



the dpsa

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TO HEADS OF NATIONAL AND PROVINCIAL DEPARTMENTS AND PROVINCIAL ADMINISTRATIONS

CIRCULAR NO 2 OF 2026

CONSTITUTIONAL COURT JUDGEMENT ON PARENTAL LEAVE: INTERIM GUIDANCE

1. The purpose of this Circular is to advise departments of the recent Constitutional Court judgement in the matter between Werner Van Wyk and 3 Others / Minister of Employment and Labour and 4 Others CCT308/23 relating to parental leave and to provide interim guidance pending further processes.
2. The Department of Public Service and Administration (DPSA) has taken note of the judgement. The implications thereof for the public service leave dispensation are currently being studied. In this regard, the DPSA has formally requested a legal opinion from the Chief State Law Adviser to guide the appropriate response and implementation approach within the public service.
3. Departments are reminded that leave benefits applicable in the public service are regulated through a negotiated framework. Any amendments to leave benefits, including parental leave, constitute a change to conditions of service and must therefore be renegotiated in the Public Service Coordinating Bargaining Council (PSCBC) before they can be implemented in the public service.
4. It must further be noted that parental leave provided for in the Basic Conditions of Employment Act (BCEA) is unpaid, whereas leave benefits in the public service are granted with full pay in terms of the existing leave policy and determinations. This distinction remains

relevant and material when considering the implementation of the Constitutional Court judgement within the public service context.

5. In light of the above, the current leave dispensation in the public service remains applicable in the interim. Departments must therefore continue to administer leave in accordance with the existing leave policy and determinations.
6. Employees who wish to access parental leave in line with the Constitutional Court judgement are at liberty to do so. However, remuneration during such leave will be limited to full pay only where such payment is provided for in terms of the existing public service leave policy. No additional or extended paid leave beyond the current policy provisions may be granted at this stage.
7. The DPSA will issue further guidance to departments in due course, once the legal opinion has been received.
8. Departments are requested to bring the contents of this Circular to the attention of all affected officials and to ensure consistent application across the public service.

Mr Willie Vukela

Acting Director-General

Date: