Maternity Leave Practical Experiences

Evaluating implementation and experiences of employees in accessing the benefit and knowledge of maternity leave rights

A report for the Department of Labour

2018/2019

Building a better working world

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Labour Market Policy Programme wishes to thank the following people for their contribution to this research project as their efforts made the final research report possible to realize:

- Chief Director Mr. Setsomi Molapo for his help in approving the resources needed in running the project and for editing the report,
- Research Policy Planning staff for their useful and constructive recommendations on this project, for managing the project and participating where required,
- Provincial Labour Market Information and Statistics (LMIS) staff for their valuable technical support in developing data collection tools and for their inputs towards report writing,
- Special thanks are given to Chief Directors in Provinces and Labour Centre Managers for allowing the research teams space to collect data at the Labour Centres.

Glossary

Term Used	Definition
Adoptive Parent	An adult who is a South African citizen or permanent resident aged 18 years or older. There is no age cap by law however some adoption agencies, such as Johannesburg Child Welfare as an example, have a cut off of 50 years old. According to the Childrens Act, 38 of 2005 section 231 (1): A child may be adopted by the following (eligibility to be an adoptive parent): jointly by; (a) (i) a husband and wife; (ii) partners in a permanent domestic life-partnership; or (iii) other persons sharing a common household and forming a permanent family unit; (b) by a widower, widow, divorced or unmarried person; (c) by a married person whose spouse is the parent of the child or by a person whose permanent domestic life-partner is the parent of the child; (d) by the biological father of a child born out of wedlock; or (e) by the foster parent of the child.
Child	A person who is under 18 years of age (section 1 of the Basic Conditions of Employment Act 75 of 1997 – the BCEA).
Family Responsibility Leave	Refers to leave for employees who are eligible in order to discharge family responsibilities in the following circumstances: • When the employee's child falls ill; • In the event of the death of the employee's spouse or life partner, parent, adoptive parent, grandparent, child, adopted child, grandchild or sibling. In South Africa those who meet eligibility requirements are entitled to three days paid leave during a twelve month leave cycle in terms of section 27 of the BCEA. This section has recently been amended by the Labour Laws Amendment Act to eliminate eligibility for family responsibility leave on the birth of a child as this is now catered for in the new provisions relating to parental leave, adoption leave and commissioning parent leave.
Formal Sector worker	The formal economy: (1) has an organised system of employment with clear written rules of recruitment, agreement and job responsibilities. (2) has a standardised relationship between the employer and the employee is maintained through a formal contract. (3) the employee is expected to work for fixed hours and receives a fixed salary in addition to incentives and perks. He works under a decent work environment and is entitled to benefits such as leave, savings, loans etc. He has an organised association or union where his official grievances are addressed. Besides, he is covered under social protection benefits such as life insurance, health insurance, pension, gratuity etc. People working in civil service, public sector units, government service, defence, multi-national/national/private companies, schools, colleges, research institutes, management organizations, banks etc....all belong to the Formal Sector (Zuhad, S & Detiger, E., n.d.).
Informal Sector worker	The informal sector consists of those organisations that are not registered in any way. They are generally small in nature, and are seldom run from business premises. Instead, they are generally run from homes, street pavements and other informal arrangements. They exhibit the following characteristics with regard to employees: (1) there are not any written rules or agreements. (2) the employment contract exists merely on a verbal understanding. (3) the employee does not have fixed wages or fixed hours of work and mostly relies on daily earnings. (4) in most cases, the work atmosphere is congested and unhygienic. (5) the workers in this type of economy usually fail to come together and address their problems through an association or a group. They have poor awareness levels regarding social protection schemes, are unable to make savings and do not see the necessity of insuring themselves (Zuhad, S & Detiger, E., n.d.).

Term Used	Definition
Legal guardian	According to the Childrens Act, 38 of 2005, guardian means a parent or other person who has guardianship of a child. A legal guardian is someone who is chosen to be a guardian either in a will or by a court.
Maternity Benefits	The associated maternity 'benefits' in terms of money claimed from the UIF and/or the employer– paid to a mother during her period on maternity leave. The payment of maternity benefits will be determined by the Minister subject to the provisions of the UIF, 1966 (Act No.30 of 1966). [Sections 34 and 37 of the UIF, 1966 (Act No. 30 of 1966) provide for the payment of maternity leave.
Maternity Leave	This leave is generally for pregnant women in the workplace. Maternity leave is classified as unpaid leave, unless otherwise agreed by the parties. In South Africa, there are also strict provisions around the nature of work that a pregnant or nursing employee is not permitted to perform where it could be hazardous to her or the child's health. Employees are entitled to maternity leave of no less than 4 months, which is to start from 4 weeks prior to due date of birth, and end not less than 6 weeks after birth of the child (BCEA).
Paternity Benefits	These are benefits to which the father of the new born child is entitled.
Paternity Leave	Is the leave to which the father of a new born child is entitled and may be expressed in the number of days. In terms of section 27 of the BCEA, workers with at least 4 months of service are entitled to fully paid family responsibility leave of 3 days during each annual leave cycle (12 months). Prior to the amendments passed in November 2018, family responsibility leave could be taken for the birth of a child, among other family events. The new parental leave provisions in terms of the Labour Laws Amendment Act, 10 of 2018 includes a section 25A into the BCEA, which provides that an employee who is a parent of a child, is entitled to at least 10 consecutive days parental leave which may be commenced on the day that the employee's child is born. Upon the request of the employer, a worker must provide reasonable proof of the event necessitating family responsibility leave. In other words, if the employee's child is born, a birth certificate and possibly proof of paternity should be provided to the employer.
Parental Responsibility Leave	Refers to a relatively long-term leave available to either parent, allowing them to take care of an infant or young child over a period of time usually following the maternity or paternity leave period. Contained in Recommendation No. 191 and NO. 165.
Permanent employee	The LRA defines an employee as- – any person, excluding an independent contractor, who works for another person or for the State and who receives, or is entitled to receive, any remuneration; and – any other person who in any manner assists in carrying on or conducting the business of an employer, and 'employed' and 'employment' have meanings corresponding to that of employee'. – This is on a permanent basis.
Primary Care Giver	This includes the parent whose responsibilities and rights that a person may have in respect of a child, include the responsibility and the right- – to care for the child; – to maintain contact with the child; – to act as guardian of the child; and – to contribute to the maintenance of the child.
Self-Employed	Self-employment is the state of working for oneself rather than an employer. Self-employed people generally find their own work rather than being provided with work by an employer, earning income from a trade or business that they operate
Surrogacy	Is an agreement in which a surrogate is a woman (surrogate mother) who carries a baby on behalf of future parents (commissioning parties) who are medically unable to do so. Surrogacy in South Africa only became regulated in 2007. It is regulated by the Children's Act, Act 38 of 2005. The Act came into effect in June 2007.
Temporary employee service (i.e. not permanent employee)	Means any person who, for reward, procures for, or provides to, a client or other persons – (a) who renders services to, or perform work for, the client; and (b) who are remunerated by the temporary employment service.

1. Executive summary

Ernst and Young Advisory Services (Pty) Ltd (EY) was appointed by the Department of Labour (DOL) in March 2018 to conduct research into the experience of employees in accessing maternity protection benefits, their knowledge of the process to be followed as well as the legislation and protection from discrimination on the grounds of pregnancy and company processes and practices pertaining to maternity protection, including surrogacy and adoption. The specific research objectives are contained in the table below with an indication of the relevant section of this report where the objectives have been addressed.

Table 1 Project research objectives mapped to the research report

Research objectives	Section of the report where this information resides
Assess experiences of employees in accessing maternity protection benefits.	► Section 5.1 ► Section 5.2 ► Section 5.3 ► Section 5.5
Assess whether employees know the process to be followed to access maternity protection benefits.	► Section 5.1 ► Section 5.2 ► Section 5.3 ► Section 5.5
Evaluate companies' processes and practices pertaining to maternity protectio	► Section 3.7.2 ► Section 5.4 ► Section 5.6
Assess whether employees in particular, know the legislation that covers maternity protection and that protects employees against discrimination on grounds of maternity.	► Section 5.1 ► Section 5.2 ► Section 5.3 ► Section 5.5

The methodology adopted for this project began with a literature review of the relevant background, legislation and literature regarding maternity provisions worldwide and in South Africa specifically, in order to refine the research questions and design the research methodology. The subsequent research approach included a desktop analysis of recent UIF data, in-depth stakeholder interviews, employer and employee surveys, focus groups and case studies.

The literature review revealed that while progress has been made with regard to maternity and related protection worldwide, effective coverage and implementation remains a challenge. Analysis of recent labour statistics in South Africa for example shows that almost half of maternity protection beneficiaries that should be legally covered by legislation may not be eligible to claim benefits and approximately a third may have difficulty accessing benefits. Notwithstanding this; recent changes to legislation brought about by the Labour Laws Amendment Act 10 of 2018 have extended benefits to fathers, adoptive parents and commissioning parents thereby addressing some unfair discrimination.

Stakeholder interviews revealed that discrimination begins at the point of employment and includes a failure to properly accommodate women returning to work after pregnancy in terms of nursing babies and being exposed to hazardous situations. Increased education and awareness was seen as key and extending the nature of maternity protection and benefits was mooted. Many of the comments on adoption and surrogacy foreshadowed the passing of the Labour Laws Amendment Act a few months after the interviews were conducted.

Extensive fieldwork in all nine provinces saw surveys being collected manually from UIF claimants and facilitation of focus groups. Manual collection of surveys from employees was particularly important as the demographic of employees claiming

benefits at a labour centre is largely different from the type of employee who completed the online survey and so the combination of manual and online completions provides a holistic view.

Focus groups revealed very practical challenges faced by UIF claimants and provided insight into their knowledge and awareness of maternity provisions as well as their lived experiences of claiming them. Knowledge and awareness of adoption and surrogacy issues was typically rare in these groups and in the manual surveys although there was general support for the extension of benefits to fathers and adoptive and commissioning parents. Due to the prevalence of female domestic workers and their relative vulnerability with regard to discrimination on grounds of pregnancy, a specific focus group was dedicated to domestic workers only.

Three case studies were documented in order to provide a more in-depth, personal flavour to the research. Two of these case studies documented the experiences of same sex male couples in the adoption process and one documented the experience of a female employee in a large multi-national company with a well-developed maternity leave policy.

Results of the manual and online employee surveys revealed general knowledge of maternity benefit provision and protection but limited knowledge of specifics such as the calculation of the benefit. Experiences of employees in claiming maternity benefits revealed a number of practical challenges and some examples of discrimination. Knowledge and awareness of adoption benefits was limited although there was support for provision for adoption and surrogacy.

The online survey of employers revealed that most employers were aware of the legislation and had maternity policies in place. A number of employers submitted their maternity policies and an analysis of these revealed that most provided for around four months leave at partial payment and few made provision for adoption and surrogacy.

The following themes emerged from the research:

- Employees experience practical challenges in claiming maternity benefits;
- Knowledge and awareness of maternity benefits and protection among both employers and employees is basic and incomplete;
- Discrimination on the grounds of pregnancy and/or parenthood occurs particularly among vulnerable workers such as those in the domestic and agriculture sectors and in male-dominated sectors;
- The extent of the maternity benefit is insufficient to meet employees' needs during maternity leave; and
- There is widespread support for the extension of protection and benefits to fathers, adoptive, surrogate and commissioning parents.

Based on the research findings the following recommendations are made:

1. Make it easier to claim benefits and monitor the progress of claims.
2. Raise awareness of parental rights and protections among employees and employers.
3. Focus on enforcement.
4. Target vulnerable sectors.
5. Facilitate the implementation of the Labour Laws Amendment Act.
6. Work towards improving the maternity benefit.
7. Encourage employers to review their maternity/paternity leave policies in light of changes to legislation.

2. Introduction

South Africa boasts, as its supreme governing statute, a revered human rights-orientated Constitution guaranteeing the protection of basic human rights and freedoms for all its citizens. Part of the extension of these basic human rights and freedoms

to South Africans is the need to ensure fair labour practices protected under section 23 of the Constitution and further protected under the provisions of the Labour Relations Act, 66 of 1995, which was enacted specifically to give effect to the constitutionally guaranteed right to fair labour practices.

This research report considers the provision of maternity protection under the South African legislative and social framework and examines the efficiency and adequacy of the provision of maternity benefits to all child-bearers and parents. This research is meant to look critically at the available protections in so far as they apply to natural mothers and fathers of children; adoptive parents and surrogates. This research comes at a time when globally, social discourse around maternity/ paternity and parenting is demanding a more inclusive model that takes into account the interests of all who raise children whether in traditional environments or more contemporary environments where, for example, surrogacy and adoption have necessitated a revision of legislation to respond to a changing society. This report has undertaken a comparative study of maternity protections across jurisdictions as well as a benchmarking exercise with international conventions, standards and recommendations, which provide useful insight into how different societies are responding to a global cultural change.

3. Background and Literature Review

3.1 History

Throughout history women have experienced unequal treatment and access to opportunities, unfair discrimination and unfair labour practices and even oppression and violence due to their gender, at home and in the workplace. This treatment continues to this day and is the reason why the UN has specific goals and objectives focused on Gender Equality. “Gender equality is not only a fundamental human right, but a necessary foundation for a peaceful, prosperous and sustainable world” (“Gender Equality,” 2018). The United Nations (UN), through its sustainable development goals believes that providing women and girls with equal access to education, health care, decent work, and representation in political and economic decision-making processes will fuel sustainable economies and benefit societies and humanity at large (“Gender Equality,” 2018).

The history of the fight for women’s rights goes back as far as human history, with a focus on ending discrimination and promoting equal rights to health, education, voting, property, freedom of movement, equal employment and reproduction. Employment rights for women include non-discriminatory access to jobs, equal treatment and equal pay.

Much progress has been made to date, with 143 countries having guaranteed equality between men and women in their Constitutions but 52 have yet to take this step. As another example according to a recent UN report, on average women in the labour market still earn about 24% less than men globally. The full participation of women in labour forces would not only lead to healthier societies but would actually increase national growth rates – in some cases to double digit percentage points (“Gender Equality,” 2018). In order to achieve the progress that has been made regarding equal opportunities and fair treatment of women in the workplace, legislative conventions and regulations of employer power had to be enacted. The UDHR, CEDAW, ICESCR and ILO are examples.

In South Africa, it was not until the introduction of the Bill of Rights in 1994 that all women received formal recognition as equal citizens. Until this point South African women were second class citizens under the social and legal control of their fathers or husbands (SAHO, 2017). The Promotion of Equality and Prevention of Unfair Discrimination Act, 2000, seeks to advance equality in public and private life of all South Africans and provides a framework to tackle unfair discrimination, harassment and hate speech, and works towards the transformation of South African society in line with the ideals expressed in the Constitution. It prohibits unfair discrimination on any grounds, including the 16 explicitly listed in the Bill of Rights (SAHO, 2017), which include gender, sex, and pregnancy (Gov.za, 2017).

A key driver towards the achievement of gender equality in the workplace is the respecting of maternity and reproductive rights of women, as well as the effective implementation thereof. Successful implementation of maternity rights will give women greater access to work, equal treatment in the workplace and an independent income (Fawcett, 2012). However according to a report published by the Equality and Human Rights Commission (EHRC) in 2015, women returning from maternity leave in the United Kingdom (UK) are more likely to face discrimination in the workplace today than they were a decade ago. The EHRC report estimates that around 54,000 women a year who return to work after maternity leave lost their jobs due to dismissal, redundancy or through being treated so poorly they felt that they had no other choice but to quit their job. The EHRC further estimates that about 220 000 women in the UK experience some form of disadvantage at work, simply for being pregnant or taking maternity leave ("EHRC," 2017).

The figures are similar in the US with 31,000 charges of pregnancy discrimination filed with the U.S. Equal Employment Opportunity Commission (EEOC) and state-level fair employment practice agencies between October 2010 and September 2015, and the number of charges filed remained consistent year to year (NPWF, 2016).

Prior to World War II, women were typically treated as temporary workers, assumed to be in the workplace only until they got married and began to raise children, and thus there was previously a limited need for maternity leave and pay (Boninelli, 2016). The advent of World War II, however, led to an influx of women participating in industry, to replace their departed husbands' salaries and to support the war effort, which created a greater need to recognize the reproductive and caring responsibilities of working women (Anitha, & Pearson, 2013). The trends were similar in South Africa, where in the 1920s women of all racial groups slowly began to move into urban areas and enter the labour market (SAHO, 2018). Gender inequalities in the workplace were, however, marked and across the spectrum of the entire labour market globally and in South Africa, women were paid low wages and were given the least skilled jobs. In South Africa for example more than 50% of women who were employed outside of the areas reserved for Africa people only in the early 1920s were in domestic service (SAHO, 2018), in comparison to 14% today ("QLFS: Q4," 2017).

It was however through their employment that women began to get involved in trade unions or union-type organizing and work-place related activism, which became a major factor in the fight for gender equality in the workplace. In the UK for example, in the early 19th century, large numbers of women worked in the textile industry and began to collectively organize into workplace activity groups. The Manchester Spinners' Society, formed in 1795, and was predominantly female. The group was one of the first to negotiate pay based on the rate for the job and not on the rate for the sex of the worker doing the job (Boston, 1987). Women's membership of trade unions went from approximately 350,000 in 1914 to over a 1,000,000 in 1918. In France, there were mass strikes in 1916 and 1917 which were initiated by women and in which the majority of participants were women. These strikes were primarily about the effects that the war was having on the country including low wages, having to work seven day weeks and having to contend with bullying and harassment from managers (Fuller, 2015).

Women in South Africa also campaigned, protested and fought for equality in the workplace through trade unions and union-type organizing and work-place related activism as platforms throughout the 1930s and 1940s. The first attempt to establish a national, broad-based women's organisation in South Africa was the Federation of South African Women (FEDSAW) which was launched in 1954. These women drafted the Women's Charter which called for:

- the enfranchisement of men and women of all races;
- equality of opportunity in employment;
- equal pay for equal work;
- equal rights in relation to property, marriage and children; and
- the removal of all laws and customs that denied women such equality.

The FEDSAW Women's Charter furthermore demanded paid maternity leave, childcare for working mothers, and free and compulsory education for all South African children (SAHO, 2018). The Natal Organisation of Women (NOW) founded in 1983 also had the lack of proper maternity benefits and child-care as a key campaign item, and went on to be a key organisation in increasing the role of women in political and civic organisations in South Africa.

Maternity leave and pay were originally designed to protect the health of mothers and children by ensuring the provision of adequate medical and nursing care in childbirth and after childbirth and by lessening the financial, emotional and physical burden of childbearing to ensure a reasonable period free from work (Boninelli, 2016). Thus, with more women entering the labour force year after year, employers and lawmakers were forced to address the issue of pregnancy on the job and many countries began to enact maternity leave programmes due to more women entering the workplace in the aftermath of the World War II (Avendano et al., 2014).

There were however some countries that enacted maternity leave prior to World War II (see table 5). The history of maternity protection legislation dates back to the 1870s with Switzerland being one of the first countries to offer legislated time off during maternity for working women. In 1877 Switzerland offered working women 8 weeks of unpaid leave, 6 of which had to be taken after childbirth (OECD, 2017). On average working women received 5.2 weeks of maternity leave that was unpaid prior to World War II. Poland was at the forefront of maternity protection in this time period offering working women 12 weeks of fully paid maternity leave, followed by Mexico which offered working women 4 weeks of paid leave.

