

**ORGANISATION: THE BANKING ASSOCIATION SOUTH AFRICA**

**SUBMISSION DESCRIPTION: LABOUR LAW AMENDMENT BILL, 2025 (EMPLOYMENT LAWS BILL, 2025)**

#	REFERENCE IN /BILL/DOCUMENT	SECTION AMENDED	COMMENT (Why is it a problem?)	PROPOSED WORDING/CHANGE
1.	<b>Clause 3</b> Substitution of section 25, section 25A and section 25B and repeal of section 25C of act 75 of 1997 as amended by section 2 of Act 10 of 2018.	<b>Basic Conditions of Employment Act 75 of 1997 ("BCEA")</b> Inserting parental leave provisions in section 25, section 25A and section 25B	<p>Section 25(1)(b): BASA notes that the amendment retains the age restriction of six years for adoptive parents, whereas our understanding was that this age limitation was proposed to be removed. Parental leave to adoptive parents of children 6 years or less ignores the profound psychological adjustment and attachment phase required for an older child entering a new family home, which can be as intensive as that of a younger child. BASA therefore proposes the amendments as reflected in the next column.</p> <p>Section 25(2) BASA suggests that consideration should be given to a uniform parental leave entitlement of 4 months and 10 days or 4 months, for purposes of uniformity, equality and consistency. BASA therefore proposes the amendments as reflected in the next column.</p> <p>Section 25(4) BASA notes that there is inconsistency between the time period of 6 weeks in the BCEA and the time period in the proposed amendments to the UIF Act which mentions 17.32 weeks. BASA</p>	<p>BASA proposes amended wording/changes as follows:</p> <p>25. Right to parental leave</p> <p>(1) An employee is entitled to parental leave if the employee is -</p> <ul style="list-style-type: none"> <li>(a) the parent of a newborn child;</li> <li>(b) the adoptive parent of a child who is eighteen years of age or less;</li> <li>(c) a commissioning parent of a child born as a result of a surrogate motherhood agreement</li> </ul> <p>(2) An employee, is entitled to at least four months and ten days parental leave if the employee is -</p> <ul style="list-style-type: none"> <li>(a) a single parent; or</li> <li>(b) the only employed party in a parental relationship.</li> </ul> <p>(3) If both parties to a parental relationship are employed, they are collectively entitled in the aggregate to four months and ten days' parental</p>

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			<p>therefore proposes the amendments as reflected in the next column.</p> <p>Section 25(5) The restriction on accessing parental leave more than once in a twelve-month period applies to all employees except birth mothers. The practical effect of the proposed amendment is more likely to impact employees who do not give birth, including fathers and some parents in same-sex relationships. This may give rise to differentiated treatment based on pregnancy or family structure, which could raise concerns regarding substantive equality and fairness (indirect discrimination), even though the provision is not expressly limited to male employees. BASA therefore proposes that the proposed amendment be deleted, alternatively be rephrased as indicated in the next column.</p> <p>In respect of section 27(b) and section 28, the number 258 should be corrected to 25B.</p> <p>In respect of section 25B (2) mention is made of four months maternity leave instead of 4 months and 10 days. BASA therefore proposes that this be corrected to 4 months and 10 days.</p>	<p>leave to be taken in accordance with this section, section 25A and section 25B.</p> <p>Section 25(4) to align the time periods of the BCEA and UIF provisions.</p> <p>Correct the reference to “258” to be “25B”.</p> <p>Section 25(5) to be removed, alternatively, that all parents who are entitled to parental leave in terms of section 25(1) are not entitled to take parental leave more than once in any twelve-month period.</p> <p>BASA proposes that the time period for maternity leave in section 25B (2) be aligned to 4 months and 10 days.</p>
2.	<b>Clause 5</b>	<b>BCEA</b> Inserting	The expanded definition does not automatically grant all workers the standard protections like	BASA proposes amended wording as follows:

