



LEGAL ALERT

THE EMPLOYMENT (AMENDMENT) ACT,
2021: PRE-ADOPTIVE LEAVE ENTITLEMENT
TO EMPLOYEES

PRE-ADOPTIVE LEAVE ENTITLEMENT

On 30th March 2021, the President signed into law the Employment (Amendment) Bill, 2019. The Employment (Amendment) Act, 2021 (the Amendment Act) amends certain provisions of the Employment Act, 2007 (the Employment Act) with the introduction of the following new aspects:

Definition of an exit certificate

The Amendment Act has amended section 2 of the Employment Act by inserting the definition of an “exit certificate”.

An exit certificate is defined as a written authority given by a registered adoption society to a prospective adoptive parent to take the child from the custody of the adoptive society.

The exit certificate serves as documentation evidencing the intention of the adoption society to place the child in the prospective adoptive parent’s custody.

Introduction of pre-adoptive leave

Section 29 of the Employment Act has been amended by the Amendment Act through the insertion of section 29A on pre-adoptive leave.

An employee shall now be entitled to one (1) month pre-adoptive leave with full pay where a child is placed in the continuous care and control of the said employee, from the date of placement of the child.

An employee eligible for pre-adoptive leave shall be required under the Amendment Act to do the following:

- i. notify the employer in writing of the adoption society’s intention to place the child in their custody at least fourteen (14) days before the placement of the child; and
- ii. accompany the written notice in (i) above with documentation evidencing the intention of the adoption society to place the child in their custody (including the custody agreement between the employee and the adoption society and an exit certificate).

Application of sections 29 (2), (3) and (7) of the Employment Act to employees eligible for pre-adoptive leave

Upon expiry of a female employee’s one (1) month pre-adoptive leave, the said employee shall have the right to return to the job she held immediately prior to her pre-adoptive leave or to a reasonably suitable job with terms and conditions as favourable as the job she would have had had she not been on maternity leave.

Additionally, where an employee’s pre-adoptive leave has been extended with the consent of the employer or immediately before the expiry, the employee proceeds on sick leave or with the consent of the employer on annual leave, compassionate leave or any other leave,

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the employer's pre-adoptive leave shall expire on the last day of such extended leave.

The new law also provides that an employee entitled to pre-adoptive leave shall not forfeit their annual leave entitlement on account of having taken pre-adoptive leave.



Disclaimer

This alert is for informational purposes only. If you have any queries or need clarifications, please do not hesitate to contact Georgina Ogalo-Omondi (georgina@oraro.co.ke) (Partner), Anne Kadima (Associate) (anne@oraro.co.ke) or your usual contact at our firm, for advice relating to the Amendment Act and how the same might affect you.



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