

**Policy on Parental Leave for Parliamentarians – Adopted by the Rules Committee on 2
December 2019**

Introduction

The South African Constitution is often hailed as one of the most progressive and liberal constitutions of modern times. It is only one of very few that explicitly prohibits discrimination on the basis of pregnancy, which is enshrined in our Bill of Rights.

The Western Cape Provincial Parliament is taking a bold step to ensure rights for parliamentary parents for maternity, paternity, adoption and surrogacy leave.

In a country beset with inequality, we often call for more women to be represented in politics. This policy is an attempt to level the playing field and break down structural barriers to entering a life of public service. This policy is an active step to ensure public representatives are able to serve their province and look after their families. It should not be a zero-sum equation where parents, and in particular, women, are forced to choose between a career or family. This policy makes provision for parliamentary parents, whatever their gender or family arrangements, in the spirit of our Constitution.

Parental Leave

General

A member is entitled to take parental leave as a primary care giver, or as a non-primary care giver when their child is born, when the member becomes an adoptive parent where the child is younger than two years old, or when their child is born as a result of a surrogate motherhood agreement.

A member is entitled to parental leave only on notice to the Speaker and on notice to the Chief Whip or a whip of the political party to which the member belongs, as soon as is reasonably possible to give such notice.

The policy distinguishes between parental leave for primary care givers and parental leave for non-primary care givers, relating to birth, adoption and surrogacy arrangements.

Leave entitlements

With respect to parental leave a member is entitled to:

- (a) Four consecutive months parental leave as the primary care giver, following the birth of a child;
- (b) Ten consecutive week's parental leave as the primary care giver following the adoption of a child under 2 years, or birth of a child born via a commissioning agreement.
- (c) Ten consecutive days parental leave as the non-primary care giver, following the birth of a child, the adoption of a child under 2 years, or birth of a child born via a surrogate motherhood agreement;

Additional considerations

Where a member is pregnant with child:

- (a) she may commence parental leave (i) at any time from four weeks before the expected date of birth; or (ii) on a date from which a medical practitioner or a midwife certifies that it is necessary for the member's health or that of her unborn child;
- (b) she may not work for six weeks after giving birth, unless a medical practitioner or midwife certifies that she is fit to do so; and
- (c) A member who has a miscarriage during the third trimester of pregnancy or bears a stillborn child is entitled to maternity leave for six weeks after the miscarriage or stillbirth, whether or not the member had commenced maternity leave at the time of the miscarriage or stillbirth.

A member may take parental leave—

- (a) on the date that the member's child is born; or
- (b) on the date that an adoption order is granted in terms of which the member becomes an adoptive parent; or on the date that a child is placed in the care of the member by a competent court, pending the finalisation of an adoption order in respect of that child, whichever date occurs first.
- (c) on the date a child is born as a result of a surrogate motherhood agreement.

General principles concerning leave of absence and parental leave by members

Members must attend sittings of the House, and must attend meetings of committees to which they are appointed.

A member who wishes to be absent from 15 or more consecutive sittings of the House and/or meetings of committees to which that member is appointed (all inclusive), must obtain the leave of the House for that absence. If such member fails to comply with the provisions of Standing Rule 29, unless that member has taken parental leave as provided for in rule 31, loses that member's membership of the Provincial Parliament when the House resolves to confirm the loss of membership.

In respect of leave of absence for parental leave as provided for in this policy, Standing Rule 30 is not applicable. For all other leaves of absence, rule 29 and 30 apply.

A member who takes leave in terms of rule 31 must give notice of that member's intention to take leave in terms of this rule as soon as is reasonably possible. Notice must be given to the Speaker and to the Chief Whip or a whip of the political party to which the member belongs.

A member's notice of that member's intention to take leave in terms of rule 31, in which the leave exceeds 15 days, must be published in the ATC as soon as is reasonably possible.

A member who takes leave in terms of rule 31 is entitled to the same remuneration that the member received before taking such leave, and is entitled, on that member's return to the Provincial Parliament on expiry of such leave, to resume all positions in any structure of the Provincial Parliament that the member occupied before taking such leave.

Political Parties may have the discretion (a) if it is reasonable to do so and (b) only if there is no likelihood of a member's health being detrimentally affected, to require a member who is on leave contemplated in this policy to attend a House sitting or committee meeting on a particular day for the sole purpose of recording a vote or votes.

Any misrepresentation made by a member for the purpose of obtaining leave, may be dealt in terms of the Members of the Western Cape Provincial Parliament Code of Conduct Act, 2002.


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Mr M MNQASELA
SPEAKER