

# PAID PARENTAL LEAVE: FEASIBLE OPTIONS FOR ESWATINI

## PAID PARENTAL LEAVE

### ESWATINI IN CONTEXT

- **Eswatini guarantees only 2 weeks of maternity leave to mothers of infants**, far fewer than the minimum 14 weeks outlined in the International Labour Organization’s (ILO) [Maternity Protection Convention](#) (2000).
  - As of 2019<sup>1</sup>, **185 countries globally guarantee some paid leave to mothers for infant caregiving**; 157 countries guarantee at least 12 weeks, 114 countries guarantee at least 14 weeks, and 52 countries guarantee 6 months or more. This includes policies reserved for mothers, and policies that guarantee leave that can be shared between mothers and fathers.
  - **44 African countries guarantee at least 12 weeks of maternal leave**, while 29 African countries guarantee at least 14 weeks.
  - **12 of the Southern African Development Community (SADC) countries** guarantee at least 12 weeks of maternal leave, while 8 SADC countries guarantee at least 14 weeks.
- **Eswatini does not have legislation guaranteeing fathers leave** to care for new infants
  - **107 countries globally** had paid leave policies in place to guarantee new fathers time off with infants. This includes policies reserved for fathers, and leave that can be shared between mothers and fathers.
  - Guarantees to paternal leave to care for new infants are found in all regions, **including 25 African countries**.
  - **7 of the SADC countries** have these provisions for fathers’ caregiving in place.

### KEY ELEMENTS OF LAW WITH COMPARATORS

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

#### DURATION OF PARENTAL LEAVE

- Currently, **Eswatini only guarantees 2 weeks of paid maternity leave. In Africa, 44 countries guarantee 12 weeks of maternal leave and 29 countries meet the 14-week standard** outlined in ILO’s Maternity Protection Convention (C183).

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<sup>1</sup> Findings presented in this brief reflect national laws in force as of March 2019, with the addition of South Africa’s paternal leave amendment—which was introduced in 2018 and came into force in January 2020.



- **3 SADAC countries guarantee 12 weeks** of paid leave to new mothers: Botswana, Namibia, and United Republic of Tanzania. Additionally, Angola guarantees 3 months of maternity leave (more than 12 weeks).
  - **6 SADAC countries guarantee 14 weeks** of paid leave for new mothers: Comoros, the Democratic Republic of the Congo, Madagascar, Mauritius, Seychelles, and Zimbabwe.
  - Among SADAC countries, **South Africa and Zambia guarantee more than 14 weeks**; in South Africa legislation states that “an employee is entitled to at least 4 consecutive months' maternity leave” while Zambian legislation asserts that “A female employee shall be granted 120 calendar days paid maternity leave”.
  - In **Gambia**, new mothers are entitled to 6 months of paid maternity leave – an important form of support for the World Health Organization’s recommended 6 months of exclusive breastfeeding to promote infant health.
- Ensuring both mothers and fathers have equal access to paid leave to care for infants is a critical way to advance gender equality at work and home. Globally, **107 countries** have parental leave policies in place while **42 countries guarantee at least 14 weeks of paid paternal leave for dads**.
    - **50 middle-income countries around the world guarantee fathers some paid leave, and 14 middle-income countries guarantee at least 14 weeks of paid leave**—clearly demonstrating the feasibility for middle-income countries.
    - In Africa, four countries provide two weeks of paid leave to new fathers including Kenya, South Sudan, Gambia and SADAC member country South Africa.

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## JOB PROTECTION FOR PARENTAL LEAVE

- Prohibitions of discriminatory dismissal during parental leave-taking are important protections for new mothers and fathers alike.
  - 150 countries globally and **45 countries in Africa** (including 15 SADAC member countries) guarantee job protection through all of maternal leave
  - 38 countries globally and **5 countries in Africa** (including SADAC member Angola) guarantee job protection through all of paternal leave
- For example, in **South Africa** workers have the “right not to be unfairly dismissed” and unfair dismissal is defined to include “an employer refused to allow an employee to resume work after she took maternity leave in terms of any law, collective agreement or her contract of employment”
- In **South Sudan**, labor legislation asserts “An employee shall, after paternity leave, have the right to return to the position that he held immediately before his paternity leave.”

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## PAYMENT LEVELS FOR PARENTAL LEAVE

- Well-designed parental leave policy ensures that leave is remunerated at levels high enough to ensure both working mothers and fathers can afford to take leave – including low-wage workers.

- Eswatini numbers among 113 countries globally and **44 countries in Africa that guarantee mothers a minimum wage replacement rate<sup>2</sup> of at least 80% for maternal leave.**
- Among the 107 countries that guarantee fathers some length of paternal leave globally, 66 countries guarantee minimum remuneration at 80% of fathers' wages or higher. **24 of the 25 African countries that guarantee paternal leave do so at 100% of the fathers' wages.**

## FURTHER LEGISLATIVE TEXT EXAMPLES OF KEY POLICY DETAILS FROM AFRICAN COUNTRIES

### PARENTAL LEAVE

#### DURATION OF PARENTAL LEAVE

**South Africa** as an example of a 4-month maternity leave entitlement and a 10-day paternal leave entitlement:

Basic Conditions of Employment Act of 1997, as amended through 2018

25. Maternity Leave

- (1) An employee is entitled to at least 4 consecutive months' maternity leave.
- (2) An employee may commence maternity leave—
  - (a) at any time from four weeks before the expected date of birth, unless otherwise agreed; or
  - (b) on a date from which a medical practitioner or a midwife certifies that it is necessary for the employee's health or that of her unborn child.
- (...)
- (7) The payment of maternity benefits will be determined by the Minister subject to the provisions of the Unemployment Insurance Act, [1966 (Act No. 30 of 1966)] 2001 (Act No 63. of 2001).<sup>7</sup>

25A. Parental leave

- (1) An employee, who is a parent of a child, is entitled to at least ten consecutive days parental leave.
- (2) An employee may commence parental leave on—
  - (a) the day that the employee's child is born; or
  - (b) the date—
    - (i) that the adoption order is granted; or
    - (ii) that a child is placed in the care of a prospective adoptive parent by a competent court, pending the finalization of an adoption order in respect of that child, whichever date occurs first.”
- (...)
- (5) The payment of parental benefits will be determined by the Minister, subject to the provisions of the Unemployment Insurance Act, 2001 (Act No 63. of 2001).