Table 2 Countries that were early adopters of maternity protection (pre-World War II)

Date	Country	First law passed (Duration of leave in weeks)	Current
1877	Switzerland	8 weeks unpaid	14 weeks at 80% of previous earnings
1878	Germany	3 weeks unpaid	14 weeks at 100% of previous earnings
1885	Austria	4 weeks unpaid	16 weeks at 100% of previous earnings
1889	Belgium	4 weeks unpaid	15 weeks at 75 - 82% of previous earnings
1889	Netherlands	4 weeks unpaid	16 weeks at 100% of previous earnings
1892	Denmark	2 weeks unpaid for women factory workers	18 weeks at 100% of previous earnings
1900	Spain	Amount unclear - 6 weeks from 1907 unpaid	16 weeks at 100% of previous earnings
1901	Sweden	4 weeks unpaid	14 weeks at 80% of previous earnings
1902	Italy	4 weeks unpaid	22 weeks at 80% of previous earnings
1909	France	8 weeks unpaid	16 weeks at 100% of previous earnings
1910	Greece	Pregnant women are not allowed to work	17 weeks at 100% of previous earnings
1911	United Kingdom	30 shillings for insured women	52 weeks at 90% of previous

Date	Country	First law passed (Duration of leave in weeks)	Current
			earnings
1917	Finland	4 weeks for women factory workers unpaid	18 weeks at 70% of previous earnings
1917	Mexico	4 weeks paid leave	12 weeks at 100% of previous earnings
1924	Poland	12 weeks paid leave	26 weeks at 100% of previous earnings
1930	Turkey	6 weeks unpaid	16 weeks at 66.7% of previous earnings

(Addati et al., 2014; OECD, 2017)

In South Africa maternity leave and pay was legislated for the first time in 1997 through the Basic Conditions of Employment Act 75 of 1997 (the BCEA), with no amendments to sections covering maternity until amendments proposed in 2017 and passed in 2018. However, from the early 1950s, women in South Africa were involved in many activist campaigns to fight for their maternity leave benefits in the workplace (Motsiri and Timothy 2005). Recently South Africa has passed a new Bill (the Labour Laws Amendment Act 10 of 2018) that provides for benefits for fathers, adoptive and surrogate parents.

The recent launch of the Council of European Gender Equality Strategy 2018-2023 shows the continuation of legal regulation and convention that is aimed at accelerating the achievement of substantive and full gender equity.

3.2 The Centrality of the family

The UN, through its UN agencies, which include the International Labour Organization (ILO), aims to build a better world and improve the living standards of people globally by 2030 through 17 Sustainable Development Goals centred on ending poverty, protecting the planet and ensuring prosperity for all (United Nations, 2018).

For these goals to be reached, everyone needs to do their part including governments, the private sector and civil society. Goals in particular can be reached through supporting families in particular. This is because families are considered critical units of society in that they perform important socio-economic and cultural functions. Families provide the natural framework for every individual in society to reach their full potential. The family unit contributes to developing and sustaining a well-functioning society through providing its members with the emotional, financial and material support essential to their growth, socialisation, education and development, particularly that of infants and children (United Nations Population Information Framework (POPIN), n.d.). Despite the many changes that have altered roles and functions over time, families remain a cornerstone of society today.

Impactful social development that is sustainable, is thus dependent on safeguarding the critical functions of the family unit. It is therefore essential to develop effective legislation, family policies, services and benefits aimed at strengthening basic family functions (United Nations Population Information Framework (POPIN), n.d.). Some measures aimed at supporting families include; maternity protection, paternity leave, parental leave, adoption and other family protection legislation.

The ILO views maternity protection, paternity, parental and adoption protection as fundamental human rights as they protect the functioning of the family unit. The ILO has anchored its Conventions and Recommendations[1]. in the principles of the Universal

[1] An ILO Convention is a legally binding international treaty that may be ratified by member states, while an ILO recommendation is a non-binding guideline ("ILO," 2018)

Declaration of Human Rights (UDHR) of 1948, the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1976 and the Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW) of 1979 (Addati, Cassirer, & Gilchrist, 2014).

The Universal Declaration of Human Rights (UDHR) sets out the basic rights and fundamental freedoms to which all human beings, including women and parents, are entitled, and recognizes the inherent dignity and equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace in the world (UN General Assembly, 1948). Article 16(3) states that “the family is the natural and fundamental unit of society and is entitled to protection by society and the State”, and article 25(2) states that “motherhood and childhood are entitled to special care and assistance”. Article 23(3) states “that everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection” (UN General Assembly, 1948).

The International Covenant on Economic, Social and Cultural Rights (ICESCR), article 10(1) states that “the widest possible protection and assistance should be accorded to the family”. Article 10(2) states that “special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits” (International Covenant on Economic, Social and Cultural Rights, 1976).

The Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979 can be described as an international bill of rights that defines what constitutes discrimination against women and specifically addresses reproductive and maternity protection rights of women (“CEDAW,” 2009). CEDAW calls for special measures to guarantee maternity protection, and recognizes it as an essential right, and advocates, in article 5(b), ''a proper understanding of maternity as a social function". Society's obligation extends to offering social services, especially child-care facilities that allow parents to combine family responsibilities with work and participation in public life. CEDAW also recommends special measures for maternity protection and deems that they "shall not be considered discriminatory" (article 4(2)). Women (and other parents) also have the right "to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights" (article 16(e)).

Maternity protection is thus centred on the recognition of women’s rights in the world of work and aims to ensure that a woman’s reproductive role and family responsibility does not subject her to undue discrimination, does not compromise her health and the health of her child, and does not compromise her participation in the labour market, or her economic and employment security. Maternity protection therefore offers numerous benefits that are key to the achievement of global development goals, in that maternity protection:

- Promotes the health and well-being of pregnant mothers, and their babies, during and after pregnancy and in turn reduces child and maternal mortality and morbidity (United Nations, 2009).
- Provides protection against discrimination in employment and occupation, including recruitment, promotion and dismissal.
- Guarantees the right to return to the job after maternity leave.
- Promotes gender equality at work and in the home through the safeguarding of women’s employment and income security (United Nations, 2009).

While the conventions and guidelines of the ILO, UDHR, ICESCR and CEDAW set the best practice framework for the achievement of maternity protection and rights worldwide, and almost all counties have adopted legislative provisions on maternity protection at work, over 800 million mothers around the world are still not adequately protected with almost 80 per cent of these workers in Africa and Asia (Addati et al., 2014). Thus, while progress has been made, implementation remains a challenge.

In addition to this, the roles within the traditional family have evolved and there may be other employees whose family responsibilities should not compromise their economic and employment security or subject them to undue discrimination at work; such as fathers and those who adopt, have a child through surrogacy or become a legal guardian. Recognition of the responsibility of men in the upbringing and development of children, and protection of adoptive, surrogacy and guardianship parents is likely to further assist in safeguarding the family unit, and assist in reaching sustainable development goals.

Table 3 Sources of International labour standards on maternity protection

Organisation	Convention or recommendation on maternity protection
United Nations	Universal Declaration of Human Rights (UDHR),1948
United Nations	The International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966
United Nations	The Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979
ILO	Unemployment Convention, 1919 (No.1919)
ILO	Convention on underground work (women), 1935 (No.045)
ILO	Equal Remuneration Convention, 1951 (No. 100)
ILO	Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
ILO	Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121)
ILO	Workers with Family Responsibilities Convention, 1981 (No. 156)
ILO	Workers with Family Responsibilities Recommendation, 1981 (No. 165)
ILO	Night Work Convention, 1990 (No. 171)
ILO	Maternity Protection Convention, 2000 (No. 183)
ILO	Maternity Protection Recommendation, 2000 (No. 191)
ILO	Domestic Workers Convention, 2011 (No. 189)

3.3 Research Focus

The ILO maternity protection convention, 2000 (No.183) sets out the minimum standards for legislation and practice for maternity protection and many countries worldwide have adopted these minimum standards. Over the last 20 years, there have been noticeable improvements in terms of longer rest periods at the time of childbirth, and movement away from employer liability systems of financing paid maternity leave (Addati et al., 2014). 34 countries have ratified Maternity Protection Convention, 2000 (No. 183).

Table 4 Countries that have ratified ILO Maternity Protection Convention, 2000 (No.183) that are in force

Country	Date	Country	Date
Albania	18 Aug 2004	Luxembourg	08 Apr 2008
Austria	30 Apr 2004	Mali	05 Jun 2008
Azerbaijan	29 Oct 2010	Moldova, Republic of	28 Aug 2006
Belarus	10 Feb 2004	Montenegro	19 Apr 2012
Belize	09 Nov 2005	Morocco	13 Apr 2011
Benin	10 Jan 2012	Netherlands	15 Jan 2009
Bosnia and Herzegovina	18 Jan 2010	Norway	09 Nov 2015
Bulgaria	06 Dec 2001	Peru	09 May 2016
Burkina Faso	04 Mar 2013	Portugal	08 Nov 2012

Country	Date	Country	Date
Cuba	01 Jun 2004	Romania	23 Oct 2002
Cyprus	12 Jan 2005	Senegal	18 Apr 2017
Dominican Republic	09 Feb 2016	Serbia	31 Aug 2010
Hungary	04 Nov 2003	Slovakia	12 Dec 2000
Italy	07 Feb 2001	Slovenia	01 Mar 2010
Kazakhstan	13 Jun 2012	Switzerland	04 Jun 2014
Latvia	09 Feb 2009	The former Yugoslav Republic of Macedonia	03 Oct 2012
Lithuania	29 Sep 2003		

("ILO Ratifictaions," 2017)

South Africa has ratified 4 of the conventions related to maternity and protection of women at work.

Table 5 Ratifications for South Africa

ILO Convention	Date ratified
C044 - Unemployment Provision Convention, 1934 (No.44)	-
C045 - Underground work (women) Convention, 1935, (No.45)	25 Jun 1936
C100 - Equal Remuneration Convention, 1951 (No. 100)	5 March 1997
C111 - Discrimination (Employment and Occupation) Convention, 1958 (No. 111)	19 Feb 1996
C121 - Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121)	-
C156 - Workers with Family Responsibilities Convention, 1981 (No. 156)	-
C168 - Employment Promotion and Protection against unemployment Convention, 1988 (No. 168)	-
C171 - Night Work Convention, 1990 (No. 171)	-
C183 – Maternity protection Convention, 2000 (No. 183)	-
C189 - Domestic Workers Convention, 2011 (No. 189)	20 Jun 2013
C198 - The Convention on the Rights of the Child (CRC), (No.198)	-

("ILO Ratifications," 2017)

However; while progress has been made, implementation globally remains a challenge with over 800 million mothers around the world still not adequately covered and protected and almost 80 per cent of them in Africa and Asia (Addati et al., 2014). Until April 2017 for example, South Africa met and exceeded the ILO's minimum duration of leave, but did not provide financial support at the minimum ILO stipulated level of two-thirds of previous earnings. With effect from 1 April 2017 South Africa's maternity benefit was increased to 66% of previous earnings subject to the maximum annual income threshold of ZAR 212 539.

Families in addition are changing and workplaces will need to re-evaluate whether their policies are structured in a way that is conducive to raising healthy families while working. An increasing number of countries and employers are thus beginning to implement measures to support both mothers' and fathers' care responsibilities, through paternity, parental and adoption leave, as well as services and facilities to enable nursing and childcare (Addati et al., 2014).

Research on maternity and related leave in South Africa including research on implementation of legislation and key challenges to effective implementation in the country is however largely unexplored. This research thus sets out to investigate maternity protection provisions in South Africa, with a focus on implementation.

3.4 Research Objective

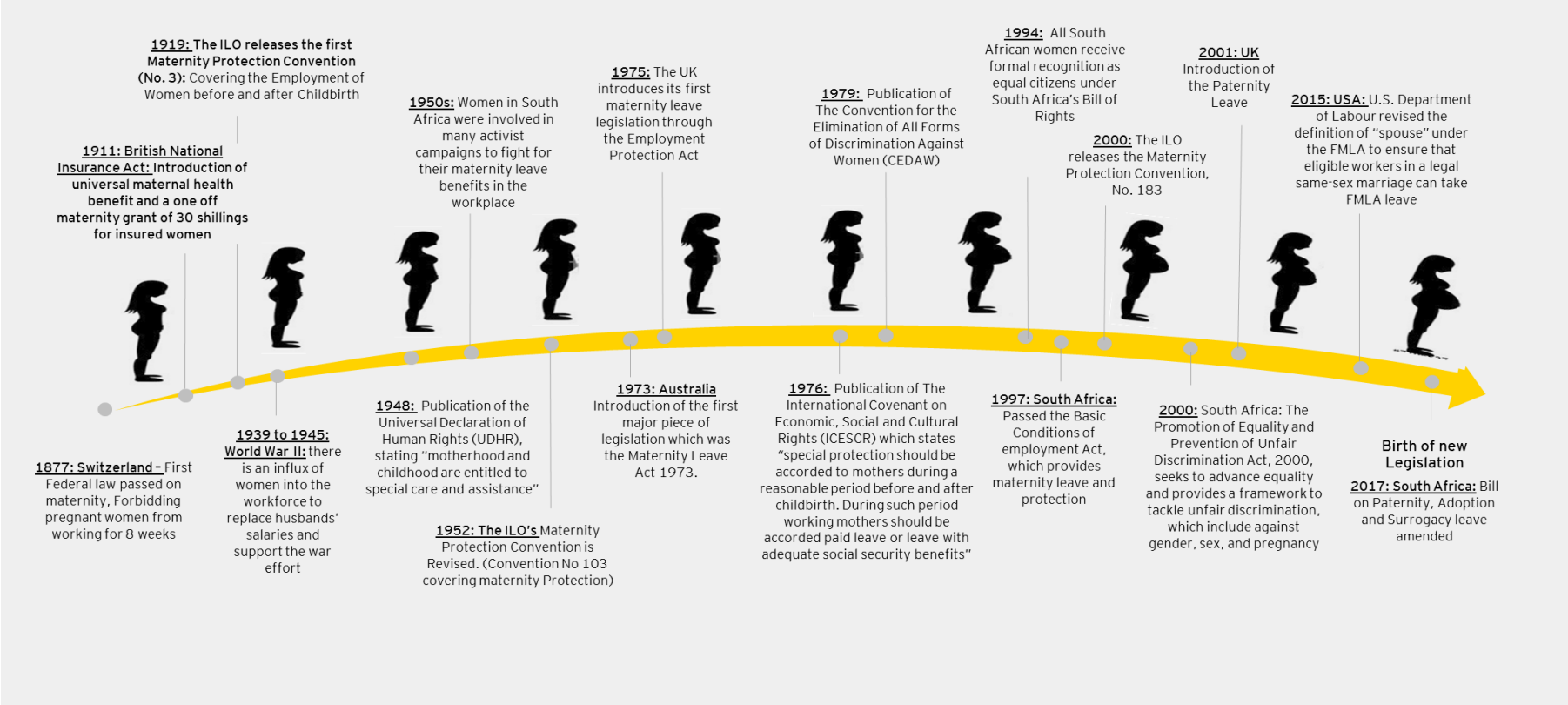
The outcome of the research is to obtain clearer information on implementation of maternity and related protection and benefits in South Africa as a crucial step in identifying recommendations for improvement. The aim of more effective implementation is to enhance the lives of South African women, South African family units and ultimately contribute to building a better South Africa for all.

Of the South African research available however, studies on coverage and implementation of maternity and related provision legislation and policy are limited, with most research outlining the labour legislation framework. This is in line with findings from a recent ILO report on maternity and paternity at work, which states that research on implementation gaps is previously unexplored and that most research has focused on the assessment of labour regulations, under the assumption that there is a direct link between adhering to the law and true application of labour law (Addati et al., 2014). Studies on protection and benefits for fathers and for non-traditional families, for example adoption leave, surrogacy, same sex couples and others are, in addition, limited in South Africa.

This research study thus intends to offer value through collecting scientific information on maternity and related provisions in South Africa with a specific focus on effective implementation. This includes investigating the estimated extent of coverage in South Africa, the extent of knowledge of legislation, legal rights and eligibility, how employers are implementing policy and practice, understanding the experiences of employees in accessing provisions and the challenges South Africa is facing with regard to implementation.

In addition, it remains useful to study the report findings along with the prevailing socio-economic context in South Africa that has shaped the society. Statistically, Black South African females remain the population group most affected by poverty in South Africa. This consideration becomes important to note as part of the research into the maternity protection commonly provided to South African females. Understanding that, according to Oxfam's Inequality report, 2019, 49.2% of Black African females live below the poverty line helps us better contextualize the findings from focus groups with women working as domestic workers, farm workers and low-income workers in South Africa and their access to UIF maternity protections. A number of these socio-economic challenges were raised by the research participants, throughout the research.

Figure 1 Timeline of Maternity Protection



The timeline above outlines some key dates in the history of protection against unfair discrimination and maternity leave provisions internationally and in South Africa.

3.5 South Africa's Current Legal framework

The ILO conventions and recommendations set out the requirements upon which countries should build their legislative frameworks with regard to maternity and related protections. The following section details the legislative framework relating to maternity protection, taking note that South Africa has not ratified the ILO Maternity Protection Convention, 2000 (No. 183).

