



PAID LEAVE FOR FAMILY HEALTH NEEDS: FEASIBLE OPTIONS FOR ESWATINI

PAID LEAVE FOR FAMILY HEALTH NEEDS

ESWATINI IN CONTEXT

- Eswatini **does not have legislation** in place that guarantees workers paid leave to meet their children's or adult family members' health needs.
- **Globally**, as of 2019, **99** countries had paid leave policies in place to enable workers to balance work and caregiving responsibilities. These include policies for children's or adult family members' health needs (75 countries), as well as paid leave that can be used for emergencies or family needs (24 countries).
- Provisions that enable workers to balance care and health needs are found in **all regions**, including **25 African countries**.
- **8 of the SADC countries** have these provisions in place.

KEY ELEMENTS OF LAW WITH REGIONAL COMPARATORS

For each area below, additional examples of strong legislative text approaches from SADAC and other African nations are included at the end of the document.

COVERING ALL FAMILY MEMBERS

- Among countries that have paid leave for family members' health needs, the vast majority cover a range of family members who may need care, including **minor children (75 countries)**, **spouses (50 countries)**, **adult children (47 countries)**, **elderly parents (48 countries)**, **grandparents (33 countries)**, and **siblings (39 countries)**.
- While paid leave provisions that cover **partners (18 countries)** and **parent-in-laws (18 countries)** are less common, coverage for these relationships is still feasible and critical to supporting workers in their dual roles as workers and caregivers regardless of family situation.
- Countries take a range of legislative approaches to family member coverage. For example, **Namibia takes an approach and recognizes a variety of family types** by guaranteeing that "An employee is entitled to compassionate leave if there is a death or serious illness in the family" and defines family as "For the purposes of this section "family" means a –
 - (a) child, including a child adopted in terms of any law, custom or tradition;
 - (b) spouse;
 - (c) parent, grandparent, brother or sister, of the employee; or
 - (d) father-in-law or mother-in-law of the employee."



HEALTH NEEDS FOR TAKING LEAVE

- Workers' caregiving responsibilities can arise from a range of different needs. For children, parental presence is often needed for preventive care, such as vaccinations, and infectious diseases that require children to stay home from school or childcare. Individuals of all ages may need a family member's help due to urgent health events or to provide long-term care for a variety of reasons from chronic conditions to end-of-life care.
- Among countries that guarantee paid leave for family members' health needs, **50 countries made at least some paid leave available generally for health needs and an additional 20 countries made it available for serious health needs.** Only 5 countries narrowly limited the circumstances to end of life care, for specific illnesses, or in case of hospitalization.
- For example, **Namibia** guarantees leave for serious health needs: "An employee is entitled to compassionate leave if there is a death or serious illness in the family."
- **Angola** provides leave more generally for health needs: "A falta ao trabalho pela ecessidade de prestar assistência inadiável aos membros do agregado familiar, tratando-se de doença ou acidente do cônjuge, pais e filhos até aos dezoito (18) anos de idade, é remunerada com limite máximo de oito (8) dias úteis por ano. (*The lack of work due to the need to provide urgent assistance to household members, in the case of illness or accident of the spouse, parents and children up to eighteen (18) years of age, is remunerated with the maximum limit of eight (8) working days per year.*)

DURATION OF HEALTH NEEDS LEAVE

- The **duration of paid leave needed by a worker for family member health needs will vary greatly** depending on the medical needs of the family member, as well as how many working family members are eligible to take leave for caregiving.
- **47 countries** guarantee at least 2 weeks of paid leave or make leave available as needed that could be used for a young child's everyday health needs. These include **13 African countries** and **3 SADC countries.**
- For example, **Madagascar** guarantees 2 months of paid leave to allow parents to meet children's general or serious health needs — "dans la limite de deux (02) mois, en cas de maladie ou d'hospitalisation d'un enfant au sens du Code de Prévoyance Sociale sous réserve de présentation d'un certificat médical justifiant la présence obligatoire de la mère ou éventuellement du père" (*within the limit of two (02) months, in the event of illness or hospitalization of a child within the meaning of the Social Security Code, subject to presentation of a medical certificate justifying the compulsory presence of the mother or possibly the father*)
- **32 countries** guarantee at least 6 weeks of paid leave that could be used for a young child's serious health needs, including two countries in Africa: Madagascar and Mozambique.



