



Parental Leave Training Manual

A Comprehensive Guide to South Africa's New Parental Leave Framework

EFFECTIVE: 3 OCTOBER 2025

UPDATED: JANUARY 2026

JOHN BOTHA

**Joint-CEO of GBS and
CEO of Circle and Square**



John Botha is the Joint-CEO of GBS and the CEO of Circle and Square, recognised for his expertise in workforce strategy, labour law, and employment sector leadership. He has featured widely in the media and at major industry forums, contributing to policy and skills development in South Africa.

Qualifications

- B. Comm: Honours (First Class)
- Postgraduate Diploma in Labour Law
- Design Thinking (Sloane University-MIT)
- Certificate in Business Excellence (Columbia University, NY)
- Certified Moderator and Assessor

Memberships

- Director, CAPES
- SASLAW member

Key Roles and Representation

- Previously:
- Group Executive Director of JSE-listed Adcorp Group
- COO, Confederation of Associations in the Private Employment Sector (CAPES)
- Commissioner, Employment Equity and Essential Services Commissions
- BUSA representative at NEDLAC
- Represented business at the International Labour Organisation (ILO) in Geneva

Publications

- Frequent contributor on workforce and labour law strategy, appearing on TV, radio, and in news and social media

Accolades

- 2024 Client Service Excellence Award (Express)
- 2016 Adcorp Holdings JSE-listed business award
- 2013 NEDLAC & Workforce Industry Chairman's Award

Speaking and Lecturing

- Wits Business School, DaVinci Business School, SASLAW
- Numerous workforce conferences and business strategy events, locally and internationally

The Old System: Pre-3 October 2025

South African statutory provisions for maternity, parental, adoption and commissioning parental leave under the Basic Conditions of Employment Act before amendments.



Maternity Leave (Section 25)

Duration & Timing:

- At least 4 consecutive months
- May commence from 4 weeks before expected birth
- No work for 6 weeks after birth (unless certified fit)
- 6 weeks leave for miscarriage/stillbirth (3rd trimester)

Notice: 4 weeks before commencement



Parental Leave (Section 25A)

Duration & Timing:

- At least 10 consecutive days
- Commences on day child is born or adoption order granted
- Available to any parent of a child
- Includes placement with prospective adoptive parent

Notice: 1 month before expected birth/adoption date



Adoption Leave (Section 25B)

Duration & Eligibility:

- At least 10 weeks consecutively OR 10 days parental leave
- For adoptive parent of child below age 2
- If 2 adoptive parents: one takes adoption leave, other takes parental leave (choice at their option)

Notice: 1 month before adoption order/placement date



Commissioning Parental Leave (25C)

Duration & Eligibility:

- At least 10 weeks consecutively OR 10 days parental leave
- For commissioning parent in surrogate motherhood
- If 2 commissioning parents: one takes commissioning leave, other takes parental leave (choice at their option)

Notice: 1 month before expected birth

The Van Wyks' Story



A Modern Family Denied Choice

Werner and Ika van Wyk represented countless South African families trapped by discriminatory law. Mrs. van Wyk managed two businesses and needed to continue working. Mr. van Wyk was willing and able to be the primary caregiver. Yet the law forced them into a rigid mold: only mothers could take extended leave.

Their constitutional challenge would change everything. The old system violated Section 9 (Equality) and Section 10 (Dignity) of the Constitution by denying families the freedom to make their own caregiving decisions.



CHAPTER 2

The Constitutional Court Judgment

01

Case Filed

Van Wyk and Others v Minister of Employment and Labour challenged discriminatory parental leave provisions

03

Immediate Effect

Interim relief applies immediately while Parliament has 36 months to amend legislation

02

Court Ruling

3 October 2025: Constitutional Court declares old framework unconstitutional and invalid

04

Universal Rights

All parents now entitled to equal parental leave regardless of gender or parenting method

What the Court Found

Gender Discrimination is Unjustifiable

The old law assumed mothers are primary caregivers, violating family autonomy and parental choice. This discrimination cannot be justified under the Constitution.

All Parents Must Have Equal Rights

Birth parents, adoptive parents, and commissioning parents are equally deserving of parental leave. The law must treat them equally.