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	Section 50A provides a broadened definition of the term "employee" and "employer" specifically for those provisions falling under chapter 8.	new section 50A before section 51	<p>overtime or sick leave. The Bill primarily applies the definition to chapters 8 to 10 of the Act.</p> <p>For the employee contemplated by the new definition, the Minister must still issue a sectoral determination. Without a specific determination, a worker could be legally recognised as an "employee" for the purpose of filing a complaint at the CCMA yet still not have a statutory right to the actual benefits defined in the rest of the BCEA.</p> <p>In terms of the definition, there is a presumption of employment unless the employer can prove that the individual is an independent contractor. The burden of proof is weighted against the employer and could prove administratively burdensome for employers who use many specialised contractors. It is suggested that the burden of proof instead be shifted to the employee to prove that he/she is an employee.</p> <p>The proposed revised wording of section 50A(2) which places the burden of proof on the individual to prove that he/she is an employee, will lend more certainty to the proposed definition of employee as it will require the individual to demonstrate that he/she "is not conducting an independent trade, profession or business in which the person receiving the work or services is a client or customer."</p>	<p>Section 50A Definitions</p> <p>Section 50A (1) Notwithstanding the definition of employee -</p> <p>(a) <b>"employee"</b> also means any individual who performs work or provides services for another person and who is not an independent contractor.</p> <p>(b) <b>"employer"</b> includes any person or entity for whom an employee works.</p> <p>(2) For the purposes of sub-section (1), an individual is only considered an employee contemplated by sub-para (1a) if he/she can demonstrate that the following factors are satisfied:</p> <p>(a) the person is subject to the control and direction of the employer in connection with the performance of the work or provision of the services;</p> <p>(b) the person is part of the organisation of the employer; and</p> <p>(c) the person performs work for or provides services to customers or clients on behalf of the employer under terms set by the employer.</p>

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			<p>BASA requests clarity on the below as same are not clear from the definition of employer:</p> <ul style="list-style-type: none"> <li>a) what the test is for when the employer will be considered an employer or a client or customer; and</li> <li>b) how this section interacts with the earnings threshold i.e. whether the threshold applies to this category of employee or not.</li> </ul> <p>In addition, the phrase “in which” may mean that even if a person is independent in all other respects, the exclusion only applies if the person receiving the work or services is a client or customer of that specific trade, profession or business.</p>	
3.	<p><b>Clause 8</b> 65A Participation in inspections by trade union representative (1) A labour inspector conducting an inspection in terms of this Chapter must, upon arrival at the workplace, take immediate steps to ensure that they are accompanied during</p>	<p><b>BCEA</b> Amendment of section 65A</p>	<p>Requiring that a trade union representative be available during labour inspections raises a number of practical concerns given that no advance notice is often given of an inspection.</p> <p>Further, requiring that a trade union representative be available upon the arrival of a labour inspector, especially where no advance notice has been given of the inspection, may not allow sufficient time for the trade union representative to meaningfully participate in the consultations. Consideration should be given to</p>	<p>BASA proposes amended wording/changes to section 65A as follows:</p> <p>65A (1) - A labour inspector conducting an inspection in terms of this Chapter must, give prior written notice to the employer of an inspection to enable the employer to ensure that a trade union representative recognised by the employer is available to accompany a labour inspector during the inspection. Where a trade union representative is not</p>

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	<p>the inspection by at least one trade union representative.</p> <p>(2) A trade union representative identified in terms of this section is entitled to -</p> <p>(a) participate in all consultations with inspectors at the workplace; and</p> <p>(b) accompany inspectors on all inspections in the workplace.</p> <p>(3) The performance of functions in terms of this section by a trade union representative must be considered for all purposes to be the performance of a function of a trade union representative, as contemplated by section 14 of the Labour Relations Act.</p>		<p>providing prior notification to ensure that this proposed amendment is meaningful.</p> <p>Clarification is also required regarding the role and function of the trade union representative during the inspection.</p> <p>In addition, the provision should refer to a trade union representative from a recognised trade union rather than a trade union representative. BASA therefore proposes the amendments as reflected in the next column.</p> <p>Finally, the proposed amendment should clarify how inspections will proceed where a trade union representative is not available.</p>	<p>reasonably available, the inspection may proceed in their absence.</p> <p>65A (2) - A trade union representative identified in terms of this section is entitled to -</p> <p>(a) be present during the consultations between the labour inspector and the employer, and to make representations on behalf of employees; and</p> <p>(b) accompany the labour inspector during inspections of the workplace, subject to the direction and control of the labour inspector.</p>
4.	<b>Clause 9</b> Compliance order (issued by a labour inspector)	<b>BCEA</b> Addition to section 69	The proposed amendment requiring an employer to provide security in order to dispute a compliance order appears to proceed on the assumption that employers routinely challenge	BASA proposes that the amendment to section 69(5)(b) be deleted.

