

BILL NO. 21 OF 2018

A BILL

FOR AN ACT TO AMEND THE EMPLOYMENT RELATIONS ACT 2007

ENACTED by the Parliament of the Republic of Fiji—

Short title and commencement

1.—(1) This Act may be cited as the Employment Relations (Budget Amendment) Act 2018.

(2) This Act comes into force on a date or dates appointed by the Minister by notice in the Gazette.

(3) In this Act, the Employment Relations Act 2007 is referred to as the “Principal Act”.

Section 47 amended

2. Section 47 of the Principal Act is amended by—

(a) in subsection 1(b) after “life”, inserting “or medical”; and

(b) in subsection (5), deleting “Any” and substituting “With the exception of deductions in respect of life or medical insurance or a medical scheme, any”.

Section 68A inserted

3. The Principal Act is amended after section 68 by inserting the following new section—

“Family care leave

68A.—(1) In this section—

“household” means the occupants of a dwelling-house who are financially dependent on each other or an occupant of the dwelling-house; and

“immediate family” consists of a worker’s spouse, child, parent and sibling.

(2) Where a worker has completed more than 3 months continuous service with the same employer and wishes to provide care or support to a member of the worker’s immediate family or a member of the worker’s household, the worker is entitled to paid family care leave of not less than 5 working days during each year of service.

(3) Family care leave entitlement must not be accumulated and unused family care leave for each year automatically lapses in the next year.

(4) For a worker to be entitled to family care leave, the worker must, as soon as reasonably practicable, notify the employer of his or her absence or intended absence and the reason for it.”.

Part 11 amended

4. Part 11 of the Principal Act is amended in the heading by deleting “MATERNITY LEAVE” and substituting “PARENTAL LEAVE”.

Section 100 amended

5. The Principal Act is amended by deleting section 100 and inserting the following new sections—

“Objects of this Part

100. The objects of this Part are to—

- (a) emphasise that taking time out of the paid workforce to care for a child is part of the usual course of life and work for parents;
- (b) promote balance between work and family life; and
- (c) protect women and ensure that they are not disadvantaged when taking maternity leave.

Interpretation of Part 11

100A. In this Part, unless the context otherwise requires—

“*de facto* partner” means a person in a *de facto* relationship;

“*de facto* relationship” means a relationship between a man and a woman who are at least 18 years of age and, although not legally married to each other, have lived with each other as spouses on a genuine domestic basis for—

- (a) a period of more than one year; or

(b) a period of less than one year, provided the employer, having regard to the circumstances listed in section 154A of the Family Law Act 2003, considers it just to treat the relationship as a *de facto* relationship;

“his child” includes a child that a man is or will be responsible for as a primary caregiver;

“partner” means a spouse or *de facto* partner; and

“primary caregiver” means a person who is responsible for the care, development and upbringing of a child.”.

Section 101 amended

6. Section 101 of the Principal Act is amended by deleting “84” wherever it appears and substituting “98”.

Section 101A inserted

7. The Principal Act is amended after section 101 by inserting the following new section—

“Rights of men on paternity leave

101A.—(1) A man whose partner is entitled to maternity leave under this Part, or would be entitled to maternity leave under this Part if she were employed, is entitled to paternity leave and to abstain from work for a period of not less than 5 working days provided that he—

(a) is or is to be a primary caregiver for his child; and

(b) produces to his employer a certificate from a registered medical practitioner or registered nurse specifying the possible date of birth of his child.

(2) Where a man has completed more than 3 months continuous service with the same employer he is entitled to paid paternity leave for a period of not less than 5 working days, as follows—

(a) for the first 3 births, to the normal remuneration he would have received as if he had been at work; and

(b) for the fourth and subsequent births, to half the normal remuneration he would have received as if he had been at work.

(3) The man may only proceed on paternity leave during the 3 months immediately before the date specified under subsection 1(b) and the 3 months after the birth of his child.

(4) The paternity leave entitlement under this section may be taken in a lump sum period or in shorter periods amounting in the aggregate to not less than 5 working days, as agreed between the man and his employer.”.

Section 105 amended

8. Section 105(2) of the Principal Act is amended after “Part” by inserting “or seeks to withhold, limit or impose a restriction on an entitlement under this Part”.

Section 191BTB amended

9. Section 191BTB(1) of the Principal Act is amended by deleting “28” and substituting “49”.

June 2018

EMPLOYMENT RELATIONS (BUDGET AMENDMENT) BILL 2018

EXPLANATORY NOTE

(This note is not part of the Bill and is intended only to indicate its general effect)

1.0 BACKGROUND

- 1.1 Parts 7 and 11 of the Employment Relations Act 2007 (**‘Act’**) set out leave entitlements for workers in Fiji. These include annual leave, sick leave, bereavement leave and maternity leave.
- 1.2 The Act, however, does not provide for family care or paternity leave entitlements and limits maternity leave entitlements to 84 days, which is not aligned to international best practice.
- 1.3 The Employment Relations (Budget Amendment) Bill 2018 (**‘Bill’**) seeks to amend the Act to provide for family care leave and paternity leave entitlements and to extend the current maternity leave entitlement.
- 1.4 The Bill also seeks to amend the limits of employer deductions under Part 6, Division 1 and a transitional provision under Part 19, Division 8A of the Act.

2.0 CLAUSES

- 2.1 Clause 1 of the Bill provides for the short title and commencement. If passed by Parliament, the amending legislation will come into force on a date or dates appointed by the Minister by notice in the Gazette.
- 2.2 Clause 2 of the Bill amends section 47 of the Act to exempt employer deductions for life or medical insurance or medical schemes from the limit on employer deductions under the Act.
- 2.3 Clause 3 of the Bill amends the Act by inserting a new section after section 68. The new section 68A establishes the entitlement of all workers to family care leave. Family care leave allows workers to provide care and support to immediate family members and members of their household. This leave entitlement is for at least 5 working days in a year and cannot be carried forward to the next year.

6

- 2.4 Clause 4 of the Bill amends the heading of Part 11 of the Act to reflect the introduction of paternity leave under that Part.
- 2.5 Clause 5 of the Bill amends section 100 of the Act to broaden the objects of Part 11 to include the goal of promoting a balanced work and family life and emphasising the fact that caring for a child is part of the usual course of life for a parent.
- 2.6 Clause 5 of the Bill also amends the Act by inserting a new section after section 100. The new section 100A provides for the definitions of terms used in Part 11, for the purposes of clarity.
- 2.7 Clause 6 of the Bill amends section 101 of the Act to extend the current maternity leave entitlement from 84 consecutive days to 98 consecutive days. This is in alignment with International Labour Organization (**'ILO'**) standards under ILO Convention No. 183.
- 2.8 Clause 7 of the Bill amends the Act by inserting a new section which establishes the entitlement to paternity leave, an entitlement of 5 working days for partners responsible for providing care to the child.
- 2.9 Clause 8 of the Bill amends section 105 of the Act to bring further clarity to the offence of contravening a provision of Part 11.
- 2.10 Clause 9 of the Bill amends section 191BTB of the Act to extend the period to apply to the Arbitration Court for compensation from 28 days to 49 days.

3.0 MINISTERIAL RESPONSIBILITY

- 3.1 The Act comes under the responsibility of the Minister responsible for employment.

A. SAYED-KHAIYUM
Attorney-General