



**9 February 2015**

**DRAFT REPORT OF THE SELECT COMMITTEE ON PETITIONS AND EXECUTIVE UNDERTAKINGS ON THE HEARING OF THE PATERNITY LEAVE PETITION, HELD 26 NOVEMBER 2014 AT PARLIAMENT**

**1. BACKGROUND**

The petition was submitted to the National Council of Provinces (NCOP) on 3 July 2014 and subsequently referred to the Select Committee on Petitions and Executive Undertakings (Committee). The petitioner is Hendri Petrus Terblanche (Terblanche) and emanates from the Western Cape.

The petition seeks the assistance of the Committee in amending the provisions of the Basic Conditions of Employment Act (Act 75 of 1997) (BCEA) to provide for 10 days paid paternity leave for fathers at the birth or adoption of a child.

Terblanche was prompted to submit the petition after his wife gave birth to twin boys who spent a total of 218 days in intensive care because they were premature and underweight. Terblanche states in this petition that he 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. PURPOSE OF THE HEARING**

The Committee decided to hold a hearing on the petition as it formed the view that the petition sought to propose an important amendment to the existing law and as such deserved to be given consideration.

**3. COMMITTEE MEMBERS AND OFFICIALS**

The following Committee Members were present at the hearing:

- Hon S G Thobejane, ANC, Limpopo;
- Hon M T Mhlanga, ANC, Mpumalanga;
- Hon G M Manopele, ANC, Northern Cape;
- Hon D L Ximbi, ANC, Western Cape;
- Hon L Suka, ANC, Eastern Cape;
- Hon Michalakis, DA, Free State; and
- Hon J W W Julius, DA, Gauteng.



And the aforementioned Members were supported by the following officials Mr T Madima (Committee Secretary); Dr M Gondwe (Committee Researcher); and Adv G Rhoda (Parliament Legal Advisor)

#### **4. STAKEHOLDERS IN ATTENDANCE**

The stakeholders in attendance at the hearing on the petition were the petitioner, Mr H P Terblanche and Mr T Mkhali (Mkhali), a Director in the Department of Labour and they both made submissions in relation to the petition during the hearing.

#### **5. SUBMISSIONS BY MR TERBLANCHE**

In his submission to the Committee, the petitioner outlined the challenges that fathers were facing in terms of existing law around taking leave at the birth or adoption of a child. In this respect the petitioner, stated that at present the law only emphasised maternity benefits when it comes to the birth or adoption of a child. And this was evident from the fact that mothers are entitled to at least 4 months of maternity leave in terms of section 25 of the BCEA whereas there is no specific provision in the law entitling fathers to take paternity leave. The closest thing to paternity leave for fathers (biological and adoptive fathers) is family responsibility leave which is afforded to fathers in terms of section 27 of the BCEA. Section 27(2) of the BCEA provides that employees are entitled to 3 days paid leave in the event of the birth of a child or where a child is sick or in the event of the death of a spouse, parent, grandparent, child, grandchild or sibling. Moreover, under section 27(1) of the BCEA, paid family responsibility leave is due only to those employees who have been with an employer for longer than 4 months and who work for that employer for at least 4 weeks a day

Paternity leave according to Terblanche is beneficial to mothers, fathers and their children. Furthermore research findings made in other countries attest to these benefits. Research findings in Sweden, for instance, reveal that the high take up of parental leave by Swedish fathers is linked to the increased contact with their children in the event that the mother and the father separate. In addition, research findings made in 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 and also place a higher value or premium on their family life. Terblanche went onto to single out countries such as Mozambique, Kenya, Algeria, Morocco, Rwanda, Tanzania and Tunisia as examples of countries on the African continent that afford fathers paternity leave.

Terblanche also highlighted some of the benefits of introducing paternity leave as including:

- Paternity leave enables mothers to take shorter maternity leave and this is beneficial and helpful towards mothers, particularly career orientated mothers.



- Paternity leave may improve the physical and mental health of both mothers and fathers and this will invariably have positive spin offs for employers.
- Paternity leave increases the responsibilities of fathers towards their children.

Terblanche further admitted that although the employer bore the costs of introducing paternity into law this was cost was minimal when compared to the benefits that would accrue to families and their children if paternity were introduced. The introduction of paternity leave would not only have a positive impact on families but would also have a positive impact on the public health system and society as a whole. The introduction of paternity leave will likely lessen the divorce rate and the number of maintenance actions for example. As such the socio-developmental benefits associated with the introduction of paternity leave far outweigh the costs.

