

EXECUTIVE SUMMARY

The past 3 years have seen several bills introduced in parliament in a bid to make changes to the Employment Act. So far, only the instant Act discussed herein has seen the light of day.

Why the Employment (Amendment) Act, 2021?

- to afford pre-adoptive leave to adopting employees

What is new?

- adopting employees entitled to 1 month's leave

When can the leave be taken?

- Once the child is placed into the employee's care

Should the employee give notice before taking leave?

- Notice of at least 14 days is required

Is there any documentation required to support leave?

- evidence of placement of the child, including a custody agreement and an exit certificate

Any other rights of the employee that an employer needs to be aware of regarding pre-adoptive leave?

- leave should not affect terms of employment upon return to work.
- If extended leave is granted, leave to expire on the last day of extended leave
- Leave not to be substituted with annual leave



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LEGAL UPDATE ON THE ENACTMENT OF THE EMPLOYMENT (AMENDMENT) ACT, 2021

The President assented to the Employment (Amendment) Bill, 2019 on 30 March 2021. The Employment (Amendment) Act, 2021 (the "Act") was set to take effect on 15 April 2021.

The main purpose of the Act is to amend the Employment Act, 2007 to afford pre-adoptive leave to parents who apply for the adoption of children who are not their natural children by birth.

The leave is meant to afford the adopting employee an opportunity to bond with and understand their new child.

The Act has introduced a Section 29A immediately after section 29 of the Employment Act (the Section relating to Maternity Leave). According to the new section, an employee who intends to adopt a child is entitled to **one (1) month's** pre-adoptive leave with full pay.

It is important to note that the leave is to be effective from the date that the child is placed in the care of the employee.

According to the Children Act, a child who is to be adopted must first be placed in the continuous care and control of the applicant (in this case, the adopting employee) for a period of three (3) consecutive months preceding the filing of the application for adoption. It is during this period that both the applicant and the child are evaluated and assessed by an adoption society.

An employee for the pre-adoptive leave must notify the employer in writing of the intention of the adoption society to place the child in the custody of the employee, at least **fourteen (14) days** before the placement of the child.

This notice is to be accompanied by documentation evidencing the intention of the adoption society to place the child in the custody of the employee. The documentation includes a custody agreement and an exit certificate (that is, a written authority from the adoption society to a prospective adoptive parent to take the child from the custody of the adoptive society).

It should also be noted that:

- An employee who takes pre-adoptive leave is entitled to return to the same job or position they held immediately prior to taking leave, or on terms and conditions not less favorable than those applied before taking leave.
- In the event that the pre-adoptive leave has been extended with the consent of the employer or where the employee proceeds on annual leave, sick leave, compassionate leave, or any other leave (with the consent of the employer) immediately on expiry of the pre-adoptive leave, then the pre-adoptive leave shall be deemed to expire on the last day of such extended leave.
- An employee shall not forfeit their annual leave entitlement on account of having taken pre-adoptive leave.