PAYMENT LEVELS FOR HEALTH NEEDS LEAVE

- Payment levels need to be high enough to ensure all workers can afford to take paid leave. This is also critical for gender equality in leave taking.
- Among countries guaranteeing paid leave that can be used to meet children’s serious health needs, **84 countries guaranteed at least 80% of wages** for at least some of the leave¹, including **23 African countries and 7 SADC countries**.
- For example, in the United Republic of Tanzania, paid leave is defined as “any leave paid under this Part and calculated on an employee's basic wage” and employees “During any leave cycle, [see definition below] an employee shall be entitled to-
 - (b) at least 4 days paid leave for any of the following reasons-
 - (i) the sickness or death of the employee's child;”

FURTHER LEGISLATIVE TEXT EXAMPLES OF KEY POLICY DETAILS FROM AFRICAN COUNTRIES

FAMILY HEALTH LEAVE

COVERING ALL FAMILY MEMBERS

Angola as an example of an approach to recognizing a variety of eligible family types

Lei Geral do Trabalho, 2015

ARTIGO 145.º

(Faltas justificadas)

1. São motivos justificativos de faltas ao trabalho:

(...)

g) A impossibilidade de prestar trabalho, devido a facto que seja imputável ao trabalhador, nomeadamente, acidente, doença ou necessidade de prestação de assistência inadiável a membros do seu agregado familiar, em caso de doença ou acidente, dentro dos limites fixados no artigo 149.º;

ARTIGO 149.º

(Faltas por acidente, doença ou assistência)

(...)

5. A falta ao trabalho pela necessidade de prestar assistência inadiável aos membros do agregado familiar, tratando-se de doença ou acidente do cônjuge, pais e filhos até aos dezoito (18) anos de idade, é remunerada com o limite máximo de oito (8) dias úteis por ano.

ARTICLE 145

(Justified absences)

1. *Justification reasons for absences from work are:*

(...)

g) The impossibility of providing work, due to the fact that it is attributable to the worker, namely, accident, illness or need to provide urgent assistance to members of his household, in case of illness or accident, within the limits set out in article 149;

¹ In cases where wage replacement rates vary during leave for family health needs, these findings focus on the minimum rate—or the lowest level of wage replacement available over the course of the leave.



ARTICLE 149

(Absences due to accident, illness or assistance)

(...)

5. The absence from work due to the need to provide urgent assistance to the members of the household, in the case of illness or accident of the spouse, parents and children up to the age of eighteen (18), is remunerated with the maximum limit of eight (8) business days per year.

Liberia as an example of an approach to recognizing a variety of eligible family types

Decent Work Act of 2015

§ 19.1 Definition of immediate family

For the purposes of this Part, the 'immediate family' of an employee includes the employee's:

- a) Children, including any adopted children;
- b) Married spouse;
- c) Partner to whom the employee is not married but with whom the employee lives in a relationship like marriage;
- d) Parents, including adoptive parents;
- e) Grandparents; and
- f) Siblings, including adopted siblings.

§ 19.4 Entitlement to leave to care for others

a) Every employee is entitled to five days' paid leave during each year of service with their employer, to provide care or support to a member of the employee's immediate family who requires care or support because of: (...)

Namibia as an example of an approach to recognizing a variety of eligible family types

Labor Act (2007), current through 2012

Compassionate leave

25. (1) An employee is, during each period of 12 months of continuous employment, entitled to five working days' compassionate leave with fully paid remuneration.

(2) An employee is entitled to compassionate leave if there is a death or serious illness in the family.

(...)

(5) For the purposes of this section "family" means a -

- (a) child, including a child adopted in terms of any law, custom or tradition;
- (b) spouse;
- (c) parent, grandparent, brother or sister, of the employee; or
- (d) father-in-law or mother-in-law of the employee.

HEALTH NEEDS FOR TAKING LEAVE

Liberia as an example of leave generally available for family health needs

Decent Work Act of 2015

§ 19.4 Entitlement to leave to care for others

a) Every employee is entitled to five days' paid leave during each year of service with their employer, to provide care or support to a member of the employee's immediate family who requires care or support because of: (...)

i) a personal illness, or personal injury, affecting the member of the employee's immediate family;
or

ii) an unexpected emergency affecting the member of the employee's immediate family.



South Africa as an example of leave generally available for children's health needs

Basic Conditions of Employment Act 1997, amended to 2013

(2) An employer must grant an employee, during each annual leave cycle. At the request of the employee. Three days' paid leave. Which the employee is entitled to take—

(...)

(b) when the employee's child is sick; or

Seychelles as an example of leave generally available for children's and dependent's health needs

Employment Regulations (Conditions of Employment) 1991 (amended to 2006)

12. (1) Subject to this regulation, a worker, other than a casual or part-time worker, is entitled to sick leave in any period of 12 months as follows – (...)

(2) Entitlement to sick leave under sub-regulation (1) arises where –

(a) a medical certificate of unfitness for work or confinement, as the case may be, is produced;

(b) in the case of sub-regulation 1 (a) or (c), **a worker's child under 12 years of age is medically certified sick** and a medical practitioner or official authorised by the Minister of Health recommends that the worker attends the child;

(c) in the case of sub-regulation 1 (a) or ©, **a worker's dependent other than a child under 12 years of age is medically certified sick and a social worker certifies that the sick person requires the attendance of the worker.**

DURATION OF LEAVE

Madagascar as an example of 2 months of available paid leave for children's health needs

Law No. 2003- 044 relating to the Labor Code

Article 13.- Aucun employeur ne peut résilier le contrat de travail lorsqu'il se trouve suspendu.

Le contrat est suspendu :

(...)

