to serve as a general guide to farmers and does not substitute legal advice that may be required to address a particular situation with peculiar circumstances.

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