
GOVERNMENT NOTICE

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

No. R. 50

26 January 2012

MAGISTRATES ACT, 1993 (ACT NO. 90 OF 1993)
REGULATIONS FOR JUDICIAL OFFICERS IN THE LOWER COURTS, 1994:
AMENDMENT

The Minister of Justice and Constitutional Development has, under section 16 of the Magistrates Act, 1993 (Act No. 90 of 1993), on the recommendation of the Magistrates Commission, made the regulations in the Schedule.

SCHEDULE

Definitions

1. In these regulations "the Regulations" means the regulations published by Government Notice No. R. 361 of 11 March 1994, as amended by Government Notices Nos. R. 644 of 1 April 1994, R. 1407 of 11 August 1994, R. 1808 of 17 October 1994, R. 1707 of 27 October 1994, R. 1791 of 17 November 1995, R. 72 of 26 January 1996, R. 331 of 1 March 1996, R. 957 of 7 June 1996, R. 1178 of 19 July 1996, R. 1242 of 2 August 1996, R. 1340 of 12 August 1996, R. 1567 of 27 September 1996, R. 1627 of 1 October 1996, R. 178 of 7 February 1997, R. 421 of 20 March 1997, R. 1081 of 8 August 1997, R. 274 of 20 February 1998, R. 997 of 7 August 1998, R. 56 of 15 January 1999, R. 1498 of 17 December 1999, R. 1339 of 26 September 2003 and R. 1593 of 31 October 2003.

Amendment of Classification of Regulations

2. The Classification of the Regulations is hereby amended by the insertion after the expression "38. Leave" of the following expressions:

"38A. Maternity leave

38B. Adoption leave

38C. Family responsibility leave".

Insertion of regulations 38A, 38B and 38C in Regulations

3. The following regulations are hereby inserted after regulation 38 of the Regulations:

"Maternity leave

38A. (1) A magistrate may, per confinement, be granted a maximum of four consecutive calendar months' maternity leave with full remuneration, commencing at any time from four weeks before the expected date of birth, or on a prior date from which the attending medical practitioner certifies that it is necessary for the magistrate's health or that of the unborn child, regardless of the magistrate's marital status.

(2) No magistrate may commence with normal official duties for at least four weeks after the birth, unless the attending medical practitioner certifies that she is fit to do so.

(3) The maternity leave may be utilised before and after the confinement, but shall in all cases be uninterrupted and continuous with the confinement.

(4) Notwithstanding subregulation (3), maternity leave may only be interrupted if—

- (a) a magistrate so chooses if the child is born prematurely and is hospitalised during the maternity leave;
- (b) a magistrate so chooses if the child becomes ill and is hospitalised for a period longer than a month during the maternity leave; or
- (c) the magistrate falls ill during the maternity leave.

(5) A magistrate who chooses to interrupt her maternity leave as contemplated in subregulation (4), may for the duration of the interruption utilise her—

- (a) annual leave;
- (b) unpaid leave in the event of the magistrate not having enough annual leave available; or
- (c) sick leave in the event of illness.

(6) A magistrate who has interrupted her maternity leave as contemplated in subregulation (4), and fails to return to work after the four

weeks as contemplated in subregulation (2) have expired, must cover that period with annual leave, or unpaid leave in the event of the magistrate not having enough annual leave available.

(7) Maternity leave may be extended upon application by a magistrate by the granting of—

- (a) annual leave;
- (b) unpaid leave for a period not longer than six calendar months in the event of the magistrate not having enough annual leave available; or
- (c) sick leave as a result of a medical complication.

(8) Sick leave may be granted due to absence from duty as a result of miscarriage, stillbirth or termination of pregnancy on medical grounds before the third trimester of pregnancy and before a period of maternity leave commences.

(9) If the miscarriage, stillbirth or termination of pregnancy on medical grounds occurs during the third trimester of pregnancy or after the period of maternity leave has commenced, the magistrate is eligible for six consecutive weeks' maternity leave that will commence after the miscarriage, stillbirth or termination of pregnancy on medical grounds, whereafter sick leave as a result of a medical complication may be granted.

(10) If the miscarriage, stillbirth or termination of pregnancy on medical grounds occurs after the period of maternity leave has commenced, the period prior to the miscarriage, stillbirth or termination of pregnancy on medical grounds shall be regarded as maternity leave.

Adoption leave

38B. (1) A magistrate who legally adopts a child who is not older than 24 months on the date of adoption, qualifies for adoption leave to a maximum of 84 calendar days commencing from the date that the adopted child takes up residence with the adoptive parent.

(2) Adoption leave may be extended upon application by a magistrate by the granting of—

- (a) annual leave; or
- (b) unpaid leave for a period not longer than six calendar months, in the event of the magistrate not having enough annual leave available.

(3) If the spouse or partner registered in terms of regulation 54B of a magistrate as contemplated in subregulation (1) is also a

magistrate, that spouse or partner is entitled to the family responsibility leave as contemplated in regulation 38C(1)(b).

Family responsibility leave

38C. (1) A magistrate may be granted not more than three working days family responsibility leave per annual leave cycle for utilisation if—

- (a) the magistrate's spouse or partner registered in terms of regulation 54B gives birth;
- (b) the magistrate's spouse or partner registered in terms of regulation 54B adopts a child who is not older than 24 months on the date of adoption; or
- (c) the magistrate's child, including an adopted child, spouse or partner registered in terms of regulation 54B is sick.

(2) A magistrate may be granted not more than five working days family responsibility leave per annual leave cycle for utilisation if the magistrate's child, including an adopted child, grandchild, spouse or partner registered in terms of regulation 54B, parent, adoptive parent, grandparent or parent-in-law dies.

(3) The number of family responsibility leave days taken as contemplated in subregulations (1) and (2) may not exceed five days in an annual leave cycle, unless special circumstances warrant further leave at the discretion of the Minister or a person designated by him or her.

(4) A magistrate who has utilised all his or her family responsibility leave may, subject to the approval of the Minister or a person designated by him or her, apply to use—

- (a) available annual leave; or
- (b) unpaid leave for a period not longer than six calendar months, in the event of the magistrate not having enough annual leave available."

Amendment of Schedule E to Regulations

4. Schedule E to the Regulations is hereby amended by the substitution for paragraph 13 of the following paragraph:

"13. A magistrate may only permit the proceedings in his or her court to be televised, broadcast or taped for these purposes, or photographs to be taken or television cameras or similar apparatus to be used in his or her court during a court session, during recess or immediately prior to or after the court session, on the conditions that he or she may deem fit—

- (a) after hearing argument by the applicant and any other party involved in the proceedings who may wish to oppose the application;
- (b) after due consideration of—
 - (i) the rights of all the parties, including their legal representatives, witnesses and court personnel involved in the proceedings; and
 - (ii) the interests of the administration of justice; and
- (c) if he or she is satisfied that it is in the public interest to do so."