



LABOUR LAW

5 NEW LABOUR LAWS
THAT YOU NEED TO BE AWARE OF

EBOOK

FIVE MAJOR NEW SOUTH AFRICAN LABOUR LAWS THAT YOU NEED TO KNOW ABOUT INCLUDING EXTENDED PARENTAL LEAVE

Our labour laws are constantly evolving as the South African government seeks to balance stronger protections for employees with the need to create a business-friendly investment climate.

This means that we can expect to see a number of amendments to the country's core labour law acts – including the Basic Conditions of Employment Act and the Unemployment Insurance Act – over the next couple of years, says Rob Cooper, tax expert and director of legislation at Sage. Cooper outlined some of the biggest labour law changes in the pipeline, below.

1. Unemployment Insurance Benefits

Parliament has amended the Unemployment Insurance Act to increase benefit values, simplify their administration, and clarify that foreign national employees and learners employed on a learnership agreement are eligible to claim benefits.

It also amended the Unemployment Insurance Contributions Act to make it compulsory for foreign national employees and people on a learnership to contribute to the Unemployment Insurance Fund (UIF) – which makes sense since you need to contribute to an insurance fund to benefit from it.

“The changes to the Contributions Act took effect from March 2018, but there is not yet a concrete date for the changes to the benefits offered under terms of the Unemployment Insurance Act,” Cooper said.

“Until the legislation is synchronised, the Fund promises to honour benefit claims from the affected employees.”

2. Labour Bill

“This member's bill is a wonderful example of our parliamentary democracy in action, with MPs from most parties aligning behind a piece of legislation that will make life better for many South Africans,” said Cooper.

Proposed by a member of the African Christian Democratic Party in 2016 and approved by the National Assembly towards the end of 2017, this law introduces three new forms of leave for employees: parental leave of 10 days, adoption leave of 10 weeks, and commissioning leave (where a surrogate mother is involved) of 10 weeks

“It's rewarding to see an Act that gives parents the right to take family time off, even if they are not the person giving birth.

“It's also welcome news that adoptive parents and parents working with a surrogate will be entitled to time to bond with the new member of their family,” he said.

However, he noted that changes will require further amendments to the Basic Conditions of Employment Act and the Unemployment Insurance Act.

“For now, we are not sure about the impact on the payroll, but the new types of leave will have to be recorded, and employers will most likely need to provide some information to the UIF to facilitate the approval of the new benefits.”



3. National Minimum Wage Bill

The implementation of the National Minimum Wage has been postponed from 1 May 2018 to an as yet undetermined date—the latest delay in a controversial law that the government has worked on for many years.

“I’m hopeful that the differences between labour, government and business will be resolved soon because the country needs clarity around this law,” said Cooper. “Though some critics believe it will harm employment and job creation—and others say it is not a true living wage—it is a step in the right direction. It could change living conditions for millions for the better.”

However, Cooper noted that there was still more work that needs to be done. “Parliament has introduced amendment bills to align the Basic Conditions of Employment Act and the Labour Relations Act with the National Minimum Wage Act,” he said.

“The implication for the payroll is that we will have a minimum wage administered on an hourly value and that other minimums set by current wage regulating measures will move up to the National Minimum Wage level if they are less.”

4. Employment Tax Incentive (ETI) Act

“For an employee to qualify for the Employment Tax Incentive, the employer must pay the employee at least the minimum wage,” said Cooper.

“Where there is no wage-regulating measure (such as a sectoral Bargaining Council), the Act specifies that the employer must pay a minimum wage of R2,000 per month.

“There is no hourly or weekly minimum wage option in the Act, making it difficult to apply this test fairly in a weekly payroll where some months have 4 weeks and others 5 weeks.”

He adds that if the the life of the Act is extended, it will need to be amended to replace the R2,000 monthly minimum with the proposed R20 per hour national minimum.

“I strongly believe in this Act, but it has not reached its full potential because employers and SARS alike find it complex to administer. I hope that government extends it beyond February 2019 and uses the next round of amendments to streamline the compliance requirements,” he said.

5. Provident Fund Annuitisation

Subject to recommendations from the Minister of Finance, from March 2019, legislation aligns the rules for pay-out of a provident fund benefit with those governing a pay-out by a pension and a retirement annuity fund, with provisions to phase in the change and to overcome hardship situations.

Broadly, one third of the total benefit will be paid as a lump sum and two thirds will be reinvested to provide monthly annuity income.

“For some people, the result of receiving a monthly annuity income could be that they earn above the means-test level for a social security grant,” said Cooper.

“Hopefully, policymakers are looking at this issue. The same applies to the new minimum wage—an employee’s wage could be increased above the means test threshold for a social security grant.”

What is the current position and how does South Africa currently compare with other countries?