Table 6 South Africa's maternity and related protection Legislative Framework

Legislation	Overview
The Constitution of the Republic of South Africa (1996)	Sections 9(3) and 9(4) of the Constitution of SA provide that no person may be discriminated against or dismissed on account of pregnancy. The Constitution goes on to provide protection for a person's right to bodily and psychological integrity, which encompasses the right to make decisions concerning reproduction, in section 12[2].
Basic Conditions of Employment Act, No. 75 of 1997 **Amendments to this Act, passed in November 2018, are described below**	Section 25 of the BCEA requires employers to give pregnant employees at least four months' unpaid maternity leave. This leave would normally commence four weeks before the expected date of birth but may start earlier if a medical practitioner or midwife requires it. The employer may not allow or require the employee to restart work before 6 weeks after the birth of the baby unless a medical practitioner or midwife certifies that she is fit to do so. An employee who miscarries a child during the third trimester or who bears a stillborn child is entitled to six weeks' maternity leave. According to section 26 of the BCEA no employer may require or permit a pregnant employee or an employee who is nursing her child to perform work that is hazardous to her health or to the health of her child. During an employee's pregnancy (except while on maternity leave) and for a period of six months after the birth of her child the employer must offer her suitable alternative employment on terms and conditions that are no less favourable than her ordinary terms and conditions of employment if – (a) the employee is required to perform night work or her work poses a danger to the safety or health of the employee or baby and (b) it is practicable for the employer to do so. Section 27(2) of the BCEA entitles an employee to a total of three paid days per annum family responsibility leave in the event of the illness of the employee's child. This only applies to an employee – (a) who has been in the employer's employ for more than four months and (b) who works at least four days per week.
Labour Laws Amendment Act ***This Act was signed into law by the President on 27 November 2018 and the date of proclamation still to be determined as at finalisation of this report***	Amendments to the BCEA will insert the following: "Parental leave 25A. (1) An employee, who is a parent of a child, is entitled to at least ten consecutive days' parental leave. (2) An employee may commence parental leave on — (a) the day that the employee's child is born; or (b) the day that the adoption order is granted. (3) An employee must notify an employer in writing, unless the employee is unable to do so, of the date on which the employee intends to — (a) commence parental leave; and (b) return to work after parental leave. (4) Notification in terms of subsection (3) must be given — (a) at least one month before the — (i) employee's child is expected to be born; or (ii) adoption order is expected to be granted; or (b) if it is not reasonably practically to do so, as soon as is reasonably practicable. (5) The payment of parental benefits will be determined by the Minister subject to the provisions of the Unemployment Insurance Act, 2001 (Act No. 63 of 2001). Adoption leave 25B. (1) An employee, who is an adoptive parent of a child who is below the age of two, is subject to subsection (6), entitled to— (a) adoption leave of at least ten weeks consecutively; or (b) the parental leave referred to in section 25A. (2) An employee may commence adoption leave on the date- (a) that the adoption order is granted; or (b) that a child is placed in the care of a prospective adoptive parent by a competent court, pending the finalisation of an adoption order in respect of that child, whichever date occurs first. (3) An employee must notify an employer in writing, unless the employee is unable to do so, of the date on which the employee intends to— (a) commence adoption leave; and

Legislation	Overview
	(b) return to work after adoption leave. (4) Notification in terms of subsection (3) must be given— (a) at least one month before the adoption order is expected to be granted; or (b) if it is not reasonably practically to do so, as soon as is reasonably practicable. (5) The payment of adoption benefits will be determined by the Minister subject to the provisions of the Unemployment Insurance Act, 2001 (Act No. 63 of 2001). (6) If an adoption order is made in respect of two adoptive parents, one of the adoptive parents may apply for adoption leave and the other adoptive parent may apply for the parental leave referred to in section 25A: Provided that the selection of choice must be exercised at the option of the two adoptive parents. (7) If a competent court orders that a child is placed in the care of two prospective adoptive parents, pending finalisation of an adoption order in respect of that child, one of the prospective adoptive parents may apply for adoption leave referred to in section 25A: Provided that the selection of choice must be exercised at the option of the two prospective adoptive parents. Commissioning parental leave 25C. (1) An employee, who is a commissioning parent in a surrogate motherhood agreement is, subject to subsection (6), entitled to— (a) commissioning parental leave of at least ten weeks consecutively; or (b) the parental leave referred to in section 25A. (2) An employee may commence commissioning parental leave on the date a child is born as a result of a surrogate motherhood agreement. (3) An employee must notify an employer in writing, unless the employee is unable to do so, of the date on which the employee intends to— (a) commence commissioning parental leave; and (b) return to work after commissioning parental leave. (4) Notification in terms of subsection (3) must be given— (a) at least one month before a child is expected to be born as a result of a surrogate motherhood agreement; or (b) if it is not reasonably practically to do so, as soon as is reasonably practicable. (5) The payment of commissioning parental benefits will be determined by the Minister subject to the provisions of the Unemployment Insurance Act, 2001 (Act No. 63 of 2001). (6) If a surrogate motherhood agreement has two commissioning parents, one of the commissioning parents may apply for commissioning parental leave and the other commissioning parent may apply for the parental leave referred to in section 25A: Provided that the selection of choice must be exercised at the option of the two commissioning parents. (7) In this section, unless the context otherwise indicates— "commissioning parent" has the meaning assigned to it in section 1 of the Children's Act, 2005 (Act No. 38 of 2005); and "surrogate motherhood agreement" has the meaning assigned to it in section 1 of the Children's Act, 2005 (Act No. 38 of 2005)."
Labour Relations Act, No. 66 of 1995	In Section 187[1](e), states that a dismissal is automatically unfair if the reason for the dismissal is the employee's pregnancy, intended pregnancy, or any reason related to her pregnancy. The definition of dismissal in section 186[1](c), states that dismissal means that an employer refused to allow an employee to resume work after she - took maternity leave in terms of any law, collective agreement or her contract of employment; or was absent from work for up to four weeks before the expected date, and up to eight weeks after the actual date, of the birth of her child. Schedule 8 of the LRA, Code of Good Practice: Dismissals stipulates that a dismissal on the grounds of intended or actual pregnancy is grounds for an automatic unfair dismissal.
The Employment Equity Act, No. 55 of 1998 (as amended) (the EEA)	Section 6 of the EEA reiterates the Constitution's prohibition against discrimination on the grounds of pregnancy.
The Unemployment Insurance Act, No. 63 of 2001 **Amendments to this Act, passed in November 2018 are descried below**	The Unemployment Insurance Act (UIA) provides protection to workers who become unemployed. It provides for the claiming of unemployment benefits for unemployment, maternity benefits, illness benefits, adoption benefits and dependents' benefits. Section 24[1] of the UIA states that "a contributor who is pregnant is entitled to the maternity benefits contemplated in this Part for any period of pregnancy or delivery and the period thereafter, if application is made in accordance with prescribed requirements and the provisions of this Part." It is important to note that maximum period of maternity leave is 17.32 weeks (Section 24[4] of the UIF Act).

Legislation	Overview
	Section 24[5] of the UIA states that "A contributor who has a miscarriage during the third trimester or bears a still-born child is entitled to a maximum maternity benefit of six weeks after the miscarriage or stillbirth. If the contributor receives any benefits in terms of any other law or any collective agreement or contract of employment, the benefit may not be more than the remuneration the employer would have paid the contributor if the contributor had been at work. Sections 24 to 27 of the UIA provide for the payment to the employee by the Unemployment Insurance Fund (UIF) of maternity benefits during a period of maternity leave. Part E of the UIA: Adoption benefits (ss 27-29) states that Subject to section 14, only one contributor of the adopting parties is entitled to the adoption benefits and only if a child has been adopted in terms of the Child Care Act, 1983 (Act 74 of 1983); the period that the contributor was not working was spent caring for the child; the adopted child is below the age of two; and the application is made in accordance with the prescribed requirements and the provisions. Leave and benefits will commence on the date that a competent court grants an order for adoption in terms of the Child Care Act, 1983 (Act 74 of 1983). An adoption application must be made in the prescribed form at an employment office, within six months after the date of the order for adoption, but the Commissioner may accept an application after the six-month period on good cause shown.
Labour Laws Amendment Act *This Act was signed into law by the President on 27 November 2018*	Amendments to the UIA provide for parental, adoptive and commissioning parental benefits at 66% of the earnings of the beneficiary.
The Unemployment Insurance Contributions Act, No. 4 of 2002	This act provides for the imposition and collection of contributions for the benefit of the UIF. The Unemployment Insurance Act and Unemployment Insurance Contributions Act applies to all employers and workers, but not to - workers working less than 24 hours a month for an employer; learners; public servants; foreigners working on contract; workers who get a monthly State (old age) pension; or workers who only earn commission. Domestic employers and their workers are included under the Act since 1 April 2003.
The Occupational Health and Safety Act, No. 85 of 1993	This Act states that the employer has an obligation to provide safe working conditions for its employees. This is for the whole workplace, for all employees inclusive of the pregnant and breastfeeding workforce.
The Code of Good Practice on the Protection of Employees During Pregnancy and After the Birth of a Child	The Code, issued in terms of the BCEA, is aimed at further protecting pregnant and post-pregnant employees as well as at protecting the employee's new-born child. This code, issued in terms of section 87(1) (b) of the Basic Conditions of Employment Act (BCEA) 75 of 1997, aims to guide all employers and employees concerning the application of section 26(1) of the BCEA which prohibits employers from requiring or permitting pregnant or breast-feeding employees to perform work that is hazardous to the health of the employee or that of her child. The code thus requires employers who employ women of childbearing age to regularly assess, review and proactively control risks to the health of pregnant or breast-feeding employees and that of the foetus or child, and inform and train employees accordingly. Employers should also investigate and maintain a list of employment positions not involving risk to which pregnant or breast-feeding employees could be transferred. The code requires that workplace policies should encourage women employees to inform employers of their pregnancy as early as possible to ensure that the employer is able to identify and assess risks and take appropriate preventive measures. The employer should keep a record of every notification of pregnancy, keep track and record of all activity and outcomes and inform of risks and train or accommodate employees accordingly. This includes consulting the relevant practitioners throughout (i.e. medical and occupational health practitioners). The code requires that arrangements should be made for pregnant and breast-feeding employees to be able to attend antenatal and postnatal clinics as required during pregnancy and after birth, and for those that are breast-feeding to have breaks of 30 minutes twice per day for the first six months of the child's life. Employers and employees should be aware of the various aspects of pregnancy that may affect work and accommodate accordingly.

Legislation	Overview
Relevant Case Law	The amendments to the BCEA and UIA described above respond to findings of the Labour Court in *MIA v State Information Technology Agency (Pty) Ltd.* In this matter the Labour Court was required to determine whether the employer unfairly discriminated against one of its male employees by denying him maternity leave. The employee was a homosexual man who was a legally recognised parent of a child under a surrogacy agreement entered into in terms of the Children's Act, 2005. He was to take on the role of primary caregiver of the child. His employer rejected his application for maternity leave, arguing that maternity leave was available to female employees only. The Labour Court acknowledged that maternity leave is meant to give biological mothers an opportunity to recover from the physiological effects of childbirth; but it went further in emphasising that maternity leave for primary caregivers must also take into consideration what is in the best interests of the child. The Labour Court thus ordered that the employee be granted maternity leave and pronounced that employees in a similar position (whether male or female) should be granted maternity leave on the same terms as biological mothers. From this judgment, various principles can be gleaned (which point to the direction in which the law is evolving) in order to give effect to the right to equality when considering parental leave: - employers should adopt a gender-neutral approach to granting maternity leave to employees; regardless of whether the employee gives birth to the child, an employee (of any sex or gender) should be entitled to maternity leave if that employee is to be the primary caregiver of the child and is either the child's biological parent or parent by law; - however, the statutory entitlement to maternity leave in these circumstances will arguably expire once the child is four months old. So, a primary caregiver of an adopted child who is older than four months might not be entitled to demand maternity leave in terms of section 25 of the BCEA; and - no other parent must be taking maternity leave or playing the role of primary caregiver of the child during the period of maternity leave. As the Labour Court stated that one of the objectives of maternity leave is the promotion of the best interests of the child, it is possible that, in the future, the law may develop even further to allow maternity leave to a non-parent primary caregiver of a child. If, for example, the biological mother dies during childbirth, a surviving grandparent might well argue that he/she has a legal duty to take care of his/her grandchild and that it would be in the child's best interest for that grandparent to be granted maternity leave in those circumstances.

3.6 Comparison of South Africa's Legislative framework

A recent ILO research study on maternity law and practice across 185 countries examined maternity law and practice according to three key aspects;

1. Whether the country provided at least 14 weeks of leave;
2. at a rate of at least two-thirds of previous earnings;
3. paid by social insurance or public funds (Addati et al., 2014).

The ILO found that 53% of the 185 countries studied provide the minimum 14 weeks of maternity leave while 42 countries meet or exceed the 18 weeks of leave suggested in the Recommendation of 18 or more weeks. Only 34% of the 185 countries were found to fully meet and exceed the requirements of ILO maternity protection convention and recommendation on all three key aspects. Until 1 April 2017 South Africa did not fully meet or exceed the requirements of ILO maternity protection convention and recommendation on all three key aspects.

Among the 51 African countries studied, almost half (48%) provide at least 14 weeks of leave, and 35% provide 12 to 13 weeks, while 17% provide less than 12 weeks of leave. Tunisia, with its leave period of 30 days, provides the shortest leave period while South Africa provides four months (17 weeks) of maternity leave. On average, the regional duration of maternity leave in Africa is 12.5 weeks which is below the standard of Convention No. 183 at, but progress in Africa is shown by the consistent increase in maternity duration over time (Addati et al., 2014).

There were 9 African countries that met or exceeded all three key aspects of the convention. The 9 African countries were; Algeria, Burkina Faso, Chad, Côte d'Ivoire, Gabon, Mali, Mauritania, Morocco and Senegal. Among these countries, only Mali and Morocco have ratified Convention No. 183.

Figure 2: African countries that fully meet ILO Convention no.183 and Recommendation no.191

In comparison to the rest of the world, and to Africa, South Africa's legislative framework is in line with the convention only in that it meets and exceeds the minimum prescribed duration of maternity leave. South Africa's maternity leave is funded mostly through mixed employer and employee contributions to the UIF which does not pay at least two thirds of previous earnings as prescribed by Convention 183.

The table below describes the ILO convention expectations and recommendations and shows the extent of alignment of South Africa's legislative framework.

Key:

- Completely aligned
- Almost aligned
- Not aligned
- Not rated

Table 7 South Africa's alignment to the ILO Convention 183 and Recommendation 191 with regard to duration of leave

ILO convention or Recommendation	ILO Expected implementation through laws or regulations	South African legislative framework	Alignment
Convention No. 183, Article 4(1)	Mandates a minimum leave period of 14 weeks (an increase from 12 weeks in the previous Conventions).	4 consecutive months 17.32 weeks	✓
Convention No. 183, Article 4(1)	Mandates 14 weeks of leave paid at least two-thirds of previous earnings	17.32 weeks paid at 66% of previous earnings subject to the income ceiling.	• □
Convention No. 183, Article 4(1)	Paid leave should be financed by social insurance or public funds	Funding is from the UIF which is a mixed contribution scheme from a combination of employer and employee contributions.	✓ □
Recommendation No. 191, Paragraph 1(1)	Members should endeavour to extend the period of maternity leave referred to in Article 4 of the Convention to at least 18 weeks.	4 consecutive months 17.32 weeks	•
Convention No. 183, Article 4(4)	With due regard to the protection of the	6 weeks compulsory leave after childbirth	

ILO convention or Recommendation	ILO Expected implementation through laws or regulations	South African legislative framework	Alignment
	health of the mother and that of the child, maternity leave shall include a period of six weeks' compulsory leave after childbirth, unless otherwise agreed at the national level by the government and the representative organizations of employers and workers.		✓
Recommendation No. 191, Paragraph 1(3)	To the extent possible, measures should be taken to ensure that the woman is entitled to choose freely the time at which she takes any non-compulsory portion of her maternity leave, before or after childbirth.	May commence maternity leave at any time from four weeks before the expected date of birth, unless otherwise agreed; or on a date from which a medical practitioner or a midwife certifies that it is necessary for the employee's health or that of her unborn child.	✓
Convention No. 183, Article 4(5)	The prenatal portion of maternity leave shall be extended by any period elapsing between the presumed date of childbirth and the actual date of childbirth, without reduction in any compulsory portion of postnatal leave.	Section 25(2) of the BCEA provides that an employee may commence maternity leave at any time from four weeks before the expected date of birth, unless otherwise agreed; or on a date from which a medical practitioner or a midwife certifies that it is necessary for the employee's health or that of her unborn child. Since the BCEA provides for four consecutive months' maternity leave, irrespective of when the leave commences, this gives effect to the provision.	□✓
Convention No. 183, Article 5	On production of a medical certificate, leave shall be provided before or after the maternity leave period in the case of illness, complications or risk of complications arising out of pregnancy or childbirth. The nature and the maximum duration of such leave may be specified in accordance with national law and practice.	Section 22 of the BCEA provides for six weeks' sick leave in a 36 month cycle. This would cover sickness or incapacity related to pregnancy.	✓
Recommendation No. 191, Paragraph 1(2)	Provision should be made for an extension of the maternity leave in the event of multiple births.	There is no provision in the BCEA for multiple births and the normal maternity provisions would apply. *(Of the 166 countries studied in the Addati et al., (2014) ILO report, the vast majority do not extend maternity leave in the case of multiple births).*	x

3.6.1 Pay/Cash Benefits

Monetary pay or cash benefits during maternity leave are for the purpose of sustaining a mother's economic independence and quality of life. According to the ILO, the guiding principle behind a cash benefit is that "the level of benefits should ensure that the woman can maintain herself and her child in proper conditions of health and with a suitable standard of living" (Addati et al., 2014).

There are a number of ways in which cash benefits can be funded:

- Through public funds (non-contributory schemes)
- Employer paid ("employer liability")
- Employment-related social insurance (contributory schemes),
- Combination of employer and employee contributions ("mixed system")
- Tripartite funding through contributions by employers, employees and government.

Public and tripartite funding are rare with the majority of countries worldwide using the mixed method where contributions are made by employers and employees to jointly fund maternity benefits (Addati et al., 2014). Thus, worldwide cash benefits typically only apply to women employed in the formal sector where employers are sufficiently sophisticated (and regulated) to make contributions. When paid maternity and family responsibility leave is not funded by mixed methods, social insurance or public

funds and employers have to bear the full direct cost, this can create disincentives to hiring, retaining and promoting women workers (Addati et al., 2014).

Approximately 28.4 % of employed women worldwide receive cash benefits, but an increasing number of countries are starting to provide maternity cash benefits to low-income residents and informal workers through non-contributory public funds (Addati et al., 2014).

In South Africa cash benefits are funded using the mixed system through a legislated employment-related contributory scheme (the UIF). In this system the employer and employee each contribute 1% of the employee's total earnings per month (excluding commission) to make up a total 2% contribution. Employers pay the unemployment insurance contributions on behalf of the employee through the South African Revenue Service (SARS). The employee's contribution is thus 1% of his/her total earnings per month which the employer deducts and pays on his/her behalf, and the employer contributes 1% of the employee's total earnings per month ("DOL," 2013). An employer in South Africa is not legally obliged to pay employees during their maternity leave, but is legally obliged to contribute together with all of its employees to the UIF.

There is a cap or ceiling placed on total monthly earnings, which is determined annually, and those who earn above the ceiling only contribute up to the ceiling amount.

The UIF maternity benefit does not cover:

- The unemployed;
- Independent contractors;
- Those who are not registered with the UIF;
- The self-employed;
- Employees employed for less than 24 hours a month with a particular employer, and their employers;
- Employees who receive remuneration under a learnership agreement registered in terms of the Skills Development Act, 1998 (Act No. 97 of 1998), and their employers;
- Foreigners working on contract to be repatriated at the end of the contract;
- Employees who get a monthly State pension;
- Employees who only earn commission.

Expanding coverage to non-standard work situations would assist to ensure the health and well-being of a greater numbers of employees and their children (Addati et al., 2014).

The ILO convention's standard for cash benefits is two-thirds of previous earnings for a duration of 14 weeks. Globally, 45% (74 countries) provide cash benefits of at least two-thirds of earnings for at least 14 weeks. There are only two countries worldwide (out of the 185 studied) that provide some form of maternity leave but do not provide cash benefits to women during maternity leave, these are Papua New Guinea and the United States (Addati et al., 2014).

Nearly all of the African countries reviewed calculate maternity benefits as a percentage of prior earnings. Of the 51 African countries assessed, 20 countries (39%) provided for at least two thirds of earnings for 14 weeks. In South Africa it is estimated that those who access the maternity benefit through the UIF should receive between 38% and 58% of total earnings per month. The higher the employee's salary the lower the % amount received will be. 38% is thus the percentage amount that high earners and those near or above the ceiling receive ("Parent24," 2009). Since 1 April 2017 South Africa has provided the stipulated two thirds of earnings over up to 17.32 weeks.