In wrapping up his submissions, Terblanche reiterated that the relief he sought was the Committee's assistance in amending BCEA to provide for paternity leave for fathers as this was beneficial to both parents as well as their children. More specifically, Terblanche proposed that fathers be entitled to an additional 10 days paternity leave in addition to the 3 days family responsibility leave that they were currently entitled in terms of section 27 of the BCEA.

## **6. SUBMISSIONS BY MR MKHALIPI**

Mkhalipi begun his submission to the Committee by emphasising that the 3 days family responsibility afforded to employees in terms section 27 of the BCEA benefits both men and women. In other words, the benefit accorded to men in terms of the concerned section of the BCEA is the same as that given to women. He further conceded that the law placed emphasised on maternity benefits as opposed to paternity benefits for the simple reason that only women give birth and not men.

Mkhalipi went on to submit that a number of countries around the world provided for more extensive family responsibility periods and this leave (especially at the birth or adoption of a child) was in most instances shared between both a mother and a father. He also submitted that prior to its coming into effect the BCEA, including its family responsibility provision, was considered and debated at Development and Labour Council (NEDLAC) and a general consensus was reached by the negotiating parties that the effect of the Act should be to treat men and women equally. As such, the negotiating parties agreed to afford both men and women an equal number of days in relation to family responsibility leave under the BCEA. The idea of providing a standalone paternity leave provision in the BCEA was not welcome at that stage because it was felt such a provision would only help entrench divisions between men and women.

Also of note, Mkhalipi observed that in those countries where standalone paternity leave was granted to fathers, such leave was only available to fathers soon after the birth or adoption of a child and there were eligibility requirements attached to the leave. For instance in some countries,



in order for a father to take paternity leave he must be living with the mother of his child and his name must appear on the birth certificate of the new born child or adopted child.

Mkhalipi further cautioned that if were paternity leave to be introduced or the family responsibility period of father were increased, the employer would bear the costs of lost production time. He did however also admit the costs (social and economic) of introducing paternity leave or increasing family responsibility for fathers had not been quantified by his Department. That is to say, an economic impact assessment had not been carried out by his Department in this regard and it was therefore difficult for him to quantify the actual costs of introducing paternity leave or increasing family responsibility for fathers.

To end off his submission, Mkhalipi agreed that there was a moral argument to be made for allowing both and women ample time to be able to look after their children. He also indicated in the event the Committee moved for the amendment of the BCEA to provide for increased family responsibility leave of standalone paternity leave, it had to bear in mind that the BCEA had just been amended and it may prove problematic to attempt another amendment to the Act in less than a year.

## **7. OBSERVATIONS AND FINDINGS**

The Committee made the following observations and findings after it heard the above submissions:

- 7.1 The paternity leave that the petition sought to introduce with the assistance of the Committee would be granted only to fathers following the birth or adoption of a child.
- 7.2 The petitioner sought to introduce with the assistance of the Committee standalone paternity leave of 10 days which father would be entitled to in addition to the 3 days family responsibility leave they currently enjoyed in terms of section 27 of the BCEA.
- 7.3 Research findings made in other countries point to the fact that there are considerable benefits to couples and their children when fathers are allowed to spend more time with their families at the birth or adoption of a child.
- 7.4 Countries such as Australia, Sweden, Cameroon, Kenya and the United States afford fathers standalone paternity leave and there are eligibility requirements attached to the granting of such leave.
- 7.5 There was socio-economic costs attached to the introduction of paternity leave but this impact had not been assessed or quantified in the South African context.



7.6 The introduction of increased family responsibility is an alternative to the introduction of standalone paternity leave because it not only ensures that men and women are treated equally but also allows fathers time to play an increased role at the birth or adoption of a child.

## **8. RECOMMENDATIONS**

The Committee recommended that further consultations be held with the Portfolio Committee on Labour and Department of Labour on the petition given that they were better placed to assist the Committee in bringing the petition to the attention of Nedlac (a forum on which all the affected stakeholders such as Government, organised labour, organised business and community based organisations sit on).

The Committee further recommended that in the interim the Department of Labour should look into the possibility of conducting an economic impact assessment in relation to the introduction of paternity leave or increased family responsibility.

*Report to be tabled for consideration.*