Financial Constraints Don't Justify Discrimination

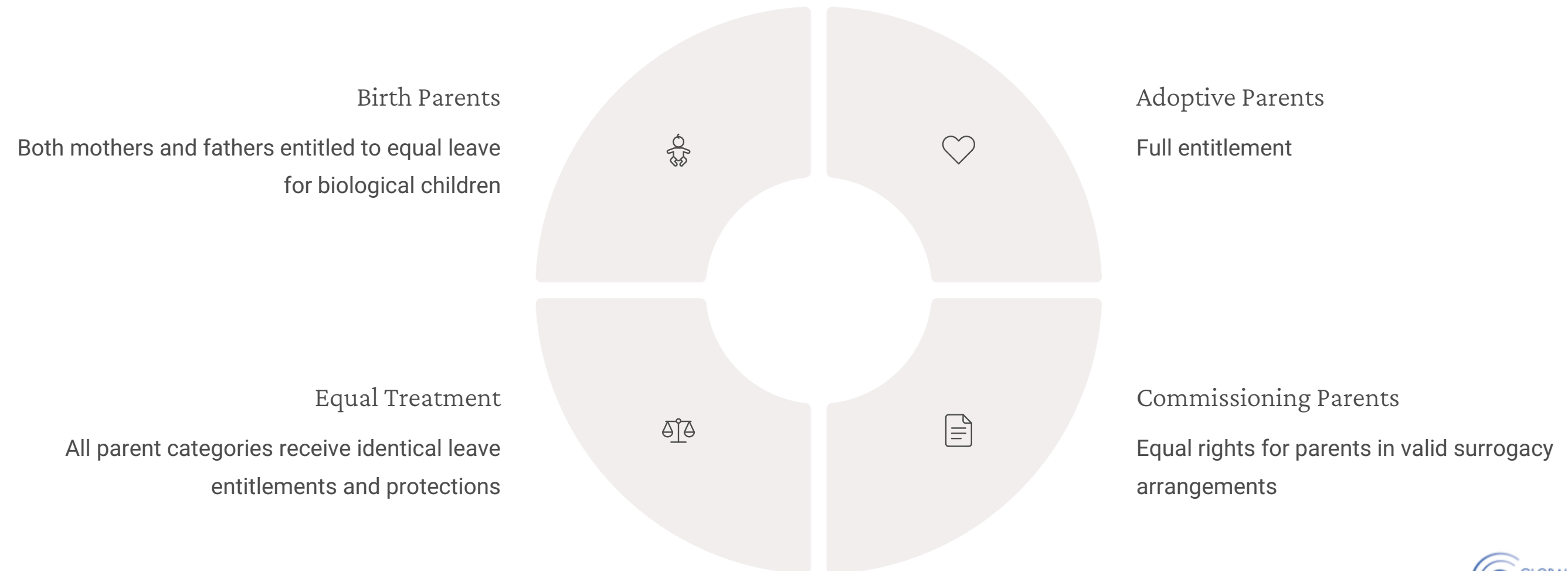
Budget impacts do not override constitutional rights to equality. The State can adjust benefit amounts or levy additional funds.

"Legislation that prevents partners from arranging their affairs according to their personal circumstances and preferences intrudes upon their private space unnecessarily and impacts their human dignity." — Constitutional Court

The New Legal Framework

Foundational Principle: Universal Entitlement

All employees who become parents are entitled to equal parental leave. This applies regardless of gender, whether the child was born to the parent, adopted, or born through surrogacy, and regardless of the age of an adopted child (however, for now still less than 2 years of age but this will likely change to 6 years as the ECD research points to this age).



Leave Entitlements Explained

4m 10d

Both Parents Employed

Total aggregate leave to be shared between both parents when both are employed (whether at same or different employers)

4m

Single Employed Parent

Full entitlement for single parents or when only one parent is employed

10w

Mandatory Period

Birthing mothers: 4 weeks pre-birth + 6 weeks post-birth (included in total allocation)

❏ **Critical Point:** The Constitutional Court's interim order is binding law NOW. Employers cannot wait for Parliament to amend legislation—compliance is required immediately.

