

EXTENDING PAID MATERNAL LEAVE: FEASIBLE OPTIONS FOR KENYA

Kenya in Context

- As of 2023, 120 countries globally guarantee at least 14 weeks to mothers, and 55 countries guarantee 6 months or more.¹ This includes policies reserved for mothers, and policies that guarantee leave that can be shared between mothers and fathers.
- In Africa, an increasing number of countries are leading the way in expanding maternity leave. 31 out of 54 countries in the region already meet the 14-week standard outlined in ILO's Maternity Protection Convention (C183). Kenya remains one of the minority of African countries that falls short of this standard, providing 3 months paid leave to mothers of infants.
 - Two countries in Africa (The Gambia and Djibouti) provide new mothers with 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.
 - Twenty-one middle income countries around the world have shown the feasibility of providing 6 months or more of paid maternity leave.
 - Leading countries in Africa include Djibouti, Ethiopia, Gambia and South Africa, which offer 4 months or more of paid maternity leave.
- A range of countries have shown the feasibility of providing paid leave to self-employed workers.
 - Self-employed workers in Kenya are excluded from paid maternity and paternity leave because the financing mechanism relies on employee contributions
 - Fifteen countries in Africa, including countries such as Angola, Egypt, Mozambique, and Tanzania provide paid maternity leave to self-employed workers; the Seychelles also provides paid paternity leave to self-employed workers.
 - Over 1/2 of countries globally cover the self-employed, generally by structuring their paid parental leave programs as social insurance.

Why Do Policies Providing Longer Maternity Leave Matter?

Paid leave for new parents has been found to benefit children's health and development:

- A study of policy changes in 20 low- and middle-income countries (LMICs), including Kenya, found that for each one-month increase in paid maternity leave, infant deaths dropped by 13

¹ Findings presented in this brief reflect national laws in force as of August 2023.

percent. The reductions in infant deaths were concentrated in the post-neonatal period (twenty-eight days to one year of age), when the expanded leave policies would have had the greatest effects on mothers' ability to provide care.²

- Another study of 20 LMICs, including Kenya, found that extending paid maternity leave increased the likelihood that a child would receive all three doses of the diphtheria, tetanus, and pertussis vaccine³
- A study of thirty-eight LMICs, including Kenya, demonstrated that each additional month of paid maternity leave was associated with a nearly 6 percentage-point increase in exclusive breastfeeding.⁴
- A follow-up study, focused on forty LMICs, including Kenya, found that each one-month extension of paid maternity leave reduced the incidence of bloody diarrhea in children under five by 36 percent, again controlling for factors like GDP, government health expenditures, and female labor force participation and unemployment rates⁵

While this toolkit focuses on maternal leave, leave for fathers plays a key role in promoting gender equity. Paid paternity leave has been found to positively impact gender equity, family wellbeing, and economic returns.

- In one study across 53 developing economies, mandating paid paternity leave was associated with a 6.8% higher proportion of women workers in private firms,⁶ while another global study found that policy reforms that reserved at least two weeks of leave for fathers (or encouraged fathers' leave-taking) were associated with improved attitudes towards women's right to a job when jobs are scarce—among both women and men.⁷

Research on maternity leave has found wide-ranging benefits for women's employment and the overall growth of the economy:

² Nandi, A., Hajizadeh, M., Harper, S., Koski, A., Strumpf, E. C., & Heymann, S. J. (2016).

Increased duration of paid maternity leave lowers infant mortality in low- and middle-income countries: A quasi-experimental study. *PLoS Medicine*, 13(3), e1001985

³ Hajizadeh, M., Heymann, J., Strumpf, E., Harper, S., and Nandi, A. (2015). Paid maternity leave and childhood vaccination uptake: Longitudinal evidence from 20 low- and middle-income countries. *Social Science & Medicine*, 140, 104–117

⁴ Chai, Y., Nandi, A., & Heymann, J. (2018). Does extending the duration of legislated paid maternity leave improve breastfeeding practices? Evidence from 38 low-income and middle-income countries. *BMJ Global Health*, 3(5).