Table 8 South Africa's alignment to the ILO Convention 183 and Recommendation 191 with regard to cash benefits

Key:

Completely aligned

Almost aligned

Not aligned

Not rated

ILO convention or Recommendation	ILO Expected implementation through laws or regulations	South African legislative framework	Alignment
Convention No. 183, Article 6(1)	Cash benefits shall be provided, in accordance with national laws and regulations, or in any other manner consistent with national practice, to women who are absent from work on leave [both in respect of maternity leave and leave in case of complication or illness].	66% of previous earnings up to a ceiling are provided for up to 17.32 weeks.	✓
Convention No. 183, Article 6(2)	Cash benefits shall be at a level which ensures that the woman can maintain herself and her child in proper conditions of health and with a suitable standard of living.	The UIF has an earnings ceiling of R17 712 per month Since current benefits are a portion of existing salary, they will only maintain the woman and child at a suitable standard of living if the existing salary is at a decent level. It remains to be seen how the introduction of a national minimum wage, which has been signed into law, of R20 per hour, will impact on this. 66% of the proposed national minimum wage would equate to R2 310.00 per month.	Not rated
Convention No. 183, Article 6(3)	Where, under national law or practice, cash benefits paid with respect to leave referred to in Article 4 are based on previous earnings, the amount of such benefits shall not be less than two-thirds of the woman's previous earnings or of such of those earnings as are taken into account for the purpose of computing benefits.	66% of previous earnings up to a ceiling are provided for up to 17.32 weeks. Those above the ceiling will not earn 66%.	×
Convention No. 183, Article 6(4)	Where, under national law or practice, other methods are used to determine the cash benefits paid with respect to leave referred to in Article 4, the amount of such benefits shall be comparable to the amount resulting on average from the application of the preceding paragraph.	66% of previous earnings up to a ceiling are provided for up to 17.32 weeks.	×
Recommendation No. 191, Paragraph 2	Where practicable, and after consultation with the representative organizations of employers and workers, the cash benefits to which a woman is entitled during leave referred to in Articles 4 and 5 of the Convention should be raised to the full amount of the woman's previous earnings or of such of those earnings as are taken into account for the purpose of computing benefits.	There are no apparent moves in SA between capital and labour to increase the size of maternity benefits	x
Convention No. 183, Article 6(4)	In order to protect the situation of women in the labour market, benefits in respect of the leave referred to in Articles 4 and 5 shall be provided through compulsory social insurance or public funds, or in a manner determined by national law and practice. An employer shall not be individually liable for the direct cost of any such monetary benefit to a woman employed by him or her without that employer's specific agreement except where: (a) such is provided for in national law or practice in a member State prior to the date of adoption of this Convention by the International Labour Conference; or (b) it is subsequently agreed at the national level by the government and the representative organizations of employers and workers.	Employers in South Africa are obliged only to offer the minimum of 14 weeks of leave, and are not obliged to pay during that leave (although many formal sector employers often do)	✓

In summary,

- South Africa's legislative framework is aligned with Convention No. 183, Article 6(1) in that it provides for cash benefits to women who are absent from work on leave for maternity related reasons.
- In terms of Convention No. 183, Article 6(2), the South African legislative framework provides maternity benefits that are relative to the existing salary of the woman going on maternity leave, as such it follows that the lower the existing salary, the lower the maternity cash benefit – contrary to the stipulation of the Convention that the cash benefit shall be at a level that is able to maintain a suitable standard of living for the mother and her child.
- South Africa's legislative framework only provides for 66% of previous earnings as a cash benefit up to a ceiling, which is not aligned with Convention No.183, Article 6(3) and 6(4) which does not stipulate a ceiling.
- As recommended in Recommendation No.191 paragraph 2, the vision of the ILO is to consider raising the cash benefits during maternity leave to a full salary. South Africa's organised labour, is yet to table this recommendation. This report considers this Recommendation in the Recommendations section below.
- The UIF structure of payment of maternity benefits is in line with Convention No.183, Article 6(4) which entails that payments for maternity benefits shall be provided through compulsory social insurance or in a manner determined by national law and practice.

3.6.2 Paternity, adoption and surrogacy

In addition to maternity leave, access to other kinds of family leave for the care of new born and young children is important for the support of family units as well as for employees to balance work and family life more effectively. With the changes in the pattern of family make-up across the globe (such as the growth of mixed families, single-parent households and same-sex couples adopting) there is an increasing awareness of the need to reconfigure the work, family and personal lives of both men and women.

The ILO Workers with Family Responsibilities Convention, 1981 (No. 156) and the accompanying Recommendation No. 165, are considered the major standards on work–family balance. Convention No. 156 regulates for national policy where all workers with family responsibilities – both women and men – can engage in employment without discrimination or, as far as possible, conflict between work and family obligations.

Recent case law in South Africa has led to a re-evaluation of maternity leave that considers the societal changes of the traditional family and looks at maternity leave for parents and same-sex couples who choose to adopt, shifting South African legislation to take a more gender-neutral and inclusive approach to maternity leave (Moodley & Ferreira 2017).

3.6.2.1 Paternity Leave

Paternity leave is usually a short period of leave for fathers to care for a child and the mother around the time of childbirth (Addati et al., 2014). While no conventions or particular standards exist that deal specifically with paternity leave, the UN and others recognise that fathers undertaking a more active role in caregiving is likely to be one of the most significant social developments of the twenty-first century (UN, 2011; O'Brien, 2013), as this is believed to be a factor in assisting with sharing of family responsibilities and thus increased gender equality in the home and more women re-entering the workplace with greater support.

Leave that is legislated and can be taken as 'paternity leave' is available in 79 countries, and on average countries worldwide provide fathers with approximately 11.7 days of paternity leave that is most often paid leave. The approximate average days of paid paternity leave excluding developed regions is however less at 5.9 days. This leave is most often funded by the employer only, and thus fathers who are self-employed, work in the informal sector or are part-time and short-term employees, are not usually eligible. Slovenia provides the most paid leave for fathers, offering 90 days of paid paternity leave, 15 of which must be

taken before the child is 6 months old, with the rest to be taken before the child is 3 years old. Norway and Iceland offer 70 and 69 days of paid paternity leave respectively (Addati et al., 2014).

In the African region, 21 countries offer a leave provisions that can be used for paternity leave. Burundi offers the most amount of paid leave in Africa at 15 days, followed by Central African Republic, Kenya, Madagascar and Mauritania at 10 days of paid leave. Mozambique offers only 1 day of paid leave immediately after delivery. The average across the region is approximately 5.5 days of paid leave. Until the recent amendments to the BCEA, South Africa fell below the regional average offering only 3 days of paid leave (Addati et al., 2014) which is not specific paternity leave but "family responsibility leave" which can be used for the birth or illness of a child. The amendment to the Act now provides that family responsibility leave is only for use during the illness of a child and parental leave of at least ten consecutive days can be claimed for the birth (or adoption) of a child. Payment of 66% of the earnings of the beneficiary may be claimed for this leave from the Unemployment Insurance Fund in terms of amendments to the Unemployment Insurance Act 63 of 2001.

Table 9 African countries that offer 'paternity leave'

Country	Leave provisions that can be used for paternity or parental leave (in days)	Paid Leave that can be used for paternity or parental leave
Burundi	15	Paid
Central African Republic	10	Paid
Kenya	10	Paid
Madagascar	10	Paid
Mauritania	10	Paid
Togo	10	No data
Djibouti	7.0	Paid
Ethiopia	5	Unpaid
Mauritius	5	Paid
Rwanda	4	Paid
Seychelles	4	Paid
Uganda	4	Paid
Algeria	3	Paid
Libya	3	No data
Mali	3	Paid
Morocco	3	Paid
South Africa	10	Paid at 66%
Tanzania, United Republic of	3	Paid

Country	Leave provisions that can be used for paternity or parental leave (in days)	Paid Leave that can be used for paternity or parental leave
Democratic Republic of Congo	2	Paid
Tunisia	1.5	No data
Mozambique	1	Paid

(Addati et al., 2014)

The fourth quarter 2017 South African Quarterly Labour Force Survey (QLFS) estimates that approximately 4 232 000 men are entitled to paternity leave in their conditions of employment. This is only 47% of the employed male population and thus less than half of men employed in South Africa are eligible or can access paternity leave ("QLFS: Q4," 2017).

3.6.2.2 Adoption Leave

The adoption process in South Africa typically follows a screening and approval process by an accredited social worker, then a matching with the child process. Once a child has been matched to suitable parents, the process to have the child legally adopted would follow. The screening and approval process involves looking into the parents' backgrounds, the stability of their relationship, their lifestyles, their income and expenditure, and their general readiness to provide a home for a child. On average, the screening and approval process takes between 3 and 6 months.

The costs of adoption vary significantly depending on the different organisations that facilitate the adoption, and whether the adoption is facilitated by Child Welfare, by a government-subsidised agency or by a private social worker. An adoption facilitated through government agencies typically costs between R12 000 and R15 000, outside of the cost of the medical, police clearance and psychological assessments. Adoptions through a private social worker or adoption organisation can cost up to R60 000, including the medical, police and psychological assessments.

According to ILO recommendation No. 191, "where national law and practice provide for adoption, adoptive parents should have access to the system of protection offered by maternity convention No. 183, especially regarding leave, benefits and employment protection." Adoption Leave should thus be available to both parents adopting a child (maternity and paternity and/or parental leave should be available in the case of an adoption).

Adoption leave provides time for parents to care for and adapt to the arrival of their adopted or surrogate child. In some countries (Senegal, UK, Colombia, Brazil and Australia), adoptive mothers/parents have the same rights as biological mothers to maternity leave, but in many countries the leave for adoptive parents is shorter than that of biological parents as there is no need for pre-natal leave or recovery from childbirth. In South Africa, until the recent amendments to legislation, adoption leave was for a shorter time period of time (10 weeks instead of 14-17.32 weeks given for maternity) and was limited to women employees – however recent case law influenced amendments to legislation which were passed at the end of November 2018.

MIA v State Information Technology Agency (Pty) Ltd (2015) 36 ILJ 1905 (LC)

In this case an employee and his partner had a baby with a surrogate mother and the employee applied to his employer for maternity leave which was not granted. The employee alleged that the refusal to grant the leave was unfair discrimination on the

grounds of gender, sex, sexual orientation and family responsibility in terms of the EEA. The employer relied on the word 'maternity' defining it as a right due to only female employees.

The court found that maternity leave is not only occupied with the mother and her physical wellbeing but is also concerned with the best interest of the child, as is regulated by section 28 of the Children's Act, No.38 of 2005. The court went on to state that the acceptance of surrogacy and same-sex unions in legislation is indicative that any policy an employer adopts should be read in accordance with the Children's Act and the Civil Union Act No 17 of 2006.

The court thus found that the policy of the employer unfairly discriminated against the employee and that the policy should be adjusted to grant maternity leave on the case of surrogacy. The challenge posed by this case is that either of the same-sex parents could approach their employer to request 4 months of maternity leave, and this scenario would discriminate against opposite sex couples (Pienaar & Sonnekus, 2016). There was thus a need to update South African legislation to bring it in line with the Civil Union Act and the Constitution of South Africa.

The Labour Laws Amendment Act provides for changes to the BCEA to the effect that:

- Ten days of parental leave may be taken by an employee when a child is born, or when an adoption order is granted;
- Or ten weeks' adoption leave may be taken by an employee when adopting a child under the age of two;
- Or ten weeks for "commissioning parent leave" may be taken by an employee when an employee's child is born by means of a surrogacy arrangement.

The amendments specifically state that if an adoption order is made in respect of two adoptive parents or if a surrogate motherhood agreement has two commissioning parents, only one of the adoptive or commissioning parents may apply for adoption/commissioning parental leave and the other parent may apply for the ten days parental leave. This provision thus protects employers from cases where both adoptive/commissioning parents try to apply for the longer-term leave. The amendments also provide for this benefit to be paid at 66% of the earnings of the employee at the date of the application for unemployment insurance benefits.

3.6.2.3 Surrogacy leave

In an article dated 21 October 2018, the Sunday Times writes *Twins' fatherhood shared by dads: Same sex couple will both contribute to their kids' DNA.* This article shared the story of a Cape Town same sex couple who approached the Cape Town High Court to allow them to share biological fatherhood of twins born from a surrogate. The couple sought the court's approval to have the Cape Fertility Clinic perform artificial fertilisation including the simultaneous transfer of one embryo that had been fertilised with sperm from the one father and another that had been fertilised by his husband. According to the article, if the in-vitro fertilisation is successful the couple's children would be twins with different DNA – one would share DNA with the first father while his husband would be the biological father of the other child, the children would share the same mother. In fertility terms, the children would be bi-paternal twins. This is to give both partners the chance at each fathering a child – as if one father were to be the only male genetic part of an embryo, then the couple would have to repeat the surrogacy journey again in order to have a half sibling born from the other father.

As expressed in the article, embryo transfer is expensive and the surrogacy journey itself is expensive and often not repeated due to the costs. The Cape Town fertility clinic needed a court order before performing the double embryo transfer due to the ambiguous and unclear wording of the provisions relating to artificial fertilisation of persons. In the end the court approved the double embryo transfer but only due to the unique circumstances of this case. A blanket approach to similar cases will not necessarily be followed, but rather, each case will be decided on its own merits.

In another unrelated case (reported in the Sunday Times on 21 October 2018), in 2016, a male same-sex couple in Pretoria made history by becoming fathers to triplets, two of whom share DNA with one of the men while the other with his husband, 10 weeks into the pregnancy showed that one of the embryos had split resulting in a third child. Surrogacy is an expensive process. In numbers, the average cost of each IVF cycle is R50 000 (it can usually take several treatments before conception and birthing.) 6000 IVF cycles are done in South Africa each year. As South Africa has outlawed surrogacy for commercial gain, the surrogate is only to be compensated for medical expenses, loss of income during the pregnancy and directly associated costs such as travelling. Commissioning parents are liable for fees relating to

- Medical assessment of the health of the surrogate;
- Hospitalisation and medical costs directly associated with the childbirth;
- Psychological assessments of the surrogate to determine her mental and emotional stability;
- Social worker assessments of the surrogate;
- Life policy for the surrogate;
- Legal costs of the surrogacy agreement and consequent High Court application.

As described above, amendments to the BCEA provide for commissioning parental leave in terms of which a commissioning parent in a surrogate motherhood agreement is entitled to ten weeks' consecutive commissioning parental leave or parental leave at 66% of the earnings of the employee at the date of the application for unemployment insurance benefits. If there are two commissioning parents in a surrogate motherhood agreement, one of the parents may claim parental leave and the other may claim commissioning parent leave.

3.6.2.4 Parental Leave

Parental leave is typically intended for a longer period in order to care for a child beyond maternity, paternity and adoption/surrogacy leave and is typically available to one or both of the parents, with some countries now making available non-transferable portions of parental leave to each parent. Parental leave systems sometimes make it possible for parents to choose how and when to take the leave.

Protection of both parents in South Africa is important for gender equality both in the home and in the workplace but it is important that employers are not overburdened. The EU Council Directive (2010/18/EU) on parental leave, states that employees are entitled to parental leave on the birth or adoption of a child, and that parental leave, even in the case of adoption should be for at least four months, as an individual right of both parents ("EU Directive on Parental leave," 2015). The Labour Law Amendments Act provides for leave for both parents in South Africa, as well as two parents in non-traditional families, albeit that leave is only between ten days and ten weeks of leave (less than the recommended minimum of 4 months). The Act as mentioned offers both parents leave, however one parent is entitled to the shorter period and one to the longer period so as not to overburden employers. These amendments are the first step in a long journey for South Africa to acknowledge and support the role of fathers.

According to research by Sonke Gender Justice *State of South Africa's Fathers, 2018* while the parental leave days are relatively few, the legislative change establishes a few important principles in the South African labour law framework, including gender-neutral language for parental leave, dedicated leave for adoptive parents and commissioning parents in a surrogacy agreement, and allowance for same-sex couples to qualify for parental leave.

3.7 Estimated coverage in South Africa

3.7.1 Estimating coverage in South Africa

The ILO states that coverage can be estimated at two levels:

1. Coverage in law (legal or statutory coverage) which aims to estimate the scope of beneficiaries that the legislation covers, determined by the categories of workers to whom the law applies and does not apply (ILO, 2012c). This is thus the potential number of beneficiaries covered.
2. Coverage in practice (or effective coverage) which aims to determine the extent to which laws are actually implemented and can be determined by the amount of the legally protected population which is actually benefiting from its application. This is thus the actual beneficiaries that have successfully claimed.

In South Africa there are 37 525 000 people between the ages of 15 and 64, of which 51% (18 975 000) are women and 49% (18 550 000) are men. Of the total 37 525 000 people between the ages of 15 and 64, 43% (16 171 000) are employed, 16% (5 880 000) are unemployed and 41% (15 474 000) are not economically active. Of the 43% that are employed 70% (11 244 000) are in the formal working sector, 17% (2 808 000) are in the informal working sector, 8% (1 270 000) work in private households (i.e. domestic workers) and 5% (849 000) work in the agriculture sector ("QLFS: Q4," 2017).

Women make up 44% (7 071 000) of the employed population in South Africa, with the majority of them (67%) in the formal working sector. Of the women employed in South Africa, 15% are in the informal working sector, 14% in private households and 4% are in the agriculture sector ("QLFS: Q4," 2017)..
It is estimated that there are approximately 6 279 990[2] women who are employed between the ages of 15 and 54 and who would thus be eligible or legally covered in South Africa for maternity benefit claims.
However, the 15% of employed women working in the informal sector, 14% in private households and 4% in the agricultural sectors may not be eligible and/or have challenges in claiming maternity benefits from the UIF. Furthermore approximately 61% of working contracts in South Africa are permanent and the remaining 39% of temporary or limited contracts may not be eligible or could also have difficulty in claiming benefits from the UIF.

Under the Unemployment Insurance Act, employees who work less than 24 hours a month, public servants, foreigners working on contract and independent contractors are excluded from contributing and claiming maternity benefits. Furthermore, only those employees that contribute to the fund are eligible. The fourth quarter 2017 QLFS estimates that approximately 3 421 000 women contribute to UIF ("QLFS: Q4," 2017). Thus only an estimated 48 % of all employed working women in South Africa are currently eligible to claim maternity benefits from the UIF.

While the potential number of beneficiaries in South Africa who should be legally covered is at approximately 6 279 990, almost half (48%) may not be eligible and approximately a third (33%) or more may have difficulty accessing benefits. This study aims to understand the key challenges associated with this level of effective coverage, so as to identify possible recommendations for improvement.

3.7.2 Non-covered populations and how coverage could be extended

Women who are unemployed, not economically active, work in the informal sector, are casual or temporary workers, independent contractors or the self-employed are excluded from maternity protection and benefits under the BCEA and the UIA.

[2] 7 071 000 total employed women between 15-64 years of age, less 51% of total employed between 55-64 years of age, 1 551 000, equals the estimated number of women employed between 15-54. (7 071 000 – (0.51*1 551 000) = 6 279 990) ("QLFS: Q4," 2017).

There are an estimated 10 771 290 women between the ages of 15-54[3] in South Africa who are unemployed, or not economically active that would need to rely on public grants administered by the South African Social Security Agency (SASSA), for financial assistance when they are having a child. This being said, their public funded financial assistance can only be obtained once the child is born, where a birth certificate, among the other necessary documents, can be provided, and thus no benefits will be received during pregnancy. The Child Support Grant from SASSA is currently R400 per month, per child for up to six biological children (approximately US$32 a month) ("Child Support Grant," 2018).

Self-employed women make up major segments of the labour market in many countries and can often be among the most vulnerable workers. The number of women who are self-employed in South Africa is estimated to be about 677 000 (*SESE*, 2013). Libya is one country in Africa that provides 100% of previous earnings for 13 weeks for women who are self-employed (Addati et al., 2014).

The informal sector, casual or temporary workers and the self-employed could be more adequately covered for maternity protection and benefits in the following possible scenarios:

1. Entitlement to compulsory coverage under the UIF;
2. Eligibility for special insurance systems;
3. Voluntary contribution to the UIF (the self-employed would however be required to pay higher contributions (both the employer and the employee contribution).