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	(b) If the employer refers a dispute to the CCMA as contemplated in paragraph (a), the employer must provide security to the satisfaction of the CCMA equivalent to the amount that the employer is required to pay in terms of the compliance order.		<p>compliance orders as a delaying tactic, thereby placing an administrative burden on the CCMA. It would be helpful to see empirical evidence supporting this assumption. Requiring security as a precondition to disputing a compliance order may be unduly onerous, could restrict access to dispute resolution, and may deter employers with <i>bona fide</i> grounds from exercising their right to challenge incorrect or unlawful compliance orders. BASA therefore proposes that the proposed amendment be deleted, alternatively rephrased as indicated in the next column.</p> <p>For legal certainty, BASA requests clarity in respect of:</p> <p>(a) to whom the security must be paid; (b) whether the security will operate similarly to a security bond in the Labour Court; and (c) what happens to the security if the employer refers the matter to the Labour Court.</p>	<p>If the above proposal is not accepted, BASA proposes that the wording of section 69(5)(b) be amended as follows:</p> <p>69(5)(b) - If the employer refers a dispute to the CCMA as contemplated in paragraph (a), the CCMA may, in its discretion, having regard to the merits of the employer's dispute, and without unreasonably limiting the employer's right to refer a dispute, require the employer provide security for any amount that may become payable in terms of the compliance order.</p> <p>BASA proposed an addition to section 69(5) by adding the below:</p> <p>(c) The CCMA must determine the form, amount and manner of such security, including to whom it is payable or held. Any security provided must remain in force if the dispute is referred to the Labour Court, subject to that Court's direction.</p>
5.	<b>Clause 18</b> Allows referral of any harassment-based unfair discrimination claim to CCMA arbitration.	<b>Employment Equity Act No. 55 of 1998 ("EEA")</b> section 10(6)	As findings in such matters may impact the issuing of a compliance certificate, these disputes should be carefully regulated. There may also be reluctance by certain parties to have the CCMA adjudicate all such disputes, without clear parameters and training in the sensitivities involved in such an arbitration, which is essentially a hearing <i>de novo</i> . BASA therefore suggests retaining the current arrangement i.e. the Labour Court has jurisdiction.	BASA does not support the proposed expansion to include all forms of harassment and submits that the current wording be retained.

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6.	<b>Clause 22</b> Repeals and replaces sections regulating parental benefits to align with BCEA amendments.	<b>Unemployment Insurance Act No. 63 of 2001 (“UIA”)</b> sections 24–29	<p>With respect to section 25(2), the time period of 17.32 weeks is inconsistent with the time period mentioned in the equivalent section 25(4) of the BCEA.</p> <p>In respect of section 26(b), cross reference to be corrected.</p> <p>In respect of section 27(1) - We note that the amendment retains the age restriction of six years for adoptive parents, whereas our understanding was that this age limitation was proposed to be removed.</p>	<p>BASA proposes amended wording/changes as follows:</p> <p>Section 25(2) to be aligned with legislative provisions contained in the BCEA.</p> <p>That section 26(b) be amended as follows: 26(b) - if the mother of the child is a contributor, 10 days and, in addition thereto, any portion of the mother’s entitlement to parental apportioned between the parents in terms of an agreement concluded in terms of section 26B of the Basic Conditions of Employment Act”.</p> <p>That section 27(1) be amended as follows: 27(1) - A contributor is entitled to parental leave benefits in respect of the adoption of a child.</p>