**Comoros** as an example of a 14-week entitlement to mothers

Loi du 28 juin 2012 abrogeant, modifiant et complétant certaines dispositions de la loi n° 84-108/PR portant Code du travail.

Article 125.- Toute femme enceinte don't l'état a été constaté médicalement ou don't la grossesse est apparente peut quitter le travail sans préavis et sans avoir de ce fait à payer une indemnité de rupture de contrat.

<sup>2</sup> In cases where wage replacement rates vary during parental leave, these findings focus on the minimum rate—or the lowest level of wage replacement available over the course of the leave.

A l'occasion de son accouchement et sans que cette interruption de service puisse être considérée comme une cause de rupture de contrat, toute femme a le droit de suspendre son travail pendant quatorze semaines consécutives dont huit postérieures à la délivrance ; cette suspension peut être prolongée de trois semaines en cas de maladie dûment constatée par un médecin et résultant de la grossesse ou des couches.

Elle a droit, pendant cette période, à la charge de l'employeur, jusqu'à la mise en place d'un régime de sécurité sociale, à la totalité du salaire qu'elle percevrait au moment de la suspension du travail.

*Article 125.- Any pregnant woman whose condition has been medically established or whose pregnancy is apparent may leave work without notice and without thereby having to pay compensation for breach of contract.*

*On the occasion of her childbirth and without this interruption of service being considered as a cause of breach of contract, any woman has the right to suspend her work for fourteen consecutive weeks including eight after delivery; this suspension may be extended for three weeks in the event of illness duly certified by a doctor and resulting from pregnancy or childbirth.*

*She is entitled, during this period, at the expense of the employer, until the establishment of a social security scheme, to the full salary she would receive at the time of the suspension from work.*

**Gambia** as an example of an entitlement to 6 months of paid leave for new mothers and 10 days for new fathers

Gambia Women's Act, 2010

Maternity Leave

20. (1) Every woman is entitled to a period of six months maternity leave with pay or with comparable social benefit without loss of employment, seniority or similar benefits.

(2) In order to reinforce the common responsibility of men and women in the upbringing and development of their children, every father is entitled to a reasonable period of time not exceeding ten working days as paternity leave with pay, for every child delivered for him.

**Kenya** as an example of a 3-month (12.9 week) entitlement to mothers paired with a 2-week entitlement to fathers

2007 Employment Act (revised through 2018)

29. (1) A female employee shall be entitled to three months maternity leave with full pay.

(...)

(4) A female employee shall only be entitled to the rights mentioned in subsections (1), (2) and (3) if she gives not less than seven days notice in advance or a shorter period as may be reasonable in the circumstances of her intention to proceed on maternity leave on a specific date and to return to work thereafter

(5) The notice referred to in subsection (4) shall be in writing.

(6) A female employee who seeks to exercise any of the rights mentioned in this section shall, if required by the employer, produce a certificate as to her medical condition from a qualified medical practitioner or midwife.

(7) No female employee shall forfeit her annual leave entitlement under section 28 on account of having taken her maternity leave.

(8) A male employer shall be entitled to two weeks paternity leave with full pay.

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## JOB PROTECTION DURING PARENTAL LEAVE

**South Africa** as an example of a prohibition of discriminatory dismissal during maternity leave

Labor Relations Act 2002

CHAPTER VIII

UNFAIR DISMISSAL AND UNFAIR LABOUR PRACTICE

185. Right not to be unfairly dismissed or subjected to unfair labour practice

Every employee has the right not to be

- (a) unfairly dismissed; and
- (b) subjected to unfair labour practice.

186. Meaning of dismissal and unfair labour practice

(1) "Dismissal" means that-

- (a) an employer has terminated a contract of employment with or without notice;
- (b) an employee reasonably expected the employer to renew a fixed term contract of employment on the same or similar terms but the employer offered to renew it on less favourable terms, or did not renew it;
- © an employer refused to allow an employee to resume work after she-
- (i) took maternity leave in terms of any law, collective agreement or her contract of employment;

**Rwanda** as an example of both a protection from dismissal during maternity leave and a guarantee to same position upon the mothers' return

Law regulating labour in Rwanda, No 66/2018 of 30/08/2018

Article 61: Resuming work after maternity leave

A female employee who has given birth must resume her work on her same post, at the end of maternity leave. An employer cannot give a female employee who has given birth a notice of dismissal which is included in her maternity leave.

**South Sudan** as an example of job protection during paternity leave and a guarantee to the same position upon the father's return

Labour Act, 2017

65. Paternity Leave

(1) An employee is entitled, on each occasion that his wife is pregnant, to two weeks of paternity leave on full pay, to be taken:

- (a) within three days after the birth of his child or
- (b) immediately following miscarriage by his wife.

(2) An employee shall, after paternity leave, have the right to return to the position that he held immediately before his paternity leave.

73. Reason(s) for Termination by Employer

(2) An employment contract shall not be terminated for the following reasons:

(...)

(e) absence of an employee from work for reasons acceptable according to the provisions of this Act or authorization by the employer or

(...)