(Adapted from Addati et al., 2014)

3.8 Best Policy and Practice worldwide

3.8.1 Countries

Comparisons of maternity protection across countries is challenging as there are distinctive aspects that are unique to some countries, and some countries have quite complex systems. A recent study by the ILO has found that more than half, or 98 of the countries studied provide the minimum of 14 weeks of leave and 45%, or 74 countries, reach the standard of at least two-thirds of earnings paid for at least 14 weeks (Addati et al., 2014).

The country that provides the most amount of paid time off for maternity leave is Croatia at 58 weeks, of which 24 weeks are paid at 100% of previous earnings, and thereafter a flat rate benefit is paid. Australia, the United Kingdom (UK), Albania, Bosnia and Herzegovina and Montenegro all come in second with 52 weeks of leave. In Australia 18 of the 52 weeks are paid at the federal minimum wage level. In the UK, the first 6 of the weeks are paid at 90% of previous earnings, a lower of 90% or flat rate is paid for weeks 7–39 and then weeks 40–52 are unpaid. Albania pays 80% of previous earnings prior to birth for up to 150 days after and then 50% for the remainder of the weeks (Addati et al., 2014).

The country with the least amount of leave is Tunisia at 4 weeks, which are paid at the two-thirds of the previous earning level (66.7%). The United Arab Emirates provides 6 weeks at 100% of previous earnings, while Qatar, Oman, Lebanon and Nepal all provide 7 weeks at 100% of previous earnings. There are then two countries that do not provide cash benefits during maternity leave, these are the United States and Papua New Guinea (Addati et al., 2014).

[3] 11 904 000 total unemployed and not economically active women between 15-64, less 51% of the total unemployed and not economically active between 55-64, 2 221 000, equals the estimated number of women unemployed and not economically active between 15 – 54. (11 904 000 – (0.51*2 221 000) = 10 771 290) ("QLFS: Q4," 2017).

Table 10 Countries with the most and least paid weeks in comparison to South Africa

Country	Duration of maternity leave (in weeks)	Amount of maternity leave cash benefits (% of previous earnings)	Source of funding of maternity leave cash benefits
Croatia	58 Weeks	100% until 6 months after birth, then a flat-rate benefit	Social security (health insurance fund for 6 months, then public funds)
Australia	52 Weeks	18 weeks at the federal minimum wage level	Social security (public funds – federal government)
United Kingdom	52 Weeks	6 weeks paid at 90%; lower of 90%/flat rate for weeks 7–39; weeks 40–52 unpaid	Mixed (employers reimbursed up to 92% by public funds) 24
Albania	52 Weeks	80% prior to birth up to 150 days after; 50% for remainder	Social security (social insurance)
Bosnia and Herzegovina	52 Weeks	50% to 100%	Social security (social insurance and public funds)
Montenegro	52 Weeks	100%	Social security (social insurance)
South Africa	17 Weeks	58% (at the time of this study)	Social security (social insurance)
Nepal	7 Weeks	100%	Employer liability
Lebanon	7 Weeks	100%	Employer liability
Oman	7 Weeks	100%	Employer liability
Qatar	7 Weeks	100%	Employer liability
United Arab Emirates	6 Weeks	100%	Employer liability
Tunisia	4 Weeks	66.70%	Social security (social insurance)

(Addati et al., 2014)

Africa as a region on average provides 12.5 weeks of leave at approximately 90.8% of previous earnings. 60% of African countries however rely on employers to fund maternity benefits, 38% of countries in Africa have full employer liability funding, while 23% are mixed employer and other funding. South Africa provides the longest duration of leave in Africa at 17 weeks, however only provides up to 60% of previous earnings and up to a ceiling, which is less than the ILO's two-thirds and the regional approximated average. Congo in comparison provides 15 weeks paid maternity leave at 100% of previous earnings, however it is funded through a mixed (50% social insurance; 50% employer) system, whereas South Africa uses a mixed (50% employer, 50% employee) system.

Table 11 African countries by the highest duration of maternity leave (in weeks)

Country	Duration of maternity leave (in weeks)	Amount of maternity leave cash benefits (% of previous earnings)	Source of funding of maternity leave cash benefits
South Africa	17 Weeks	58% (at the time of this study)	Social security (social insurance)
Congo	15 Weeks	100%	Mixed (50% social insurance; 50% employer)
Algeria	14 Weeks	100%	Social security (social insurance)

Country	Duration of maternity leave (in weeks)	Amount of maternity leave cash benefits (% of previous earnings)	Source of funding of maternity leave cash benefits
Benin	14 Weeks	100%	Mixed (50% social insurance; 50% employer)
Burkina Faso	14 Weeks	100%	Social security (social insurance)
Cameroon	14 Weeks	100%	Social security (social insurance)
Central African Republic	14 Weeks	50%	Social security (social insurance)
Chad	14 Weeks	100%	Social security (social insurance)
Comoros	14 Weeks	100%	Employer liability
Côte d'Ivoire	14 Weeks	100%	Social security (social insurance)
Democratic Republic of Congo	14 Weeks	66.7%	Employer liability
Djibouti	14 Weeks	100%	Mixed (50% social insurance; 50% employer)
Gabon	14 Weeks	100%	Social security (social insurance)
Guinea	14 Weeks	100%	Mixed (50% social insurance; 50% employer)
Libya	14 Weeks	50% (100% for self-employed women for 13 weeks)	Mixed (employer liability or social insurance for self-employed women)
Madagascar	14 Weeks	100%	Mixed (50% social insurance; 50% employer)
Mali	14 Weeks	100%	Social security (social insurance)
Mauritania	14 Weeks	100%	Social security (social insurance)
Morocco	14 Weeks	100%	Social security (social insurance)
Niger	14 Weeks	100%	Mixed (50% social insurance; 50% employer)
Senegal	14 Weeks	100%	Social security (social insurance)
Seychelles	14 Weeks	Flat rate monthly benefit for 12 weeks	Social security (social insurance)
Somalia	14 Weeks	50%	Employer liability
Togo	14 Weeks	100%	Mixed (50% social insurance; 50% employer)
Zimbabwe	14 Weeks	100%	Employer liability
Angola	13 Weeks	100%	Social security (social insurance)
Egypt	13 Weeks	100%	Mixed (75% social insurance; 25% employer)
Ethiopia	13 Weeks	100%	Employer liability
Kenya	13 Weeks	100%	Employer liability
Botswana	12 Weeks	50%	Employer liability
Burundi	12 Weeks	100%	Mixed (50% social insurance; 50% employer)
Equatorial Guinea	12 Weeks	75%	Social security (social insurance)
Gambia	12 Weeks	100%	Employer liability
Ghana	12 Weeks	100%	Employer liability
Lesotho	12 Weeks	100%	Employer liability
Mauritius	12 Weeks	100%	Employer liability
Namibia	12 Weeks	100% up to a ceiling	Social security (social insurance topped up by employer)
Nigeria	12 Weeks	50%	Employer liability

Country	Duration of maternity leave (in weeks)	Amount of maternity leave cash benefits (% of previous earnings)	Source of funding of maternity leave cash benefits
Rwanda	12 Weeks	100% first 6 weeks, 20% remainder	Employer liability
Sierra Leone	12 Weeks	100%	Employer liability
Swaziland	12 Weeks	100% for 2 weeks	Employer liability
Tanzania, United Republic of	12 Weeks	100%	Social security (social insurance)
Zambia	12 Weeks	100%	Employer liability
Uganda	10 Weeks	100%	Employer liability
Cape Verde	9 Weeks	90%	Social security (social insurance)
Eritrea	9 Weeks	Paid (amount unidentified)	Employer liability
Guinea-Bissau	9 Weeks	100%	Mixed
Mozambique	9 Weeks	100%	Social security (social insurance)
Sao Tome and Principe	9 Weeks	100%	Social security (social insurance)
Malawi	8 Weeks	100%	Employer liability
Sudan	8 Weeks	100%	Employer liability
Tunisia	4 Weeks	66.7%	Social security (social insurance)
Approximate Averages	**12.4 Weeks**	**90.8%**	

(Addati et al., 2014)

3.8.2 Employers

Internationally there are employers that are offering exceptional maternity and related benefits to their employees. For example; Netflix in the US offers employees 1 year (52 weeks) of fully paid leave for birth and adoptive parents of any gender. Netflix employees can also choose to return to work full-time, part-time, and to take additional time off as needed. Technology companies in particular, are offering above average parental leave in an attempt to attract and support more women in the industry. These companies are in addition offering leave and benefits for both primary caregivers and secondary caregivers. Amazon allows employees to "donate" up to six weeks of their paid leave (up to 20 weeks for birth mothers) to their partners; paying for the employee's partner's salary for up to six weeks if that partner doesn't receive paid leave from their own company ("Business Insider," 2016).

The Bill & Melinda Gates Foundation offers employees up to 1 year (52 weeks) of paid time off in order to enable parents to participate more fully in their children's lives, while also allowing them the flexibility and financial certainty to meet the needs of their growing families ("Business Insider," 2016).

Facebook and Apple, in addition to 17 and 18 weeks of paid maternity leave respectively, are paying for female employees to have elective egg freezing in order to preserve fertility and delay having a family in favour of putting their careers first (Bennett, 2018).

In South Africa, as in many other countries, legislation dictates the minimum requirements that employers must meet with regard to maternity and related protection. Thus, in South Africa, while companies must offer a minimum of 16 weeks maternity leave they are not obliged to offer paid leave. Employers in South Africa however can, and do, offer employees paid, either full or partial, maternity leave as a "job perk" and make use of this benefit as an employee value proposition to attract and retain the best talent.

Where companies offer paid leave, whether fully or partially paid, they tend to require a certain period of service in order to be eligible for the paid benefit and often have a work back period, where if the employee resigns before the work back period they will be responsible for repaying a portion of the remuneration that was received. In South Africa, where companies offer only partial pay, employees can claim the rest of the potion from the UIF. The UIF Act, 2002, section 24(3) states that "When taking into account any maternity leave paid to the contributor in terms of any other law or any collective agreement or contract of employment, the maternity benefit may not be more than the remuneration the contributor would have received if the contributor had not been on maternity leave."

Creating policies that benefit employees looking to start families will allow employers to access wider pools of talent, and in particular, female talent. The benefits for companies to offer attractive maternity and parental leave policies include increased staff retention, and reduced hiring costs contributing to more positive impacts on productivity. For example, Vodafone cited a study it had commissioned that showed businesses could save up to R228 billion ($19bn) a year by offering 16 weeks of maternity leave to employees. Weighing up the cost for an employer to introduce a maternity leave policy for a longer fully-paid duration against the estimated spend on recruiting and training new workers to replace women who left the workforce after having a baby shows that it is significantly more cost effective to have a good maternity leave policy in place ("Business Report," 2015).

Information regarding maternity and related policies in South Africa is limited, however some secondary source information is available for a few companies in South Africa. Pick n Pay, the second largest supermarket chain store in South Africa, offers employees well above the legislated minimum. Pick n Pay offers 44 weeks of paid maternity leave, and fathers 8 days of paternity leave. In addition, if both parents have worked at the company for more than 8 months they can share maternity leave. MTN, a large telecommunications company in South Africa offers employees 18 weeks of paid leave, a re-entry programme and reduced working hours after returning to work. The table below details some of the best maternity and related leave policies of employers in South Africa (from information publically available, the sources of which are referenced in the table below).

Table 12 South African Employers with the best maternity and related policies

Company (Source)	Industry	Maternity Benefit Details	Other related Benefits	Paternity, Adoption and surrogacy
Pick n Pay ("Living and Loving," 2018)	Retail	44 weeks (11 months) of paid leave		• 8 days paternity leave • If both parents have worked at the company for more than 8 months they can share maternity leave
MTN ("BusinessTech," 2017)	Telecommunications	24 weeks (6 months) paid leave		
Maersk Group ("The HR Portal," 2016)	Transport and Energy	18 weeks fully paid maternity leave	• Return-To-Work programme for a smoother transition back to work • 20% reduced working hours at full pay	1 week of paternity leave
BHP Billiton ("Business Chief," 2010)	Mining and Metals	18 weeks of leave	• Work-from-home arrangements	
Sage VIP	Professional Services	16 weeks (4 months)	• Provide the option to work reduced	• 5 days Paternity

Company (Source)	Industry	Maternity Benefit Details	Other related Benefits	Paternity, Adoption and surrogacy
("HRworks," 2012)		partially paid with	hours as part of a re- entry programme • Provide mobile internet to new mothers who wish to work from home • Provide comfortable and private breastfeeding facilities on office premises	leave • 4 months for adoption
Vodacom ("MyBroadband," 2015)	Telecommunications	16 weeks paid leave	• Full pay for a reduced 30-hour work week for the first six months after returning to work	
Coca-Cola South Africa ("Business Chief," 2010)	Manufacturing	16 weeks (4 months) paid leave		
Nestle (Nestle South Africa, 2015)	Manufacturing	14 weeks paid leave – for all employees who are the primary caregivers of newborns including male employees and adoptive parents	• Leave can be extended up to six months • Offer flexible working arrangements where needed • Female employees are entitled to reasonable daily breaks or a daily reduction of work hours to breastfeed • Counselling and support for breastfeeding mothers • Provide employees with on-site childcare facilities or assist with referral to available child-care services	• 14 weeks for all primary caregivers - someone who has primary responsibility for the care of a child immediately following birth or adoption • Paid paternity leave of 1 week and an additional week unpaid

This study thus seeks to fill the information gap on employer maternity/paternity/adoption policies in South Africa as women play an increasing role in the workforce, and in particular at management and leadership levels, and as conventional notions of the family unit change in workplaces. Employers in South Africa may need to re-think their approach to maternity and related parental policies. Women and other parents are likely to handle their family decisions differently and thus flexibility and optionality in polices may be the key to competitive advantage for attracting and retaining female and parenting talent (Boninelli, 2016).

3.8.3 Innovative maternity related benefits

Innovative maternity related benefits include:

- Options to delay child bearing such as paying for female employees to have elective egg freezing in order to preserve fertility and delay having a family in favour of putting their careers first (Bennett, 2018);
- Reimbursing adoption expenses for parents choosing to adopt (Boninelli, 2016);
- Flexible work schedules;
- Reduced working hours;
- Leave sharing among parents;
- Re-entry programmes;
- On-site childcare facilities that offer parents secure and reliable child care in the same building or close by where they can visit children during lunch breaks;
- An inclusive family friendly culture

3.8.4 Re-entry programmes

New mothers and parents undergo major changes to their lifestyles and responsibilities when having a child and may experience many new challenges. Programmes to assist adjustment needs can help enable a smoother transition back to work, through supporting the balance of work and family responsibilities.
For many returning parents extra time commitments such as overtime, travel, after-hours meetings, socializing with clients, and even community involvement and mobility and relocation may not be possible anymore (Boninelli, 2016). This can result in being seen in a more negative light in terms of "reputation" and "personal branding" and can ultimately impact on career progression. It is important for organisations to find ways that returning mothers and parents can still be seen as adding value to the organisation.

A study by Lucas (2012) showed that mothers returning to work in South Africa are not given enough support in returning to the workplace after maternity leave and identified that, re-entry programmes for returning women do not appear to exist in South Africa. There are a few companies in South Africa that have now incorporated re-entry programmes for returning parents. For example Sage VIP in South Africa has a phase-in process following the 4 month maternity leave period where new mothers receive a mini-induction session in order to share all the important information they may have missed and are offered reduced work weeks where they are only required to work 20 hours a week at first ("HRworks," 2012). Maersk Group in addition provide a "Return-To-Work programme" for a smoother transition back to work as well as reduced working hours ("BusinessTech," 2017).

3.8.5 An inclusive family friendly culture

As previously discussed there is a lack of up-to-date evidence on employers' and employee's experiences of, and attitudes towards, managing pregnancy and maternity in the workplace. Discrimination in the workplace against pregnant employees or returning parents is more often covert than overt and is related to company culture and practice. A study by Cooklin, Rowe and Fisher (2007) showed that 22% of pregnant women experienced at least one form of workplace discrimination related to their pregnancy, such as negative comments or being excluded from training and development, or promotion.

A study by the EHRC showed that generally employers felt that supporting pregnant women and those on maternity leave was in the interests of their organisation as it increased staff retention and morale. Results however also showed that 17% of employers believed pregnant women and new mothers returning to work were less interested in career progression and promotion than other employees, 7% felt they were less committed to work than other employees, and 14% believe felt that women had abused their rights during pregnancy (EHRC, 2015).

29% of employees who were pregnant or returning from maternity leave on the other hand said that they were given fewer opportunities than other colleagues at the same level, 16% said they received negative comments from their employer or colleagues, 15% said that they were given more 'junior' tasks upon their return to work and 16% felt their opinion was less valued (EHRC, 2015).

There are a number of means to create an inclusive family friendly culture;

- Flexible working arrangements where employees feel at ease to ask for flexibility
- Breaks and facilities for Breastfeeding
- Strict policy and implementation of protection from unlawful discrimination
- Communication, training and programmes to dispel negative perception regarding pregnancy and maternity leave in the workplace and to dispel re-entry myths, and to rather promote the benefits of a family friendly culture

While legislation regulates the prohibition of unfair practices against pregnant women and women on and returning from maternity leave, workplace culture and managing perceptions is also required to deal with the more subtle and covert practices.

4. Methodology

As part of the research approach, it was essential for EY to design a data collection methodology that would be most appropriate to realize each research objective. In order to achieve the research objectives, EY undertook a mixed research approach whereby both qualitative and quantitative research methods were utilized.

Given the distinct and personal nature of this research, childbirth being a primary function of society, qualitative inputs are necessary. Qualitative research is meant to understand the experiences of individuals and how they interpret events in their lives (Whitley & Kite, 2012, 35).[4] Case studies or qualitative inputs emphasize a detailed contextual analysis of often a limited number of events or conditions and their relationships. Social scientists make wide use of this qualitative research method to examine contemporary real-life situations and provide the basis for the application of ideas and extension of methods. [5] By anchoring the research in the social and lived reality of those we write about, we are often better placed to draw informed and contextualized analyses.

Qualitative research methods have often been challenged as they usually involve a study of a small number of cases that can offer no grounds for establishing reliability or generality of findings. To overcome this challenge and ensure a balance of the findings, quantitative research methods have been incorporated to also provide statistical, empirical data. The qualitative research approach involved:

- Diagnostic interviews with key stakeholders;
- Focus groups;
- Case studies; and
- A desk-top review of relevant employer policies.

The quantitative research approach involved:

- Surveys completed both online and manually, by employers and employees (from which both qualitative and quantitative data was extracted). Fieldwork was conducted at Labour Centres throughout South Africa in order to obtain both qualitative data in the form of focus groups and quantitative data in the form of the employee survey.

[4] Whitley, B E & Kite, M E (2012). Principles of Research in behavioural science, Routledge.

[5] Soy, Susan K. (1997). *The case study as a research method*. Unpublished paper, University of Texas at Austin.

As part of the data collection, EY sought to access the views of new mothers at various hospitals and healthcare centres around the country. To do this, authorization from the Department of Health was required, which authorization was not obtained largely due to patient confidentiality challenges. As such, our research did not include findings from hospital patients who had just given birth. We did however, incorporate the responses from the manual surveys conducted with the staff at the Awryp Private Hospital in Kempton Park into the report findings.