Understanding Parental Rights

The Court's order references the Children's Act, which defines legal parents as those who have **assumed parental rights and responsibilities**. These include four key components:



Care Responsibility

Duty to provide suitable living environment, ensure health, wellbeing, and development



Contact Rights

Right to maintain meaningful relationships through visiting and personal interaction



Guardianship Authority

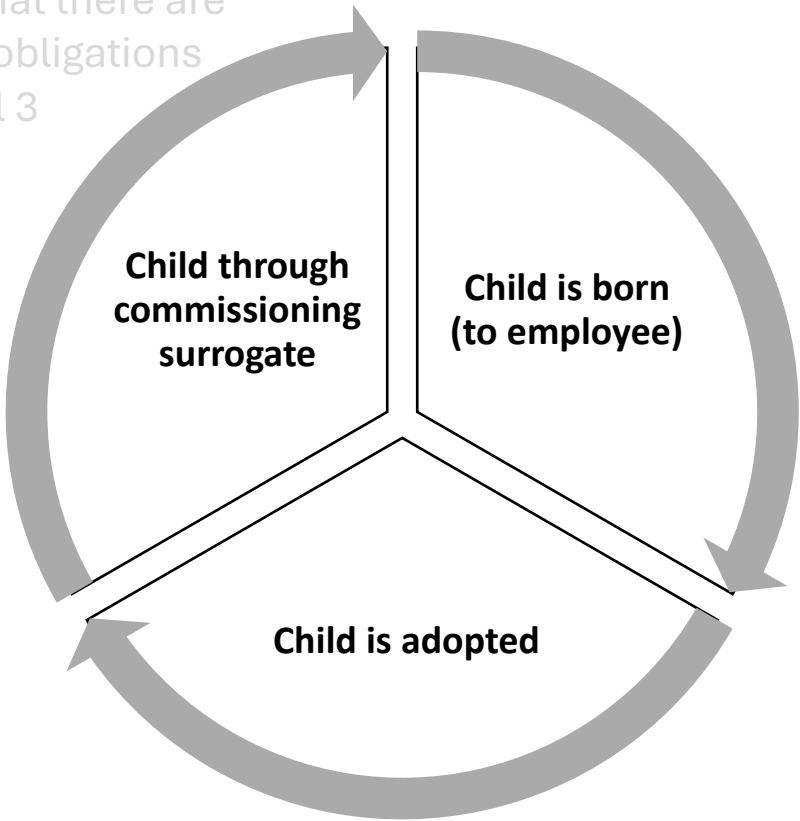
Represent legal interests and consent to major decisions (medical, education, travel)