⁵ Chai, Y., Nandi, A., & Heymann, J. (2020). Association of increased duration of legislated paid maternity leave with childhood diarrhoea prevalence in low-income and middle-income countries: Difference-in-differences analysis. *Journal of Epidemiology and Community Health*, 74(5), 437–444

⁶ Amin, Mohammad, Asif Islam, and Alena Sakhonchik. 2016. "Does Paternity Leave Matter for Female Employment in Developing Economies ? Evidence from Firm Data." World Bank Policy Research Working Paper 7588.

⁷ Omidakhsh, Negar, Aleta Sprague, and Jody Heymann. 2020. "Dismantling Restrictive Gender Norms: Can Better Designed Paternal Leave Policies Help? ." *Analyses of Social Issues and Public Policy* 20(1):382–96. doi: <https://doi.org/10.1111/asap.12205>.

- A study of 117 countries found that women ages 25–55 were more likely to participate in the labor force when paid maternity leave of moderate length was available.⁸
- According to the McKinsey Institute, equalizing labor force participation rates worldwide among men and women would add \$28 trillion to annual global GDP.⁹ A McKinsey Institute estimate for Africa found that achieving gender parity in labor markets could result in an additional \$1 trillion to annual regional GDP.¹⁰
- Among countries that have provided paid maternity and/or parental leave for the past few decades, rates of female employment have boosted GDP per capita growth by 10–20%¹¹

Key Elements of Law with Comparators

For key areas below, additional examples of strong legislative text approaches from other African countries are included at the end of the document.

Duration of Maternity Leave

- In Africa, 31 out of 54 countries meet the 14-week standard outlined in ILO’s Maternity Protection Convention (C183). Kenya falls short of this standard, providing 3 months paid leave to mothers of infants.
- Two countries in Africa (The Gambia and Djibouti) provide new mothers with 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. Twenty-one middle income countries around the world provide 6 months or more of paid maternity leave.

Paid Leave for Adoptive Parents

Adoptive parents are often ineligible for paid leave or have access only to a reduced amount of leave.

- Kenya provides 1 month paid leave for each parent when adopting, compared to 3 months paid leave maternal leave and 2 weeks paternal leave for birth parents.
- Thirty-seven middle income countries provide longer paid leave for adoptive parents than Kenya. This includes two African countries (South Africa and Mauritius) that provide 3 months or more paid leave to adoptive parents.

⁸ Besamusca, J., Tijdens, K., Keune, M., & Steinmetz, S. (2015). Working women worldwide: Age effects in female labor force participation in 117 countries. *World Development*, 74, 123–141.

⁹ Woetzel, J., Madgavkar, A., Ellingrud, K., Labaye, E., Devillard, S., Kutcher, E., & Krishnan, M. (2015). The power of parity: How advancing women’s equality can add \$12 trillion to global growth. McKinsey Global Institute. (2019).

¹⁰ Moodley L., Kuyoro M., Holt T., Leke A., Madgavkar A., Krishnan M., and Akintayo F. The power of parity: Advancing women’s equality in Africa. McKinsey Global Institute. (2019).

¹¹ Heymann, S. J., Richter, L., Britto, P., Raghavan, C., & Wong, E. (2019, July). Family-friendly policies: Redesigning the workplace of the future. UNICEF.

Paternal Leave

While this toolkit focuses on maternal leave, leave for fathers plays a key role in promoting gender equity. Paid paternity leave has been found to positively impact gender equity, family wellbeing, and economic returns.

- Kenya is one of the 30 countries in Africa that provides paid paternal leave, guaranteeing 2 weeks paid paternity leave to fathers.
- Eighteen middle income countries provide longer paternal leave than Kenya.

Payment Levels for Maternity 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

- Kenya currently guarantees 100% wage replacement rate for the 3 months of leave available to mothers of infants and the 2 weeks available to fathers.
- It will be important to continue a high wage replacement rate when Kenya extends the length of maternity leave

Job Protection for Parental Leave

Prohibitions of discriminatory dismissal during parental leave-taking are important protections for new mothers and fathers.

- Kenya is one of 48 countries in Africa and 173 countries globally that provides job protection for the duration of maternity leave.