These data collection methodologies will be discussed in more detail below.

During the data collection some challenges arose which limit, to a lesser or great extent, some of the research outputs. For example, transport fares to get to the labour centre for a focus group discussion was a common challenge that impacted people's ability to participate in the focus groups. We will discuss these research limitations, where such limitations were experienced, under the relevant research method below.

4.1 Diagnostic interviews with key stakeholders

EY conducted interviews with key stakeholders. The DOL and EY identified a range of key stakeholders in order to obtain their views on the current effectiveness of South Africa's maternity protection benefits and how these could be improved. These interviews supplemented the information and knowledge gained through the literature review and also informed the design, structure and approach to the fieldwork.

The stakeholder interviews were designed to address the following themes:

- The current knowledge and awareness of maternity provisions;
- Workplace discriminatory practices towards pregnant women and new mothers;
- Workplace support programmes for pregnant women and new mothers;
- Paternity protections under South African law;
- The maternity/paternity protections of non-traditional families, particularly same-sex couples who adopt children and surrogacy protections.

The table below lists all the stakeholders interviewed during the design phase of the project.

Table 13 Interview schedule of stakeholders

Organisation	Name and title of Interviewee	Interview date
The Commission for Gender Equality (CGE)	Mr. Mcebisi Ketse – Human Resources Director	14 June 2018
South Africa Commercial, Catering and Allied Workers Union (SACCAWU)	Ms. Patricia Nyman - National Gender Co-ordinator	8 June 2018
MassMart Holding	Ms. Jane Bruyns – Human Resource Executive	2 July 2018
Umpheme Development	Mrs. Thembi Zondi - Human Resource Executive	8 June 2018
Helen Joseph Hospital	Mr. Raymond Billa - Chief Executive Officer	13 June 2018
Joburg Child Welfare	Ms. Chriselda Bunu - Social worker supervisor	11 July 2018
ENS	Mr. Irvin Lawrence – Attorney	5 June 2018
Department of Labour (Labour Centre)	Mr. Basimane Dingaan – Deputy Director: Gauteng along with his team	11 June 2018
South African Domestic Service and Allied Workers Union (SADSAWU)	Mrs. Eunice Dhladhla - Gauteng SADSAWU chairperson Mrs. Salome Molefe - Gauteng SADSAWU coordinator	5 June 2018

Organisation	Name and title of Interviewee	Interview date
Sonke Gender Justice	Ms. Pam Reddy - Human Resource Director	13 July 2018

Refer to **Appendix A** for the diagnostic stakeholder interview questionnaires.

4.2 Fieldwork: Surveys, Focus Groups, Case Studies

EY researchers conducted fieldwork in all nine provinces of South Africa in order to ensure maximum reach of the qualitative focus groups and the quantitative employee surveys and to identify potential candidates for the case studies. Fieldwork was conducted at labour centres in each province in order to interview employees claiming maternity benefits. In total, there are 142 operational labour centres in South Africa and in order to ensure that the research covered an appropriate sample of labour centres, a labour centre in each province in South Africa was visited to be part of the research. The identification of an appropriate and representative sample of labour centres was informed by the DOL based on volume of maternity claimants and diversity of employment sectors in the provinces.

Each provincial visit included a visit to a sample of labour centres, at which–

- Employees from mixed sectors and industries were asked to complete a manual survey;
- Focus groups with employees from mixed sectors and industries were held; and
- Observations of operations at the labour centre were made.

EY conducted a total of 27 visits across South Africa's labour centres over a 3-month period (between August and October 2018). The approach in arranging these visits was that the Department of Labour head office would liaise with each provincial office and obtain consent forms from the potential research participants. EY would then call the participants to invite them to a focus group, specifying a date when such a focus group would be held at the provincial labour centre. It was preferable for EY to try as much as possible, to arrange the focus group on a day when the participants were planning to visit the labour centre for some or another enquiry.

Details of these visits are indicated below:

Table 14 List of Labour Centres visited

Province	Labour Centre	No. of manual surveys completed	No. of focus groups conducted
Gauteng 27-31 August 2018	Kempton Park Pretoria Sandton	63	2
Mpumalanga 3-7 September 2018	Mbombela Witbank Secunda	61	0*
North West 8-12 October 2018	Klerksdorp Mahikeng Rustenburg	23	1
Northern Cape 24-28 September 2018	Upington Kimberley Kuruman	23	0*
Limpopo 10-14 September 2018	Thohoyandou Polokwane Labour Centre	43	1
Free State 10-14 September 2018	Phuthaditjhaba Bloemfontein Welkom	50	0*
Western Cape	Paarl	64	1

Province	Labour Centre	No. of manual surveys completed	No. of focus groups conducted
3-7 September 2018	Cape Town		
	Bellville		
Eastern Cape	East London	43	1
1-5 October 2018	Mdantsane		
	Port Elizabeth		
Kwazulu-Natal	Prospection	74	7
17-21 September 2018	Pinetown		
	Pietermaritzburg		

*Focus groups could not be conducted in Mpumalanga; Free State and the Northern Cape for various reasons including the unavailability of potential participants for an interview and transport restrictions. Most of the potential research participants were not due to attend the labour centres on the day the focus groups were held and were thus not available to participate. In order to make up for this, additional focus groups were conducted in Kwazulu-Natal.

In addition to the above Focus Groups, a domestic worker-focused group session was held at the Domestic Workers' Union offices in Johannesburg, CBD.

The manual surveys and focus groups conducted were aimed at gathering information from individuals who had claimed and/or accessed maternity benefits from the UIF in the last 5 years. The study was particularly interested in finding out the following –

- Their knowledge and awareness of current maternity provisions in South Africa;
- Their experiences and challenges, if any, with claiming and/or accessing maternity benefits from the UIF;
- Their knowledge of and any experience with workplace discriminatory practices relating to their pregnancy;
- Workplace policies and support programmes for pregnant women and new mothers;
- Their knowledge and awareness of paternity protections under South African law;
- Their knowledge and awareness of maternity/paternity protections of non-traditional families, particularly same-sex couples who adopt children and surrogacy protections.
- Their suggestions on how to improve the provision of maternity benefits in South Africa.

4.3 Focus Groups

Attempts were made to conduct focus groups in all provinces during the fieldwork. This did not prove possible in three provinces (Mpumalanga, Northern Cape and Free State) due to the unavailability of employees who had previously been approached by the DOL to participate. To mitigate this five additional focus groups were conducted in Verulum (2), Stanger and Ladysmith (2) (KwaZulu Natal) as well as one focus group for domestic workers in Johannesburg. The reasons for the focus on agriculture and domestic work are discussed below.

According to a recent Business Tech article, South Africa has in excess of one million domestic workers employed, accounting for around 8% of the total workforce in the country.[6] Domestic work, almost exclusively female is considered low-income and unskilled labour, which makes this workforce group often vulnerable to exploitative practices. From the UIF data shared by the Department between 2014 and 2018 16 481 (3.98%) came from the agricultural sector and 6 093 (1.47%) from domestic household.

It is with this mind that EY, with the DOL project team sought to conduct focus groups with domestic workers specifically, in addition to the general focus groups conducted in the provinces, to understand from them as a marginalized and vulnerable group in the South African workforce, if and how they have been able to access maternity benefits. EY contacted the Domestic Workers Union (DWU) to arrange a focus group with 12 of its members, who work as domestic workers in Johannesburg. The focus group was held on Saturday, 10 November 2018 at the DWU offices in Johannesburg CBD.

Refer to Appendix B for the Focus Group Questionnaire.

4.3.1 Challenges and Limitations with the Focus Groups

A challenge in securing participants for focus groups at the labour centres proved to be the fact that they would not come if they were not scheduled to be at the labour centre on that day or they did not have money for transport to travel to the labour centre.

To overcome this challenge, EY proposed to the provincial labour centres that they approach women who were in the queues waiting to be assisted to participate in the focus group. This worked quite well as those that participated in the focus group were assisted privately by a labour centre official, without having to wait in line. Officials at the Mdantsane, Eastern Cape Labour Centre even went out to collect the participants from their homes to be part of the focus group.

While researchers were able to obtain focus group participation from the women queuing for service at the labour centres, it was still a challenge to have these women stay the duration of the focus group discussion as they had other commitments with their time and had not necessarily planned to be part of the focus group but were merely visiting the labour centre for service-related enquiries. This impacted on the number of participants per focus group. In some areas, focus groups were held with 4 participants.

[6] https://businesstech.co.za/news/general/91930/here-is-how-many-domestic-workers-south-africa-has/

4.4 Case Studies

In order to supplement the findings with more qualitative research, case study interviews with various employees who are able to contribute to specific components of the research objectives, such as the access to maternity/paternity provisions of same-sex couples, were conducted. EY conducted 3 case study interviews as follows –

- 2 same-sex (male) couples who had in the past 5 years adopted a child;
- An employee working for a multi-national corporation who also shared her experiences when working for a medium sized employer.

These case studies explored –

- Employer practices and policies relating to maternity protection;
- Employer support programmes for pregnant women; and new parents, including same-sex couples who have adopted a child;
- Legislative and social recognition for same-sex couples who adopt a child or enter into surrogacy arrangements;
- The couple's experiences with the adoption process in South Africa;
- Employee knowledge and awareness of maternity provisions and their experiences with accessing maternity benefits and protection from both their respective employers and the UIF, and
- Areas of improvement in the provision of maternity/paternity benefits.

Refer to Appendix C for the case study questionnaire.

4.4.1 Challenges and Limitations with the Case Studies

A few potential case studies were identified during the fieldwork but when approached to be part of a documented case study, these employees declined so the identification of case studies was done through researcher networks instead.

With regards to surrogacy, particularly in the South African environment, it is still very much an under-utilised option of having a child for various reasons. As such, suitable participants as a case study on surrogacy experiences could not be found. Nevertheless, the case studies include 2 same-sex couples who had adopted a child in the last 5 years.

4.5 Desk Research: Desktop Analysis of Employer policies

During the literature review EY reviewed some eight company policies on maternity leave which were in the public domain (see section 3.7.2 above). In the course of the online employer survey EY also collected a total of 37 workplace policies from employers across varied industries. These policies give insight into some of the maternity/paternity provisions currently practiced by some employers. While a study of 37 employer workplace policies can hardly be said to represent the cumulative number of employers across industry, it helps support and, in some cases, corroborate some of the fieldwork findings. The findings regarding the employer policies are presented in the following findings chapter. Unlike the policies which are in the public domain, these policies cannot be attributed to particular employers without their permission, so the provisions are merely summarized.

4.6 Online and Manual surveys

EY together with the DOL project team developed two surveys to be completed by employees and employers from a range of sectors and industries. The surveys were completed manually by the employees (as part of the fieldwork), and online by both employees and employers. The online survey groups were sourced from –

- Employees whose email addresses were obtained from the DOL database of all UIF maternity claimants in the last 5 years;
- Employers whose email addresses were obtained from the DOL database of registered employers; and
- Employers from EY client databases and contacts, which comprise employers from a range of sectors and industries.

The employee online survey was launched on 27th August 2018 and ran until mid-November 2018 with three reminders sent to invitees during this period. Response rates tapered off significantly by the end of the period. The table below indicates the number of employee email invitees and responses from the original UIF database:

Table 15 Employee invitees to the online survey

UIF claims between 2014-2018	Total unique claimants in the UIF database	Total unique email addresses	Clean email list	Complete online responses
413 861	374 242	20 410	17 387	2484

Refer to Appendix D for the employee online survey.

In addition to the online employee survey, manual surveys were conducted by the fieldworkers, in discussion with employees at the labour centres during the fieldwork. These manual surveys contributed an additional 458 employee responses which were then captured into the employee survey database, bringing the total number of responses to the employee survey to 2942.

The employer online survey was launched on 28th September 2018 and ran until mid-November with three reminders sent to invitees during this period. Response rates also tapered off significantly by the end of the period. The table below indicates the number of employer email invitees and responses from the combined UIF and EY databases:

Table 16 Employer invitees to the online survey

Total claims in UIF database between 2014-2018	Total unique employers in the UIF and EY databases	Total unique email addresses (UIF and EY databases)	Clean employer email list (sent)	Complete online responses

413 861	85 541	35 072	32 907	402

Refer to Appendix E for the employer online survey.

For a research methodology using surveys, the larger the number of responses, the better, in terms of statistical generalisability. However, in order to guide the fieldworkers and remain within budget, EY needed to estimate an ideal minimum number of respondents which would allow for valid conclusions to be drawn. In calculating the number of responses required EY was cognisant of the fact that the number required would depend on the segmentation of the responses. The table below describes some of the segments EY was able to obtain estimated populations for:

Table 17 Table: Key segments for survey purposes

Population	Est. Population Size
Women between 15 and 64 years of age in South Africa	18 975 000 *("QLFS: Q4," 2017)*
Women who have accessed UIF maternity benefits 2004 - 2018	535 801 UIF Data set 2004 - 2018
Women employed in the formal sector in South Africa	5 373 960 *("QLFS: Q4," 2017)*
Women employed in the informal sector in South Africa	1 060 650 *("QLFS: Q4," 2017)*
Women employed in the private households in South Africa	989 940 *("QLFS: Q4," 2017)*
Women employed in the agricultural sector in South Africa	282 840 *("QLFS: Q4," 2017)*
Gay men in South Africa	259 700 (HSRC and The Other Foundation LGBT issues in Africa, 2015)

Using these populations and the statistical method described in Appendix F, EY was able to calculate that the maximum response rate per segment would need to be 384.16 to achieve a 95% confidence interval at a 5% margin of error (which is the typical standard for social science research - Babbie, 2016). In most cases, the response rate would be significantly lower to achieve the same level of confidence at the same margin of error.

Results of the employee survey (online and manual results combined) reveal a 95% confidence interval with a 5% margin of error by province, industry and occupation with three minor exceptions (see Appendix G for provincial, industry and occupational breakdown).

Since many employers operate in more than one province, results of the employer survey have been calculated by industry only. They reveal a 90-95% confidence interval with a 5% margin of error with three minor exceptions (see Appendix H for industry breakdown). Since the objective of the employer survey was to understand practices and policies, generalization is less important.

Based on the population size a research sample should be selected which yields results with a confidence level of 95% at a margin of error of 5% across the total population. To translate this back to a sample size required, some mathematical

calculation is required. Steyn, Smith, Du Toit and Strassheim (1994:396-397) describe the process for calculating the sample size when estimating the population proportion (π). The following equation can be employed to calculate the required sample size to yield the abovementioned results:

$$P(|P - \pi| \leq \epsilon) = c$$

where $\epsilon = error\ margin$, and $c = confidence\ level$.

Hence, a solution is sought for $P(|P - \pi| \leq 0.05) = 0.95$ or alternatively:

$$P(-0.05 \leq (P - \pi) \leq 0.05) = 0.95$$

Standardising this formula into the Z transformation yields:

$$P\left(\frac{-0.05}{\sqrt{\frac{\pi(1-\pi)}{n}}} \leq \frac{(P-\pi)}{\sqrt{\frac{\pi(1-\pi)}{n}}} \leq \frac{0.05}{\sqrt{\frac{\pi(1-\pi)}{n}}}\right) = 0.95$$

or

$$P\left(\frac{-0.05}{\sqrt{\frac{\pi(1-\pi)}{n}}} \leq Z \leq \frac{0.05}{\sqrt{\frac{\pi(1-\pi)}{n}}}\right) = 0.95$$

where $n = sample\ size$.

The normal approximation for the distribution of the probability follows the Z approximately distributed as n (0,1) therefore, it can be derived from the Z-transformation tables as follows:

$$\frac{0.05}{\sqrt{\frac{\pi(1-\pi)}{n}}} = 1.96$$

or

$$n = \pi(1-\pi)\left(\frac{1.96}{0.05}\right)^2$$

As the population proportion (π) is unknown, an upper bound can be calculated by noting that $\pi(1-\pi) \leq \frac{1}{4}$ for all values of π. Resulting in the following formula:

$$n = \frac{1}{4}\left(\frac{1.96}{0.05}\right)^2 = 384.16 \approx 385$$

From this calculation, the required sample size is 385 respondents. It is important to note that the research objectives of this project did not require the testing of an hypothesis but rather gathering of information regarding awareness, knowledge and experience of maternity benefits as well as issues related to adoption and surrogacy, hence the appropriateness of the approach described above.

4.3.1 Challenges and Limitations with the Surveys

The early stages of preparing to source data from employees was to obtain correct contact information in the form of email addresses. The UIF database had valid, invalid and outdated email addresses. Many claimants also utilised the services of a UIF expert or service provider to submit their claim on their behalf, and therefore the UIF database contained the service provider's email address as opposed to the claimant's personal email address. The most prevalent reason for invalid email addresses, was that they were loaded incorrectly on the system and were therefore invalid. This also resulted in a high volume of bounced email addresses when the surveys were emailed to employees.

When an employee leaves their place of employment, their work email address is no longer valid. As a result, the survey link was sent out to a previous email address of employment. Automatic replies with a referral email address were then received and attempts to send an additional invite to a participant in the online survey to the new/updated email address was made. In addition to this, while some work email addresses were valid, the employees were currently on maternity leave and therefore unable to access and/or respond to the online survey.

There were also a number of employees who were sceptical about the validity of the request, as it originated from EY, and not the DOL or UIF. Some respondents contacted the DOL directly to obtain further information or confirmation that this was a legitimate survey, and subsequently completed the survey.

Some employees refused to participate due to challenges with not receiving UIF payouts when claiming for benefits. Some unsubscribed and would still send emails requesting to be removed from the list of email addresses.

Some respondents did not complete the survey due to its length and the duration of time it required to complete it. The duration of time to complete, coupled with a poor internet connection did result in some participants disconnecting midway through. Some participants did however respond with an email noting that they had attempted to complete the survey and due to the length of time taken to partially complete it, they were not prepared to start from the beginning to attempt complete it again. As the survey was anonymous, the participant was unable to pick up where they left off.

Contact details for employers was also a challenge to source, due to the small number of employees who provided their employer's email address in their claim details. An employer's email address did not appear to be a mandatory field on the claim form, and many employees were unable to provide these details. In addition to this, some employees provided a generic or unmonitored email address (e.g. info@company.co.za) which resulted in the request to complete the employer survey not being directed to the correct person. Email addresses were sourced mainly from EY databases and contacts from colleagues. Some participants were of the view that the survey did not cater for their businesses and was irrelevant to them since they did not have any female employees, hence did not complete the survey. Others had sold the business over to another owner and would decline to participate on their behalf. Some responded to note that they were previous consultants to a business and out of ethical duties, would decline to participate as well.

The database of employers listed various individuals as HR Executives, which appeared to be an outdated role, and they responded noting that their ole had changed, and were now CEOs and/or general managers and therefore would not be helpful in our research as they did not have access to some of the information needed to complete the survey.

The typical challenge experienced with manual surveys, was the fact that conditional logic/branching was not automatic (as in the online survey), and therefore participants did not always understand which sections to respond to and which ones they should ignore. At times, some participants would complete all questions, disregarding the instructions, and that would result in

inconsistent responses. This challenge was not experienced with the online survey, since the conditional logic/branching was built into the survey and participants were automatically directed to the relevant sections based on answers they had provided earlier in the survey.