Maintenance Obligation

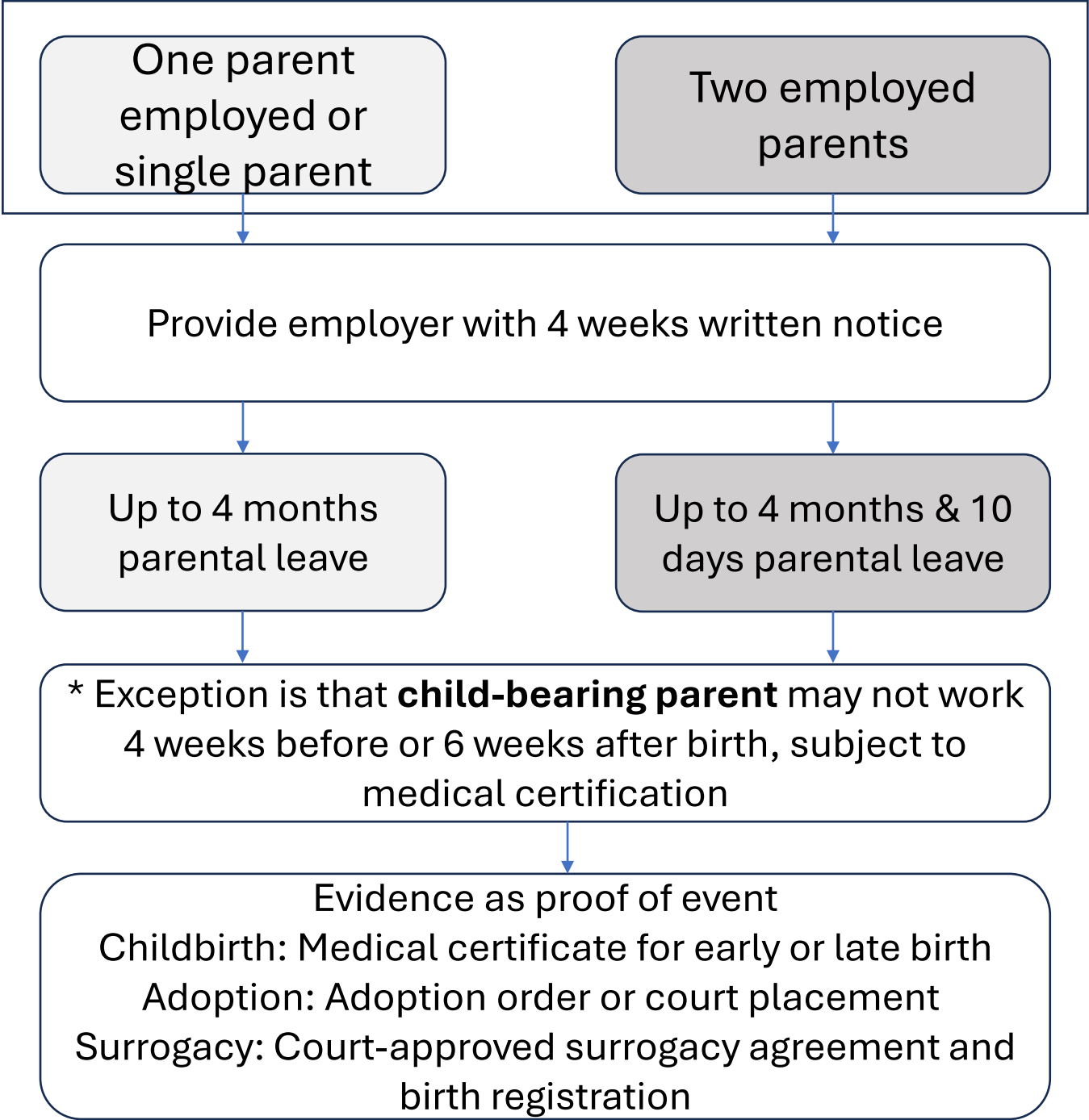
Duty to provide financial support for housing, food, clothing, healthcare, education

Outcome – in brief!



Must be **deemed a party to the parental relationship**

under the Children's Act



Leave-Sharing Mechanisms

When both parents are employed, they share the total entitlement and must agree on how to divide it. Parents have flexibility in how they structure their leave.

1

Consecutive

One parent takes leave first, then the other follows. Example: Parent A takes 2m 5d, then Parent B takes 2m 5d.

2

Concurrent

Both parents take leave at the same time. Example: Both take the first month together, then Parent A continues alone.

3

Mixed

Combination of concurrent and consecutive. Example: First month together, then Parent A takes 1m 5d alone.



Default Rule: If parents cannot agree on division, leave splits 50/50 automatically (approximately 2 months 5 days each).



Key Requirements for Leave-Sharing

1 Written Agreement Required

Parents must agree in writing on how to share the leave. If no agreement can be reached, the default 50/50 split applies.

3 Advance Notification

Written notification of the arrangement must go to BOTH employers at least 4 weeks before commencement.

2 Continuous Sequence

Each parent must take their portion in ONE continuous sequence—no fragmentation allowed.

4 Inter-Employer Communication

If parents work for different employers, communication between employers may be required (with POPIA consent).

CHAPTER 5

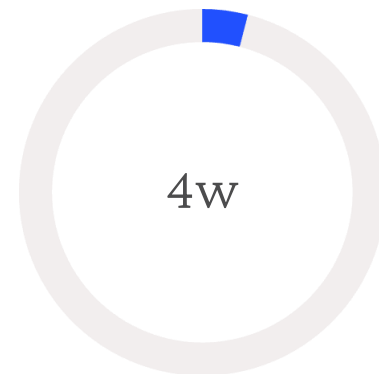
Special Provisions: Birthing Mothers

Pre-Birth Period

- May commence leave 4 weeks before expected birth date
- Any other date by mutual agreement with employer
- Earlier commencement possible if medical practitioner certifies health necessity