Legislative Text Examples from African Countries**Duration of Maternity Leave**

South Africa as an example of a 4-month maternity 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).’

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).

Gambia as an example of an entitlement to 6 months of paid leave for new mothers:

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 of similar benefits.

Djibouti as an example of an entitlement to 6 months of paid leave for new mothers:

Loi N° 51/AN/19/8ème L portant modification partielle de l'article 113 de la loi n°133/AN/05/5ème du 28 janvier 2006 portant Code du travail

Toute femme enceinte a droit à un congé de maternité de vingt-six semaines qui commence sept semaines avant la date présumée de l'accouchement et se termine dix-neuf semaines après la date de l'accouchement.

Paid Leave for Self-Employed Workers

Cote d’Ivoire as an example of paid maternity leave coverage for self-employed workers of equal duration (14 weeks or more), and where all self-employed workers are required to register under the social security system:

Ordonnance no. 2019 du 17 juillet 2017 portant institution de régimes de prévoyance sociales pour travailleurs indépendantes

Article 2

Il est institué un régime général des travailleurs indépendants dénommé « régime social des travailleurs indépendants » qui garantit des prestations au titre de la couverture des risques maladie, accident, maternité et vieillesse.

2015 Labor Code (edition 2019)

Art 23.6

La salariée a le droit de suspendre le contrat de travail pendant quatorze semaines consécutives dont six semaines avant la date présumée de l'accouchement et huit semaines après la date de celui-ci. La période post-natale des huit semaines est augmentée de deux semaines en cas de naissance multiple.

La suspension peut être prolongée de trois semaines en cas de maladie dûment constatée et résultant de la grossesse ou des couches.

Togo as an example of paid maternity leave coverage for self-employed workers of equal duration (14 weeks or more), and where all self-employed workers are required to register under the social security system:

ARRETE N°002/2012 /MTESS/CAB/DGTLS fixant les modalités d'application du code de sécurité sociale (2012)

TITRE III - AFFILIATION ET IMMATRICULATION DES EMPLOYEURS ET DES TRAVAILLEURS

CHAPITRE II - IMMATRICULATION DU TRAVAILLEUR

Article 23- Est considéré comme travailleur indépendant toute personne exerçant librement son activité professionnelle dans un secteur structuré ou formel et qui n'a aucun lien de subordination avec une tierce personne.

Article 24- Est considéré comme travailleur de l'économie informelle, toute personne exerçant pour son propre compte dans un secteur non structuré notamment dans la petite économie et l'économie traditionnelle.

Article 28- La caisse nationale de sécurité sociale immatricule les travailleurs assujettis au régime général de sécurité sociale.

1- La demande d'immatriculation est établie par :

a- l'employeur au plus tard dans les huit (8) jours qui suivent la date de l'embauche, au profit de tout travailleur qui n'a pas été précédemment immatriculé ;

b- le travailleur indépendant ou le travailleur de l'économie informelle au plus tard dans les trente (30) jours qui suivent le démarrage de ses activités

CHAPITRE IV - PRESTATION DE MATERNITE

Article 72- Une indemnité journalière de maternité est versée à la femme salariée pour la durée de l'arrêt de travail dans la limite de quatorze (14) semaines. Elle est due à la femme qui exerce dans le secteur indépendant ou dans l'économie informelle pour la durée de la cessation effective de ses activités professionnelles, sans que cette durée n'excède les quatorze (14) semaines.

Seychelles as an example of maternity leave coverage and paternity leave coverage for self-employed workers:

Social Security Act 2010

Maternity Benefit

A person being a woman covered shall be entitled to maternity benefit for a prescribed period if-

b) she was in employment, either as an employed person or self-employed, immediately prior to the period for which she is claiming benefit

Social Security Regulations Amendment, 2015

b) by inserting after regulation 15, the following

Part IV A. Paternity benefit

15A (1) A person making a claim for paternity benefit shall furnish the Director with-

c) evidence to the satisfaction of the Director that he was in employment, as an employed person or self-employed person, on the day immediately preceding the beginning of the period for which he is claiming the benefit

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;

Gambia as an example of job protection during maternity leave:

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 of similar benefits.

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

(...)