Pendant la durée d'absence de la mère ou éventuellement du père, **dans la limite de deux (02) mois**, en cas de maladie ou d'hospitalisation d'un enfant au sens du Code de Prévoyance Sociale sous réserve de présentation d'un certificat médical justifiant la présence obligatoire de la mère ou éventuellement du père. Passé ce délai de deux mois, l'employeur peut rompre le contrat de travail, mais doit régler tous les droits du travailleur, don't notamment le préavis.

Article 13.- No employer may terminate the employment contract when he is suspended.

The contract is suspended:

(...)

During the period of absence of the mother or possibly the father, within the limit of two (02) months, in the event of illness or hospitalization of a child within the meaning of the Social Security Code, subject to presentation of a medical certificate justifying the compulsory presence of the mother or possibly the father. After this two-month period, the employer can terminate the employment contract, but must pay all the rights of the worker, including notice.

Seychelles as an example of 30 days of paid leave available for children's health needs, followed by a period of unpaid leave

Conditions of Employment Regulations 1991, as amended to 2006.

Art. 12



Subject to this regulation, a worker, other than a casual or part-time worker, is entitled to sick leave in any period of 12 months as follows –

(a) an aggregate maximum of 30 days' paid sick leave;

(b) when a worker is required by a medical practitioner to be confined to a hospital or similar institution if –

(i) the worker has not exhausted his 30 days' paid sick leave referred to in paragraph (a), and

(ii) the worker is confined at the hospital or similar institution or at home for a continuous period which extends beyond the unexhausted part the 30 days' paid sick leave the worker shall be entitled to a further maximum 30 days' paid sick leave during that continuous period;

(c) an aggregate maximum of 60 days' unpaid sick leave after the exhaustion of paid sick leave under this regulation.

(2) Entitlement to sick leave under sub-regulation (1) arises where –

(a) a medical certificate of unfitness for work or confinement, as the case may be, is produced;

(b) in the case of sub-regulation 1 (a) or (c), a worker's child under 12 years of age is medically certified sick and a medical practitioner or official authorized by the Minister of Health recommends that the worker attends the child;

© in the case of sub-regulation 1 (a) or (c), a worker's dependent other than a child under 12 years of age is medically certified sick and a social worker certifies that the sick person requires the attendance of the worker.

PAYMENT LEVELS

Angloa as an example paid leave for family health needs generally, paid at 100% wage replacement

Lei Geral do Trabalho, 2015

ARTIGO 145.º

(Faltas justificadas)

1. São motivos justificativos de faltas ao trabalho:

(...)

g) A impossibilidade de prestar trabalho, devido a facto que seja imputável ao trabalhador, nomeadamente, acidente, doença ou necessidade de prestação de assistência inadiável a membros do seu agregado familiar, em caso de doença ou acidente, dentro dos limites fixados no artigo 149.º;

(...)

2. São remuneradas dentro dos limites estabelecidos no número anterior e nos artigos seguintes as faltas justificadas pelos motivos constantes das alíneas a) ai) do n.º 1 deste artigo.

ARTIGO 149.º

(Faltas por acidente, doença ou assistência)

5. A falta ao trabalho pela necessidade de prestar assistência inadiável aos membros do agregado familiar, tratando-se de doença ou acidente do cônjuge, pais e filhos até aos dezoito (18) anos de idade, é remunerada com o limite máximo de oito (8) dias úteis por ano.

ARTICLE 145

(Justified absences)

1. Justification reasons for absences from work are:

(...)

g) The impossibility of providing work, due to the fact that it is attributable to the worker, namely, accident, illness or need to provide urgent assistance to members of his household, in case of illness or accident, within the limits set out in article 149;

(...)

2. They are remunerated within the limits established in the previous paragraph and in the following articles the justified absences for the reasons set out in paragraphs a) to i) of paragraph 1 of this article.



ARTICLE 149

(Absences due to accident, illness or assistance)

5. The absence from work due to the need to provide urgent assistance to the members of the household, in the case of illness or accident of the spouse, parents and children up to the age of eighteen (18), is remunerated with the maximum limit of eight (8) business days per year.

United Republic of Tanzania as an example of leave available for children's health needs generally paid at 100% wage replacement rate

Employment and Labour Relations Act 2004

30 (1)-For the purpose of this sub-part

(c) "paid leave" means any leave paid under this Part and calculated on an employee's basic wage

34.-(1) During any leave cycle, [see definition below] an employee shall be entitled to-

(a) ...

(b) at least 4 days paid leave for any of the following reasons-

(i) the sickness or death of the employee's child;

(ii) the death of the employee's spouse, parent, grandparent, grandchild or sibling.

(2) Before paying an employee for leave under this section, an employer may require reasonable proof of the event prescribed in subsection (1).

(...)

(b) the 4 days referred to in subsection (1)(b) are the total number of days to which the employee is entitled irrespective of how many of the events prescribed in that paragraph occur within the leave cycle, but the employee may take more days as may be authorised by the employer for the event and other subsequent events within the same leave cycle provided that such extra days will be without pay.