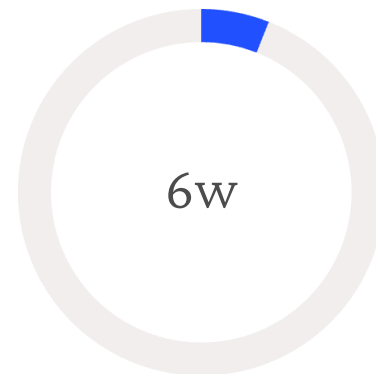
Post-Birth Period

- Mandatory 6-week rest period after birth
- Cannot work unless medical practitioner certifies fitness
- This 6-week period counts toward total entitlement



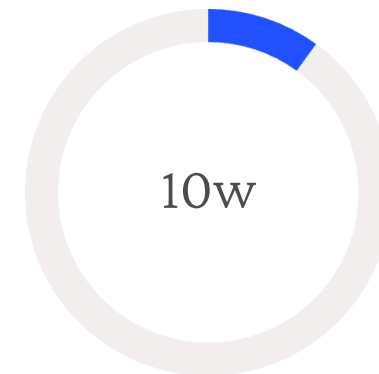
Pre-Birth

Weeks before due date when leave may commence



Post-Birth

Mandatory rest period after delivery



Protected Period

Total mandatory period included in allocation





Special Provisions: Adoption



Commencement Date

Leave may commence on the EARLIER of: (1) date adoption order is granted by Children's Court, OR (2) date child is placed with prospective adoptive parent.



Age of Child

Age cap will be changed but remains 2 years for now. Will likely move to 6 years based on ECD research.



Notice Requirement

At least 1 month before expected placement date. Exception: If not reasonably practicable, notify as soon as reasonably possible.



Supporting Evidence

Court adoption order OR court placement order as prospective adoptive parent required for approval.

Special Provisions: Commissioning Surrogacy

Who Qualifies

Commissioning parent(s) in a valid surrogacy agreement as defined in Children's Act sections 292-294. The surrogacy agreement must have been confirmed by the High Court.

Commencement Date

Leave may commence on the date the child is born as a result of the surrogacy agreement.

Two Commissioning Parents

Entitled in aggregate to 4 months and 10 days. Same sharing rules apply (consecutive, concurrent, or mixed). Must provide written leave-sharing arrangement to both employers.

Required Evidence

- Valid surrogacy agreement confirmed by High Court
- High Court order confirming arrangement
- Birth certificate showing commissioning parent(s) as legal parent(s)



Notification and Evidence Requirements



Birth Parents

Notice: 4 weeks minimum before commencement

Evidence: Medical certificate confirming pregnancy + due date; birth certificate after birth; antenatal records



Adoptive Parents

Notice: 1 month minimum before expected placement

Evidence: Final adoption order from Children's Court OR court placement order showing prospective adoptive parent



Commissioning Parents

Notice: 1 month minimum before expected birth

Evidence: High Court order confirming surrogacy agreement; birth certificate showing commissioning parent(s)

❏ **Exception:** If advance notice is not reasonably practicable, notify as soon as reasonably possible. Employers cannot refuse leave based on late notice if circumstances prevented earlier notification.

Remuneration and Payment Options

What the Law Requires

The Basic Conditions of Employment Act requires unpaid leave plus UIF benefits. Employers are not statutorily required to pay for parental leave. However, UIF provides benefits to eligible employees, with amounts and duration determined by the Minister.

Critical Rule: Non-Discrimination in Payment

If your organization offers PAID maternity leave, you MUST extend the same principle payment to all parents (fathers, adoptive, commissioning)
OR remove the benefit for everyone legally (not unilaterally) or look at other options.

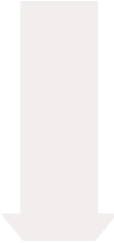
Payment Compliance Scenarios (same employer)

Current Practice	Option	Compliance Status
Pay birthing mothers 6m at full salary	Extend to all parents at full salary	✓ Compliant
Pay birthing mothers 6m at full salary	Pay fathers/adoptive 3m at 50%	✗ Not compliant
Pay birthing mothers 6m at full salary	Pay others statutory unpaid only	✗ Not compliant
Gradual return-to-work for mothers only	Extend gradual return to all parents	✓ Compliant
No paid leave for anyone (unpaid + UIF)	Continue status quo	✓ Compliant (minimum)



