

PRE-ADOPTIVE LEAVE IN KENYA

In a monumental amendment to the Employment Act in March 2021, pre-adoptive leave was provided for in Kenya. Section 29A of the Employment Act, 2007 (Retrieved from <http://kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=No.%2011%20of%202007>) provides that an employee is entitled to one month's pre-adoptive leave with full pay from the date of placement of child under the employee's care. According to ILO (2014) *Maternity and Paternity at Work, Law and Practice across the World*, (Retrieved from https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/@publ/documents/publication/wcms_242615.pdf) several other countries have long embraced the practice of pre-adoptive leave in their legislative systems. These include Senegal, the United Kingdom and Brazil where benefits available for maternity leave are similar to those availed for adoptive parents. ILO recommends that pre-adoptive leave be provided to both parents but some countries have not enforced this. In Columbia, for instance, adoptive leave is only availed to mothers of children less than 7 years whereas Peru restricts the leave to married women in the process of adopting a child.

So much for Kenya at the base of implementation of this pre-adoptive leave in Kenya, which is available also to prospecting fathers on simple definition of employee. Section 29A of the Employment Act states that where pursuant to section 157 of the Children Act, a child is to be placed in the continuous care and control of an applicant who is an employee under this Act, the employee must notify their employer in writing of the adoption society's intention to place the child under the employee's care. The notification must be 14 days before placement of the child, accompanied by documentary evidence of the adoption agency's intention to place the child under the employee's care. That means there must be a custody agreement between the adoption agency and the employee, also an exit certificate as well must accompany the application, which is the written authority given by a registered adoption society to a prospective adoptive parent to take the child from the custody of the adoptive society. It is imperative to note that the protection of rights given to employees proceeding on maternity leave is also extended in pre-adoptive leave; including the right to not forfeit annual leave on account of taking their pre-adoptive leave.

This law on pre-adoptive leave is a step in the right direction and affirms Article 53 of the Constitution, which provides for the right to parental care and protection as the responsibility of both parents. It also affirms the principle in Section 4 of the Children Act, the United Nations Convention on the Rights of the Child (UNCRC) and the African Charter on the Rights and Welfare of the Child (ACRWC) that the best interest of a child should always be considered in all matters concerning children.

In conclusion, we can only look forward to full implementation of the pre-adoptive leave for healthier families and employees. We conclude with the words of Gabrielle Mistral, in *Su Nombre es Hoy* :

"We are guilty of many errors and many faults, but our worst crime is abandoning the children, neglecting the fountain of life. Many of the things we need can wait. The child cannot. Right now is the time his bones are being formed, his blood is being made, and his senses are being developed. To him we cannot answer 'Tomorrow,' his name is today."