5. Research Findings

The following section sets out the research findings from the various and above-described data collection methodologies. The research findings are presented in the order of the discussed data collection methodologies –

5.1 Stakeholder interviews

Table 18 Specific comments from stakeholder groupings

Stakeholder	Stakeholder comments
Gender activist groups	The Department should facilitate and conduct more public education and advocacy programmes - put together materials and take advantage of electronic media. Getting maternity protection benefits right goes a long way in terms of alleviating poverty and dealing with inequality in South African societies. It is therefore important to make sure in building a poverty-free, equal society, everyone is included, even the LGBTI community.
Trade unions	The benefits are not enough and government should increase the leave period and UIF payout. Employees are too fearful to request what the legislation entitles them to because of the lack of compliance of employers and there are no consequences for employers who break the law. The high rate of unemployment also makes employees more vulnerable because they are easily replaceable, so in an attempt to keep their jobs, they demand less and forfeit their rights in the process. Unions are very patriarchal and do very little when it comes to advocating for the rights of women, when negotiating for female employees and their needs. Union representatives and shop stewards are usually men and do not voice or raise womens' challenges at the right platforms.
Attorney	There have been a number of discriminatory cases regarding pregnancy – miscarriages due to working environment, return from maternity leave and your job no longer exists and non-disclosure of pregnancy during interviewing and employers retracting their job offer upon finding out that the applicant is pregnant. There is lack of understanding and awareness of the legislation and what the employees' rights are in relation to the employers' policies and benefits. The government needs to do more to educate employees of their rights, but also to protect those employees whose rights have been violated.
Adoption agency	There is a lack of knowledge about adoption and how it works, unlike with a pregnancy, where an employee and employer can prepare for a due date and maternity period, with adoption there is no due date, there are processes that need to be followed and placements are unpredictable. So adoptive parents struggle a lot with that process. It is worse with employers who do not have adoption policies and don't know what the legislation says and refuse to give maternity leave to adoption parents. There is also a perception that adopting is a luxury for wealthy people and is not afforded the same respect and consideration like being pregnant and giving birth to your own baby, despite the fact that most people who adopt can usually not have children of their own. So adoptive parents have to deal with a lot of prejudice, due to perceptions and lack of awareness and understanding.
Employers	Women are discriminated against during the recruitment process, they are not hired into specific roles because they are

	women, and they are even asked during interviews whether they plan to have children. Women employees do not complain or request to be moved to a safer working environment when they are pregnant, they also continue to work overtime. Due to South Africa's high unemployment rate women are reluctant to ask to be moved to safer working environments or not work normal hours because people fear losing their jobs. Employers are unaware of the legislation, they are just concerned with the bottom-line of their businesses. Employers could do more for their employees to support them during these great transition periods in their lives, with crèches at work, flexible working hours and back to work programmes. Women do suffer from discrimination in the workplace due to pregnancy or because they are new mothers.
UIF	Large organisations are better at complying with legislation and UIF contributions, compared to smaller and informal organisations. It is also generally large organisations that provide their employees fully paid maternity leave. The UIF cap disadvantages women in the sense that it does not pay out an employee's full salary during their maternity period, during a period that they need it the most. However, at the same time it provides a sense of security to employees, especially those in the informal sector whose are not guaranteed to get fully paid maternity leave or their jobs upon their return. There is the Department of Social Development child support grant which is not that much in comparison to the UIF contribution. Employees in the informal sector can claim both UIF and the child support grant, provided that they have been contributing to their UIF.

- Knowledge and Awareness

As set out above, the interviewed Stakeholders, particularly as expressed by the Attorney, Adoption Agency and Gender Activist group, evidenced a lack of knowledge and awareness among both employees and employers regarding maternity benefits and suggest that the DOL run awareness campaigns for both employers and employees on the legislation and other best practices within industry or across the world, particularly in rural areas and the informal sector.

The view is that it is in these areas and sector women are most vulnerable and mistreated by their employers. This is exacerbated by the fact that, according to the trade union and attorney interviewed, women employed in these areas are usually uneducated and not aware of the legislation and their rights. Knowledge and awareness should also be improved in male dominated industries such as agriculture, mining, manufacturing, construction, etc.

There were some comments, expressed by the employers group above, to the effect that employers were not necessarily malicious in this regard but simply unaware themselves, and they also therefore needed to be educated on the legislation and it is suggested that the DOL should find ways to make accessing maternity benefits easier for both employees and employer.

- Experiences with maternity provisions

The trade union expressed the view that the maternity benefits are not enough and government should increase the leave period and UIF payout and perhaps it could be increased to six months or even a year (similar to European countries such as Sweden). The motivation around the proposed increase was that some women are not ready to return and enter the workforce after four months, because some women have difficult pregnancies, experience complications during birth, give birth to unhealthy babies who need more support and/or are not ready to go back to work after four months for various reasons such as there are not many crèches that accommodate four-month old babies and they have no support at home to care for the baby. This finding also came up within the Focus Groups conducted, where participants similarly expressed the insufficiency of the maternity benefit. The findings from the Focus Groups are discussed in detail in the relevant section below.

All the stakeholders thought that the UIF aspect of the maternity benefit could be improved as new mothers need more money and not less. The view was that the UIF should therefore pay them their full salaries when they are on maternity leave. In addition to this, the view was that the payment process could be improved in that at the moment pregnant women and new mothers have to physically go to a labour centre to apply for their maternity payment. This could be improved by making the process available electronically and at hospitals and clinics.

The gender activist group stakeholders interviewed suggested strongly that government, in the interests of extending adequate social security to drive poverty alleviation in South Africa, should explore alternative options for unemployed mothers as they believe that the child social grant provided to mothers by the Department of Social Development is not sufficient to raise a child.

EY could gather from all the stakeholder interviews that compliance with labour legislation is very low in South Africa and due to the high unemployment rate employees are fearful of losing their jobs and therefore do not report any violations of their rights. In addition, there are usually no consequences for employers who do not comply with legislation.

Opinions from the stakeholders, expressed above, regarding discrimination were that there is a lot of discrimination of pregnant women and new mothers and that most of it was perpetuated by a lack of knowledge and awareness. Employers are not aware of how they need to support pregnant women or new mothers, especially if the employees do not speak out for themselves, or Human Resources in their organisation is not aware or proactive about such matters. Discrimination is more prevalent in the informal sector and in male dominated industries (such as agriculture, mining, manufacturing and construction).

According to the employers and attorney stakeholder interviews, discrimination was described as occurring at the following stages:

- Recruitment stage: employers would hire a male candidate over a female candidate because of a belief that men will be less demanding and have fewer requirements than women. Women are also discriminated against if they admit during their interview process that they are currently pregnant or signs of pregnancy are visible;
- Employment stage: most employers do not have policies and procedures to accommodate working women when they are pregnant, especially those who work in hazardous environments or lift heavy objects. Some of the stakeholders also noted that women were verbally harassed for being pregnant.
- Return to work stage: There have been cases of new mothers returning to work after maternity leave to find that they no longer have jobs. Very few employers also make provisions for new mothers with breastfeeding facilities for them to pump.

With regard to workplace support, the employers' stakeholder group, and similarly the trade union were of the view that most employers do not offer any workplace support for women who are pregnant or new breastfeeding mothers, due to a lack of knowledge. They are not aware of the physical changes in a women's body due to pregnancy, and how that impacts them and their ability to physically carry out tasks. Again, all stakeholders interviewed emphasized that awareness campaigns could assist with this, especially within the informal sector and male dominated industries, but everyone needs to be made aware of how they can best support pregnant women and new breastfeeding mothers. Few employers have programmes to support women integrate back into the workplace after maternity leave, fewer even understand what such a programme would entail. The stakeholders believe that South Africa still has a long way to go in terms of providing women with workplace support post maternity leave.

With regard to paternity leave, there were mixed views as to whether fathers should get more than five days, due to the economic impact and a particular cultural perspective. Whilst some stakeholders believed that five days was not enough and that fathers should play a bigger and more impactful role in the care-taking of their babies, others thought that the five days was enough, because men do not play a significant role in taking care of new born babies. These two views provide a view of the cultural disparity in the South Africa society, whilst there are fathers who are advocating for longer paternity leave because they want to play a more proactive role in their children's development, other fathers do not even use the full five days paternity leave they are entitled to at the moment because they believe that women are responsible for the children's development and the only contribution required from them is financial.

With regard to non-traditional families, all stakeholders were of the view that same–sex couples who adopt (new-born babies) should be entitled to the same benefits as pregnant women and fathers. This would mean that the primary care giver should get four months' maternity leave and the secondary care giver should get the five days' paternity leave. The couple could decide between them who gets four months and who gets five days. Other stakeholders, particularly the adoption agency interviewed also highlighted the need for them to be able to be flexible, for example one could be the primary care giver for two months and return to work and the other one could step in and cover the last two months.

The view around surrogate mothers was that they should get between five days and six weeks (the period given to women who miscarry late in their pregnancy or give birth to still born babies) and not the full four months.

According to the stakeholders, adoption leave should be stated more clearly in the legislation and there should be age limits, for example if parents adopt a child below the age of two years then parents should be entitled to full maternity protection benefits, if the adopted child is between the age of two and seven then adoptive parents should be given six weeks. If the child is older than seven years then the adoptive parents should be given two weeks. They should also be entitled to the UIF maternity pay for the period that they are on leave.

It is worth noting that these interviews were conducted prior to the passing of the Labour Laws Amendment Act which provides for parental leave, adoption leave and commissioning parental leave and many of the stakeholders' comments about these issues foreshadowed these amendments.

5.2 Focus groups

For ease of reference results of the focus groups are tabulated below:

Table 19 focus group results

Province (labour centre)	Knowledge and awareness	Experience	Stop, start, continue	Adoption and surrogacy
Limpopo (Polokwane)	All but one member of the group was not aware that by law they are entitled to four months maternity leave and they were also not aware that they could apply for maternity benefits from the UIF online and that they did not have to physically go in to the labour centre. The group had a perspective from the agricultural industry which focused on hazards in the workplace and that more could be done to ensure the rights of pregnant women to be protected from harm in the workplace and to have their jobs guaranteed while on maternity leave.	The majority of women mentioned that women are unfairly discriminated against in the workplace because of pregnancy. However, they highlighted that it also depends if you are a permanent worker or a contractor: if you are a permanent worker you treated differently as compared with a contract worker. Most women in the group did not have positive experiences while claiming the maternity benefits from UIF. However, majority of them mentioned that the actual service they receive from the client service officer is good it is just the system that is a mess. For example, they mentioned that before they went to maternity leave they were nervous on how they were going to survive without their full payment. The group was not aware that they could apply for their claim for maternity benefits online, which would expedite their claim and improve their overall experience.	**Stop:** "Requiring us to come and sign every month. Employers should stop threatening to fire pregnant women." **Start:** "Extend maternity leave." **Continue:** "The good service. Having a dedicated queue for pregnant women. "	The group had mixed responses relating to adoption and surrogacy. What was interesting is that the group viewed surrogacy from the same sex couples as a "taboo". "It's difficult", one lady said maybe one man can take the maternity (the man that acts as a lady) should take a maternity leave. Some women said they are not sure because the purpose of the maternity benefits is for the women to heal and to build a bond with a child. But they were more welcoming of the idea and majority of the group said that women who adopt should be given at least three months of maternity leave and they should be able to claim their portion of their salary at the UIF. "Yes she must stay with the child for at least 3 months with the baby so they create a bond". The overall feeling from the group was that they were not well informed about the adoption and surrogacy, most of them mentioned that the process of surrogacy by same sex couple, in their culture is not recognised as a welcoming act.

Province (labour centre)	Knowledge and awareness	Experience	Stop, start, continue	Adoption and surrogacy
KwaZulu Natal (Pinetown, Pietermaritzburg, Stanger, Verulam (2) and Ladysmith (2))	The groups seemed to have reasonable knowledge around maternity benefits and what their rights are as working women. However, there were some questions about the duration of maternity leave. Some women mentioned that other employers are well informed about the maternity process and they advise their employees of the necessary measures that they need to do to be safe and protect their pregnancy. Whereas in some organizations, some women mentioned that their Human Resources Manager is male and had no idea of what a pregnancy journey looks or feels likes, but as an employee they had to flag and tell the manager about their rights. The majority of the groups said it is not fair to ask an applicant if they are pregnant because it leads to discrimination, however a few women thought it was a fair question because your employer should be prepared because if you go on maternity leave they will need to carry the cost of hiring someone when you pregnant. However they further explained that it depends on the nature of job, some jobs require you to do medical checks which includes pregnancy so an employer can find out without you declaring. For example, in a manufacturing and mining sector, they do regular medical checks When the women were probed if a woman can take sick leave if she has taken maternity leave, all the women said yes and mentioned that those are two different leaves and they cannot be treated as one. One lady commented that "my baby was being looked after by her grandmother and her grandmother had to leave so I had taken three months of my maternity leave and because my baby had no one to stay with at home, I had to go back to maternity leave for a month after returning to work for 2 days".	Most of the groups were compensated a portion of their salary from their employers when they are on maternity leave. One woman mentioned that she was employed at the regional municipality and she receives 65% of her pay and claims the rest from UIF but she has a work-back period of six months thereafter. The majority said that they work on flexible hours and their work caters for their pregnancy. "My employer's office was infected with ants and they had to outsource a company to spray throughout the office, our manager sent us all emails that they requesting pregnant women not to come to the office and also anyone with chronic disease not to come in the office". One lady had a negative experience, but she mentioned that she was aware that her employer was wrong, but she couldn't question it because she was scared that she might lose her job. "I had to continue work late hours at a manufacturing sector, and my job required me to assemble cars, my boss did not care whether I was pregnant or not and as a resulted they experienced I had a premature delivery." Many in the groups were first time claimers. From their current experience the women had different experiences with the process, some found it easier and quick and some expressed their experience as delayed, slow and frustrating. A few women mentioned that they were worried about the delay of getting their money into their accounts. Delays are usually caused by incorrect documents being sent. However if everything is submitted correctly to the labour centre the payment should take between 5 to 10 working days to be paid.	**Stop:** "Coming here to sign- just come once to sign, they should introduce other means of preventing to sign." Giving people signing dates when their documents are not up to date. Sending clients back and making them wait too long without follow ups Story telling an applicant that their application is frozen **Start:** "Give more information Make everyone aware of the online system. They should adapt the home affairs SMS system when they process your claim. A mummy room for nursing moms to pump and keep their milk safely Signing once at the labour centre My employer should pay me my salary They should not allow us to work overtime Extend maternity to 6 months, 4 months is a little Treat us equally at work The UIF should make payment faster and tell us the documents they will need in time." Validating forms and documents Calling people when there is something wrong with their documents Giving applicants reasons when something is not allowing progress Give reasonable dates that consider when they return to work **Continue:** "Good service however, one bad experience with a rude client service consultant: my documents were wrongly captured by the official at the department. I was surprised why I wasn't getting paid and after I came to the labour centre to check, the other official realised that my documents were not correct. The labour centre did not even call me to come rectify the documents or explain the delay." Paying on time (within 7 days of signing) Assisting clients	The groups had different views about adoption and surrogacy, they seemed to be more welcoming to the idea of adoption than surrogacy, when probed more, they mentioned that the surrogate mother and the commissioned mother should be granted both maternity leave. What was interesting is that the groups, also viewed this as a "Taboo" saying two ladies cannot be in a relationship. The groups had minimal contribution around the topic of adoption and surrogacy.
Province (labour centre)	Knowledge and awareness	Experience	Stop, start, continue	Adoption and surrogacy

North West (Rustenburg)	They were generally aware of their rights. They said that the employer does not pay maternity benefits but has the responsibility to sign documents etc. One lady did not claim and thought that the employer claimed on her behalf as she received half of her salary. The majority of women said there is protection from hazards. One lady works day and night shifts but as soon as she came back from maternity, they said she must only work day shifts so that she can be with the baby at night. One lady said it is fair to ask an applicant if they are pregnant so that they can assign you to a department that's relevant for you. Another lady said it is not fair because they will use that information against you and not hire you. Majority said it's unfair. There were mixed responses regarding leave after miscarriages and still births. One lady said if it is in the first trimester, they should get leave but it should be shorter. In the case of a still born, they felt you should be afforded the full leave, or around three months. You must get all the benefits including the money. The ladies agreed that for a stillborn, they should be able to claim at least for two months to take care of themselves. One lady had miscarried twins and did not get any time off.	These women were mostly in the retail industry. They mentioned that their employers were the biggest bottle neck when it comes to accessing the maternity rights/benefits and because of fear of losing their jobs they would just let some of the things the employer does to them to slide. A lady who works at a major retail store as a shelf packer said when she fell pregnant she told her supervisor and asked her supervisor to change her departments and move her to a place where it was less stretching and lifting, she said she knew that was her right but because she was scared that she would her job she just agreed to the decisions of her supervisor not moving her. Women in the group had different experiences of claiming, ranging from very good to the worst experience. One lady mentioned that she submitted her claim when she was eight months pregnant and she has not yet received the money (at the time of the focus group) and her baby is (at the time of the focus group) seven months old and she had to go back to work early because she had no income. Majority of the women in the labour centre complained that they haven't received their payments and its overdue, they mentioned that the process was not really good, because the either not well informed about what they need to bring at the centre when claiming or their documents are captured incorrectly and they have to wait for the 30 days, only to find out that their documents are not correct. Some ladies mentioned that it took them less than two weeks to get their first payment after submitting their documents to the UIF.	**Stop:** "Delaying payments. The inconsistency of the payment dates causes anxiety and stress. Making us wait long. Not communicating (especially when documents are wrong, they should tell you immediately) Stop the signing every month. It should be once. Stop the bad service (they shout at us when we were not able to make the date they gave) **Start:** "Have separate priority queues for maternity clients Quick payment" **Continue:** "Sorting the queue There's nothing that they do correctly." **Wish List** "Knocking off early – Till baby is one year Allow you to see the child during lunch."	The results from the focus group show mixed responses and some responses were influenced by the group's' responses. For example when the group was asked if a women who has adopted a child can take maternity leave; one lady asked why can't the biological woman get the benefits, the rest said the mother doesn't want the child so she definitely shouldn't get anything. As for the adoptive parent, some said yes and some said no. Majority of the women believed that if you give birth you must be able to claim from UIF because you will have to take time off and heal unlike the commissioned mother. Another said you get paid as a surrogate so you shouldn't claim for cash. One believes there should be a division of time between the surrogate and the parents that will be taking care of the child. Maybe two months for the surrogate and four months for the parents who are adopting.
Province (labour centre)	Knowledge and awareness	Experience	Stop, start, continue	Adoption and surrogacy
Eastern Cape (Mdandtsane)	The women in the focus group had knowledge to some extent on what needs to be done when they are pregnant, but they said that even though they are aware of what their rights are the employer makes it difficult for them to exercise their rights. Majority of women mentioned that they are discriminated at their workplace because they are pregnant and mostly by their management, a lady gave an example of her time while she was at work, she got an ankle injury at work,	Majority of the women expressed their experience as a non-pleasant one, mainly due to the back and forth that they had to do, when submitting their claims and the back and forth causes delays in receiving their payments.	**Stop:** "Making us do a lot of back and forth, they should reduce their paperwork and also tell us what we need all at once." **Start:** "Roadshow trip on filling in the forms by the employer. Online system. Extend their maternity benefits to six months." **Continue:** "Good service"	The group was open about the issue of adoption and surrogacy: they mentioned that women who adopt should even be allowed to claim from the UIF because if they do not it can be seen as discrimination. The group had different feelings about surrogacy but the feeling of the majority was that both the surrogate mother and the commissioned parents can have days off together.

	while she was heavily pregnant. Instead of getting time off from her employer, she was expected to continue with her duties while being heavily pregnant and walking with crutches. The doctor only gave her three days off. Her duty involves her walking so much and also packing things on the shelves. Another lady mentioned that while she was pregnant, her employer refused to change her departments. She works for a pharmacy company and her department requires a very low temperature for the medicine and because she was pregnant she had to move but her manager refused. She ended up moving herself forcefully, because she knew her rights very well. When the group was asked if an employer required to pay their salary while you are on maternity leave, majority of the group said no, by law it's not compulsory. All women knew that the employer is not forced by law to pay, but if they do they are being nice. They were also well informed that a woman can still take sick leave after they have taken maternity leave, they mentioned that those are "different leaves and not connected to each other". A woman that has had a miscarriage or stillborn child is still entitled to maternity leave? All women had a strong view of agreeing to this. Some mentioned that the women should even be allowed to claim for UIF for two months.		**Wish list:** Roadshow trip on filling in the forms by the employer. Employers need to be taught on how to fill in the UIF forms. "We sometimes have to do the back and forth because the employer has filled in the form incorrectly". Online system- some of the ladies mentioned that they would wish to have an online system where they would do their fillings.	