CHAPTER 8

Employer Compliance Roadmap



Phase 1: Immediate Actions

Urgent policy audit, employee communication, initial training for HR team, payroll team, and line managers



Phase 2: Policy Development

Parental leave policy revision, standard forms and templates update, enhanced benefits decision



Phase 3: Systems and Processes

HR systems updates, communications templates, manager support tools deployment



Phase 4: Ongoing Compliance

Legal monitoring, record-keeping, compliance audits, employee engagement

Real-World Scenario: Dual-Income Couple

The Situation

- Both parents employed (different employers)
- Mother pregnant; due date 1 May 2026
- Mother wants: 4w pre-birth + 6w post-birth + 3m shared
- Father wants: 1m concurrent + 2m after mother returns

The Problem

Proposed arrangement totals 4.5 months—exceeds the 4m 10d entitlement by 0.5 months (approximately 2.5 weeks).

The Solution

Compliant Arrangement:

- Mother: 3m 10d total (4w pre + 6w post + 1.5m)
- Father: 1m total
- Aggregate: 4m 10d ✓

Action Required

- Both employers notified 4 weeks before mother's commencement
- Written leave-sharing agreement documented
- Birth certificate submitted after delivery
- Payment terms apply equally to both parents

Frequently Asked Questions

- When do the new rules apply?

The Constitutional Court's interim regime applies with immediate effect from 3 October 2025. Employers must update policies now.

- How much parental leave am I entitled to?

If both parents employed: 4 months 10 days total (shared). If only one parent employed: 4 months. For birthing mothers: 10 weeks mandatory, remainder can be shared.

- Can I take leave concurrently with my co-parent?

Yes. You can arrange concurrent (same time), consecutive (one after another), or mixed arrangements—with 4 weeks' notice to both employers.

- I'm adopting a child aged 8. Am I entitled to leave?

Not yet. We are waiting for BCEA update but likely to move to 5 or 6 years.

- Must my employer pay me during parental leave?

The law doesn't require paid leave. However, if your employer pays mothers, they must extend the same payment to all parents. You may also be eligible for UIF benefits. There are some options we will consider in the next slides.

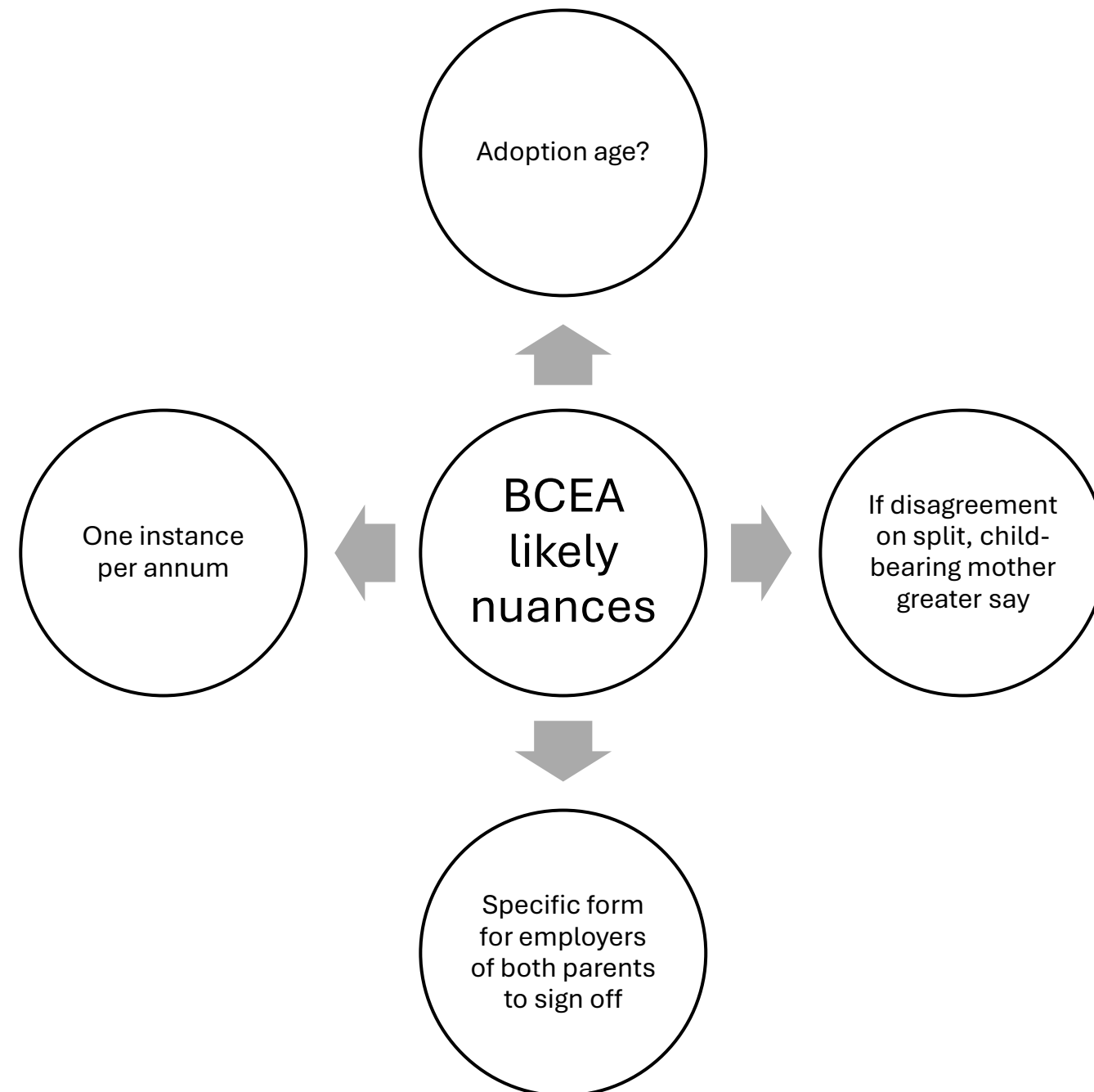
- What if my employer refuses to grant me parental leave?