The local labour regulations of Germany, South Africa and Kenya are compared below highlighting the employer obligations in respect of minimum conditions of employment.

Germany

In Germany, the legal framework for employment include the Bürgerliches Gesetzbuch (Civil Law Act) and many other acts concerning specific fields of the employment relationship such as, termination, maternity protection and fixed term contracts. As a

result, the employment law in Germany is regulated in detail by these acts.

In general, the German employment law is employee friendly, which is especially shown in the comprehensive termination protection rights of employees. Furthermore, in certain fields, such as annual leave, it is common practice in Germany to grant more favourable terms for the employee in the employment contract than the statutory minimum prescriptions.

South Africa

In a country with a very high unemployment rate and no minimum or ‘living’ wage, the cost of labour is not immense. However, whilst the cost of employing workers in South Africa is not vastly different to that of other countries, the real risk of costs being incurred is in respect of termination of employment. The law regarding termination is set out within the Labour Relations Act which was amended with effect from 1 January 2015. In respect of minimum conditions of employment, these are set out in the Basic Conditions of Employment Act, which was also recently amended.

The aforementioned Act provides that the minimum conditions found within the Act constitute terms of any contract of employment, whether expressly stated in such a contract or not. The minimum conditions in the Act apply except if another law provides a term that is more favourable for the employee or if a term of the contract is more favourable for the employee.

Kenya

Kenya’s skilled and professional labour market has experienced tremendous growth in the last two decades or so, evidenced in part by the local and international firms sourcing their skilled and professional staff, including staff for senior managerial positions, largely locally. In addition, the overhaul of the laws governing employment in 2007 was as a result of a need to ensure the legal framework governing the employment relationship was reflective of and in-keeping with the prevailing labour issues and conditions.



In general, the labour laws in Kenya-contained in the Employment Act, the Work Injury Benefits Act, Labour Relations Act, Labour Institutions Act and the Occupational Safety and Health Act- are employee friendly, as is the dedicated labour court, the Employment and Labour Relations Court.

**Minimum
conditions of employment
between
Germany, South Africa and Kenya.**

Maximum hours of work in a week

Germany: 40 hours (5-day week)
 South Africa: 45 hours
 Kenya: 52 hours (6-day week)

Maximum hours of work a day in a 5-day week

Germany: 8 hours (10 hours possible, if over a period of 6 months or 24 weeks, the average hours of work in a day do not exceed 8 hours)
 South Africa: 9 hours
 Kenya: 8.66 hours (daily average considering 52 hours in a 6-day week)

Maximum hours of overtime work in a week

Germany: No statutory legal maximum
 South Africa: 10 hours
 Kenya: 40 hours for night staff, 12 hours for day adult staff over a period of two consecutive weeks

Minimum annual leave in a year

Germany: 20 days (in the event of a 5 day week)
 South Africa: 15 days
 Kenya: 21 working days of leave with full pay after every 12 months of service

Sick leave entitlement in a year

Germany: 6 weeks per type of sickness in 12 months (exemptions apply)
 South Africa: 30 days in 36 months, based on a 5-day working week
 Kenya: Not less than 7 days with full pay and 7 days with half pay in each period of 12 consecutive months of service

Maternity leave entitlement (paid / unpaid)

Germany: 14 weeks paid | Parental leave: up to 14 months if mother and father take parental leave (paid 2/3 of income by the state)
 South Africa: 4 months unpaid
 Kenya: 3 months maternity leave with full pay. A male employee is entitled to 2 weeks paternity leave with full pay

**Family responsibility leave per year
(paid / unpaid)**

Germany: No statutory legal minimum for paid leave.

South Africa: 3 days

Kenya: Termed as 'compassionate leave' and is taken from annual leave entitlement (paid), with additional 5-20 days unpaid depending on the industry

Written employment contract required

Germany: No. Exception applies in the event of a fixed term employment contract.

South Africa: No. But written particulars of employment must be provided on commencement of employment.

Kenya: Yes provided it is for a period of 3 months or more.

National minimum wage

Germany: Yes, EUR 8.50

South Africa: No. But a minimum wage can be set for a particular sector or by way of a collective agreement.

Kenya: Yes, minimum depends on the sector/industry (eg agricultural industry, building and construction industry) and the locality of employment, e.g KES 10,954.70 (approx. EUR 100) per month excluding house allowance for a general labourer - cleaner, sweeper, gardener, children's ayah, house servant, day watchman- in Nairobi

Minimum severance pay for retrenchment

Germany: 0.5 month's pay for every completed year of service (applicable for employers with more than 10 employees – exemption applicable - and only if the employee was employed for a minimum of 6 months).

South Africa: 1 week's pay for every year of completed service

Kenya: Not less than 15 days' pay for each completed year of service