This constitutes unfair discrimination. You can file a complaint with the CCMA for unfair labour practice or lodge a discrimination claim under the Employment Equity Act. Could lose EE Certificate.

Potential Employer Responses – Where Maternity (or adoption or commissioning surrogacy) Payment is Already a Benefit



Some considerations... and what may change in the BCEA final amendments



Impact on TES

LRA s198A	Below the threshold, more than 3 months, equal treatment	Scenario 1: Below the earnings threshold	Equal treatment after 3 months which means that whatever the client protocol is, the TES must do likewise / ensure equal value
LRA s186 ULP	Promotion, demotion, training, benefits	Scenario 2: Above the earnings threshold	No major liability as the TES assignee remains the employee of the TES, but the draft the policy carefully so that the RES assignees can't compare themselves to TES employees
EEA Ch 3, read with s57	Act on the instruction of a client?		

📄 **Contact Global Business Solutions for specialized advice:** John Botha (082 457 0000) john@globalbusiness.co.za
www.globalbusiness.co.za

AI COMPASS CAPACITATION PROGRAMME 2026

Where Human Insight Meets AI Power

February – November 2026



www.globalbusiness.co.za



info@globalbusiness.co.za





PIONEERING AI CAPACITATION FOR HR & LABOUR LAW PROFESSIONALS

The AI Compass Capacitation Programme is a groundbreaking **10-month journey** specifically designed for South African HR, Employment Relations, and Labour Law practitioners. This comprehensive curriculum uniquely blends human-centric skills, digital intelligence, and the legal ecosystem, empowering professionals to harness AI responsibly and effectively.

Delivered by Global Business Solutions, a recognised thought leader in innovative digital workplace solutions and AI-powered employment law advisory, this programme represents the future of professional development in the AI era.

Chart Your Course with AI Compass

Future-Proof Your Skillset

Stay ahead in the AI-enabled workplace with Africa's most advanced capacitation programme



Human-Centricity & EQ

Building emotional intelligence and ethical awareness in AI-enhanced environments

Drive Real Business Impact

Apply learning immediately with practical, compliance-focused tools and frameworks



Digital Intelligence

Blockchain for secure transactions.

Learn from Award Winners

Benefit from GBS's recognised expertise and innovative approach to digital transformation



Employment Law Integration

Focus on privacy-enhancing technologies.

YOUR 10-MONTH LEARNING JOURNEY



Foundation Phase: February–May 2026

- **6 February:** Everything AI in SA
Foundations, types, local trends, legal context (POPIA, Cybercrimes, NAI Policy)
Application: AI policy awareness checklist for your organization, demonstration of latest AI applications
- **10 April:** End-User AI Tools
Copilot, Perplexity, Claude, GPT—features, limitations, ethical risks
Application: Customising workflows using end-user AI tools

- **6 March:** Prompt Engineering
Models, prompt types, business relevance, legal best practices
Application: Crafting legally sound HR/ER AI prompts and building a prompt library
- **8 May:** Microsoft Copilot Suite and Other Common Training
Deep-dive with live demos, privacy and compliance integration
Application: Building secure document workflows in Copilot

Building Expertise: June–August 2026

- **5 June:** Basic AI Workshop
Data literacy, algorithms, automation basics, privacy and bias risks
Application: Mapping a compliant HR process for automation
- **7 August:** Process Mapping & Automation
Mapping ER/HR flows, identifying automation candidates, assessing legal risks
Application: End-to-end mapping—manual to digital transformation, including Power Automate

- **3 July:** Intermediate AI Workshop
Advanced automation, feedback loops, risk controls, POPIA/ECTA/Privacy frameworks
Application: AI-driven workplace policy review process

Mastery & Integration Phase: September – November 2025

- **2 October:** AI & Workplace Law
Case studies, POPIA, ECTA, monitoring, digital evidence, cybercrime implications
Review: Policies for AI-driven workplace compliance

- **4 September:** Bot Building Fundamentals
Chatbot design, governance, legal, and compliance-by-design for HR/ER
Build: Onboarding or grievance bot prototype
- **6 November:** What's Next & Mystery Gift?
Trends, future roles, responsible leadership, creating an in-house AI culture
Present: Group project showcase and action planning

AWARD-WINNING EXCELLENCE IN DIGITAL TRANSFORMATION

Global Business Solutions brings decades of expertise guiding compliance, policy, and digital transformation at the intersection of law, HR, and digital intelligence. Our pioneering work has earned industry recognition, including the prestigious **Silver Award for Most Innovative Technology** from WesBank at the New Generation Awards 2025.

10

Months

Comprehensive
learning journey

40

Hours

Expert-led instruction
and application

100%

Practical

Hands-on skills transfer
for immediate impact

Programme Structure: Theory Meets Practice

3-Hour Monthly Immersive Workshop

Deep-dive theory sessions covering AI fundamentals, legal frameworks, and strategic implementation

- Expert-led instruction
- Case studies and real-world scenarios
- Interactive discussions and Q&A

PLUS 1-Hour Application Session per Month

Hands-on practical work translating theory into action

- Policy design and drafting
- Process mapping and automation
- Chatbot development
- Legal compliance auditing (HTML)
- Prompt library building

Included in the subscription to the AI Compass is –

- Access to the DE initiator BOT
- Access to the DE Chairperson BOT
- Deviate Tool
- Cannabis Tool
- EE HTML calculator
- Disability Tool
- Free AI Policy
- Monthly AI newsletter
- Various discounts

Fee:

Option 1: Pay upfront for 10 months: R32 500 excl. VAT

Option 2: Monthly subscription: R4 000 excl. VAT per month

Share Your Experience: Feedback

Thank you for dedicating your time to this training session.
We sincerely hope you found it enjoyable and beneficial.



Instructions:

1. Open the camera app on your mobile phone.
2. Hold your phone steadily over the QR Code.
3. A box with the link will pop up on your screen.
<https://registrations.globalbusiness.co.za/form-6790272/gbs-training-feedback-form>
4. Tap on this box and select your preferred browser.
5. Follow the prompts to complete the form.
6. Click 'Submit' to send your valuable feedback.

Your feedback is incredibly important to us. It helps us continuously improve your learning experience and tailor future sessions. We truly appreciate your input!



GLOBAL **BUSINESS** SOLUTIONS

FUTURE THINKING, NOW

Thank You For Your Support!



Contact Me :
082 457 0000

Visit Our Website :
WWW.GLOBALBUSINESS.CO.ZA

Reach out to me at :
JOHN@GLOBALBUSINESS.CO.ZA