Province (labour centre)	Knowledge and awareness	Experience	Stop, start, continue	Adoption and surrogacy
Western Cape (Paarl)	Responses from this group were largely around their experiences rather than their knowledge/awareness of the law.	One woman said that her supervisor said to her when she was asked to do a task at work "and don't give the excuse that you are pregnant". A woman who works as a seasonal worker in the agricultural sector said that when she was pregnant at work in the last season her supervisor said to her: "I am not going to be taking pregnant women next season because they always just want to sit down" A woman who worked in the agricultural industry while pregnant said: "The machines made my head dizzy when I was pregnant, and when I told them [the employer] they said that this is why they didn't like to hire pregnant women. One participant recommended that they should do away with "one pager contracts" and that job contracts should be "air tight" with no "loop holes" so that women get discriminated against less. They also noted that someone should assist women in understanding complicated job contracts with many clauses that are in a language that is difficult to understand. The women in the group asked if the department could please help women employees understand their rights. "My one boss said listen we given no maternity benefits and if you fall pregnant you will be asked to resign" One participant also mentioned that pregnant women should be moved to positions not just went they are psychically hazardous but also away from positions that are emotionally stressful and highly pressurised. One woman when working while pregnant had to stand for 6-8 hours next to a "vibrating" machine that made a noise in order to perform her daily duties and had to ask their employer and follow up multiple times to be moved to a different position, and she stated that: "yes they [employers] protect pregnant women at work but they take their time because they don't actually want to. The doctor actually had to come and said it [the particular job task] would affect the baby's health." (This example happened during the first trimester and the women was moved to a safer position and	**Stop:** "Government should never decline a person's application for UI, so long as you have worked. Employers should stop the attitude that people are the same because pregnant women are not able to do hard strenuous work. Employers should stop threatening to fire pregnant women whether they are unable to cope with certain tasks. Employers stop a pregnant from doing hard heavy-duty work. **Start:** Labour Centre should treat UI maternity clients with respect - be reasonable and considerate when dealing with people. The employers and government should make a plan arrange that women receive a full salary while on maternity leave. Employers should not be shy to ask employees because it is for the woman's safety. It will be employer's responsibility if the pregnant employee gets injured on duty or is exposed to dangerous chemicals which will affect the health of the baby. Allow pregnant women to take leave when she no longer can cope, especially in the late stages of a heavy pregnancy. Employers should make means to pay female employees because the payments from UIF take long to come. Government must increase the UI pay-out Employers should allow a day-off for pregnant women to be able to attend monthly clinic check-ups. When the baby is sick the mother must be allowed time-off to take the baby to the clinic. Sending someone else to take the baby to the clinic is not ideal because as mother you need to be completely sure about health of the baby and not worry while at work. **Continue:** Government should continue to pay maternity benefits. Government must continue to make regular UI payments. Government should continue to stand for the rights of pregnant women because sometimes women do not even get maternity leave	The group did not have anything to say instead they laughed: the laughter can be interpreted in many ways: it could be a taboo topic or they just did not have an opinion on it.

		zone). One woman is a nursery school teacher and she mentioned that she, as part of her job responsibilities, is expected to stand a lot, pick up the small children and also has to open and lock up at the beginning and end of the day. She sighed and said "it can be a long day when you pregnant"		
Province (labour centre)	Knowledge and awareness	Experience	Stop, start, continue	Adoption and surrogacy
Gauteng (Sandton and Kempton Park)	Women in Sandton were more experienced and had the right knowledge whereas the ones in the east seem to have minimal knowledge. For example the women in Sandton knew that there is the option to log in to their maternity benefit claim online but those in the east of Gauteng had no knowledge of the online system. There was a feeling amongst the group that there is not much information about maternity benefits i.e.: when can you take your maternity leave and for how long, some employers are well informed and they advise their employees of the necessary measures that they need to do to be safe and protect their pregnancy. This group (Sandton) was positive about the service being received and made a suggestion to improve queue management. This group was aware of the online system but were distrusting of the service and preferred to go in to the labour centre and speak to a person. The group said that there is a drive for awareness that is needed in general around maternity rights, that employers should also do more to make employees aware of their organisation specific maternity benefits and specifically that they would like to be able to calculate exactly how much money they will receive from the UIF so that they can plan ahead accordingly. This group (Kempton park) was not aware that by law they are entitled to 4 months of maternity leave (they believed it was only 3 months), and are not aware that they can apply for maternity benefits from the UIF online and that they do not have to physically go in to the labour centre and queue. The long queues and waiting times are particularly challenging and frustrating experiences for pregnant women and women with small children, or women who have left	The women in both groups had different experiences in claiming the maternity benefits but the majority of the women complained about the system that it takes time to capture and process the payments.	**Sandton** **Stop:** They recommend reducing the number of lines/queues **Start:** Provide more information, especially allow a way for women to work out how much they will be able to claim/get paid out Keep their service consistent The turnaround time is 15 to 20 minutes of the queue-The should be better queue management **Continue:** Good service The majority of the group say the UIF has improved and they are offering a good service - one lady had a bad experience with a rude client service consultant. Another lady received a phone call from the UIF checking if she received her payment, and they were called to come to the labour centre to correct their forms – she appreciated the proactive nature of the service. **Kempton Park** **Stop:** Taking too much time off for lunch [time waiting in the queue becomes even longer] Long queues Give the full information when we come to collect papers Complaining when we come [for service] after lunch Staff should stop being on their personal phones [while serving clients] Moving chairs all the time They must stop complaining and be supportive **Start:** An online service [there is an online service but	Majority of the group said leave should be granted as no matter what age the child is, they still need to bond with the parents after adoption. The group had different feelings about surrogacy but the feeling of the majority was that both the surrogate mother and the commissioning parents should have time off. The purpose of time off for the surrogate mother will be to heal "for 6 weeks". The purpose of time off for the commissioning parent is to care for and bond with the child. There was some hesitation and facial expressions that suggested this was a strange question to ask. The group greed that women who adopted a child under the age of 2 could take maternity leave because the mother and child "need time to bond".

	their small children waiting at home. Majority of women said they are treated the same, regardless of pregnancy. However, some of the group mentioned that "It depends in which industry do you work in" an example was made that in supply chain companies where it involves a lot of movement, when women are pregnant they are not discriminated against but are rather protected and their work life is adjusted to accommodate the pregnancy. Other experiences shared involved declaring that they are pregnant at work and the employer still expecting them to do their daily tasks without accommodating their pregnancy. Some women said they prefer not disclose their pregnancy until they are showing fully due to cultural reasons.		they are not aware of it] Start on time [staff are not adhering to official trading hours] A ticket numbering system for the queue like at the bank **Continue:** Being friendly	
Province (labour centre)	Knowledge and awareness	Experience	Stop, start, continue	Adoption and surrogacy
Agricultural sector (Although there was not one specific focus group from this sector, participants in focus groups in Stanger, Verulam and Ladysmith included some agricultural workers)	Most participants were aware of basic rights such as the right not to be discriminated against, the right not to be exposed to hazardous situations and the right to claim (although the duration of maternity leave was not uniformly accurate). There was also a sense, among those in the agricultural sector and those working as domestic workers, that they are not accommodated and often continue lifting and bending work that is taxing on their and the baby's health. In all, we could gather that across the focus groups, there seemed to be a lot of questions around the UIF claims process and the obligations of the employer. Many felt there was not enough sound communication from the start which causes many back-and-forth trips to labour centres which could have been avoided by having all necessary information when you start the process.	Participants expressed fear and anxiety about not knowing the actual earnings they would receive during maternity leave and how to calculate the benefit. Almost unanimously, the participants across all focus groups felt the claiming process is riddled with delays, which is usually caused by incorrect information being captured on the system, only for this to be picked up much later and thus the back-and-forth. For many, these delays (also caused by employer HR filling forms incorrectly) make them very anxious about being able to financially survive during their maternity leave. A participant in one of the focus groups has been sitting with a claim for at least 5 years.	**Stop:** Delayed payments Unexplained calculations of benefits **Start:** Awareness campaigns Keeping applicants up to date with where their application is in the process **Continue:** Giving out UIF benefits Making follow ups with employers for missing documents	They were less clear regarding rights relating to miscarriage, stillbirth, adoption and surrogacy. Limited knowledge about the entitlements of adoptive parents, surrogate mothers, commissioning parents in a surrogacy agreement, with a lot of the participants generally considering these subjects taboo. We got a sense that cultural perspectives have shaped the way people understand adoption and surrogacy.
Province (labour centre)	Knowledge and awareness	Experience	Stop, start, continue	Adoption and surrogacy
Domestic sector (Johannesburg CBD & one participant in Verulam)	Majority of the participants across all focus groups did not think it wrong for an employer to enquire about pregnancy status, as they felt it helps the employer better accommodate the employee. Others though felt employers use this information to discriminate pregnant women and not appoint them to jobs.	A considerable number of the participants experienced discrimination at work. Some women felt the discrimination was racial, where non-Black employees who were pregnant were accommodated easier than the Black employees. Many women experienced body shaming, being	**Stop:** Nothing in particular Giving people signing dates when their documents are not up to date **Start:** Educate employers about the requirements as they do not always understand what is required	Limited knowledge about the entitlements of adoptive parents, surrogate mothers, commissioning parents in a surrogacy agreement, with a lot of the participants generally considering these subjects taboo. We got a sense that cultural perspectives have shaped the way people understand adoption

	Hazards such as the use of step ladders were identified in the domestic context. Awareness of rights regarding adoption, miscarriage and still births was lower although most agreed that there should be entitlements in these areas including surrogacy event though it was not something they had previously given much thought to. There was also a sense, among those in the agricultural sector and those working as domestic workers, that they are not accommodated and often continue lifting and bending work that is taxing on their and the baby's health. Participants working as domestic workers shared that they don't even get to rest during a sick day (non-pregnancy related) when a doctor books them off. Also, some domestic workers say their employer is harsh as a way to work them out in order to find a replacement. In all, we could gather that across the focus groups, there seemed to be a lot of questions around the UIF claims process and the obligations of the employer. Many felt there was not enough sound communication from the start which causes many back-and-forth trips to labour centres which could have been avoided by having all necessary information when you start the process.	called "fat" or "ugly" by co-workers. A lot said the discrimination they experience is subtle (e.g. an employer would say things such as "I won't take pregnant women because they always just want to sit down" or "don't give the excuse that you are pregnant" or "if you fall pregnant, you'll be asked to resign" in an extreme case, one participant (domestic worker) shared she was forced to abort her pregnancy at 7 months. Almost unanimously, the participants across all focus groups felt the claiming process is riddled with delays, which is usually caused by incorrect information being captured on the system, only for this to be picked up much later and thus the back-and-forth. For many, these delays (also caused by employer HR filling forms incorrectly) make them very anxious about being able to financially survive during their maternity leave. A participant in one of the focus groups has been sitting with a claim for at least 5 years. For the domestic worker participants there is an expectation by the employer to return to work in some cases, as early as 2 weeks after giving birth. The women working as domestic workers say they are, in some cases, expected back at work within 2 weeks after childbirth and told to find a child-minder for their new born baby. They share that this hostility to their baby also causes them to be hostile to the children of the employer who they feel is getting the attention that their own little baby should be getting. For a lot of the domestic workers, returning back to work after childbirth is not guaranteed as a lot find that the employer has hired a replacement and their job is no longer there when they return. For domestic workers, the Domestic Workers Union helps them with their UIF registration but often their employer has not registered them (and is deceitful about registering them on UIF) and thus not paying the requisite contributions.	and this can delay the process (including foreign employers) Educating employees about their rights, how much they are entitled to, how often they will receive it etc. **Continue:** Handling applications as they are being handled	and surrogacy. While there was hesitation and general uncertainty about the rights of adoptive parents/ surrogacy parties, almost all support the idea of parental leave for adoptive parents so that parents can bond with their child. Some even said to deny adoptive parents this time with their child would be discriminatory. At least 3-4 months leave should be allowed in this instance. Most participants believe, if you have been pregnant/given birth, you ought to be allowed time off (at least 2 months) to recover.

5.3 Case studies

As discussed in the fourth chapter, under methodology, three case studies were conducted in line with the research objective to provide more qualitative input for the study. The findings from the case studies are discussed below. Pseudonyms have been used in these case studies to preserve anonymity of the parties involved.

5.3.1 **Precious Moloi** (HR co-ordinator working for Multi-national employer)

Precious works for a multinational employer. She was well aware of her rights relating to anti-discrimination on the ground of pregnancy. She also did not feel discriminated against by her employer, and instead felt like her pregnancy was embraced and accommodated by her employer. She felt that her employer is accepting of difference and has an inclusive wellness programme. As an HR Co-ordinator she is familiar with the maternity leave policy at work; a policy which the company makes easily available to all employees. She was also aware of UIF claims although she did not need to claim as her employer paid the full benefit.

Precious returned to work after her four month's maternity leave but was not aware of the work-back policy at the time. She was given four months' fully paid maternity leave under her employer's policy. She also received four months' fully paid maternity leave at her previous employer, a small locally-based company where she was employed during her first pregnancy. Her current employer (a multi-national company) applies a work-back policy, in which the employee cannot resign within four months after return from maternity leave without having to pay back the maternity benefit received.

Precious found the transition back to work personally difficult but found her employer accommodating. Her employer brought in two interns to assist with her work so that she could manage her duties at work and take care of her baby. The employer subsidises an on-site crèche for employees' children which was helpful to Precious.

Precious was aware of the legislative provisions protecting her from a hazardous working environment during and after pregnancy and while breastfeeding. She was also accommodated by her employer as she had a room where she could express milk/breastfeed her baby and she made use of the safe on-site crèche for her child, which meant she could see to her baby during the day in the event that the child was not doing well.

5.3.2 **George Brown and Robert Burns** (same-sex couple based in Cape Town)

George and Robert are a same sex male couple who have recently adopted a child. Both are working in the private sector in Middle and Middle to top management roles respectively. They were well aware of their rights against discrimination relating to their decision to have a child and felt that their employers respected and accommodated their decision to adopt a child. They were also aware of their parental leave entitlements and broadly aware of UIF claims although they did not make use of them as their leave was fully funded by their employers. They were well advised of the adoption processes.

They had experienced discrimination on grounds of their sexuality by some adoption agencies and biological mothers who viewed homosexuality as un-Christian and only wished to give a child to a family that strictly observed Christian values.

George and Robert were both entitled to paid adoption leave of four months by their respective employers to be taken by whomever they decided should be the primary care-giver. The non-primary care-giver parent was entitled to and took 10 days paternity leave. With regard to returning to work, George and Robert were aware of the provisions relating to the return to work after paternity leave and the fact that their employers encouraged flexible working hours made the transition and return to work easier to manage. They were both able to manage their return to work by maintaining flexible working hours.

Robert and George adopted a child 25 July 2017, when the child was about six months old. The process of adoption was done through an agency where they signed up their profile and their preferences for the child. The child's profile was matched to their profile. They started the adoption process in December 2016. Legally there have to be costs associated with an adoption and they paid between R35 000 and R40 000.

For George and Robert as well as the couple below, the front end of the adoption process is efficiently run. Things often delay at the back end, at the Department of Home Affairs. To register a child's name is usually delayed at Home Affairs and the process has for others taken up to four years to complete.

5.3.3 **Jeremy Fisher and Craig Lewin** (same-sex couple based in Johannesburg)

Jeremy and Craig are a same sex male couple who have recently adopted a child. Both are doctors, one working in the public sector and the other working in private practice. Jeremy and Craig were similarly aware of their rights against discrimination and felt accommodated and respected by their employers although they had also experienced discrimination on grounds of their sexuality from some adoption agencies and mothers for the same reasons (anti-Christian perceptions). They were aware of their parental leave entitlements and the right to claim from UIF although they did not do so as their leave was paid by the employer.

For Jeremy and Craig, the primary care-giver benefitted from the government policy of two months' paid adoption leave. The other parent in private practice keeps flexible working arrangements so could also be home with the child as much as possible.

Jeremy and Craig first approached the Johannesburg Child Welfare service but were disappointed with the efficiency of the service. They hold the view that the Johannesburg Child Welfare is understaffed/ under-capacitated to effectively manage adoptions in this country and so they went the route of adopting through a private adoption agency, which was very efficient:

- They worked with a social worker who matched the child with them and facilitated the adoption process. The child was staying at a home.
- The child was adopted at six months old.
- The adoption process took about one year to finalise.
- They spent around R50 000, which is mainly for the medical and psychometric assessments required.

Conclusions from these case studies are:

- Employees working for multi-nationals may be more likely to benefit from world-class maternity provisions;
- Navigating the complexities, practical challenges and costs of adoption needs well-resourced employees (both in terms of finances, occupational level and legislative knowledge) and so "ordinary" employees will require assistance, particularly if the benefits of the Labour Laws Amendment Act are to be realised for a wider spectrum of employees.

- In the cases of adoption, the process, when managed privately through an adoption agency or specialist social worker, is efficient. The process when managed through state-run entities is far less efficient. Better linkages are needed between the Department of Home Affairs, as the registrar of births, and the adoption agencies, to expedite the registration of the child, in the interests of the child. This recommendation is set out more fully in the Recommendations section below.

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5.4 Employer policies

Of the 402 employers who responded to the online survey, 40 uploaded their maternity policies (or parts of them) in the survey. This was optional and was dependant on whether they were willing or able to do so. Company names cannot be disclosed as this permission was not obtained, so the different policies are simply summarized in relation to key themes.

Table 20 Employer policies

Company	Duration	When	Miscarriage/Stillborn	Maternity Benefit Details/Qualifying	Paternity, Adoption and surrogacy	Paid/Unpaid
1	The Employee will qualify for up to four months' (17 weeks) maternity leave unless a doctor or midwife stipulates differently	An Employee may commence maternity leave at any time from four weeks prior to the expected date of birth of the unborn child, unless otherwise agreed; or on a date from which a medical practitioner or midwife certifies that it is necessary for the Employee's health or that of her unborn child.	An Employee who has a miscarriage during the third trimester of the pregnancy, or bears a stillborn child, is entitled to maternity leave for six weeks after the miscarriage or stillbirth	Employees with less than 2 years' service at the time maternity leave commences will not be paid a top up salary by the Company. These Employees should apply for UIF benefits through the Department of Labour.		Employees with less than 2 years' service at the time maternity leave commences will not be paid a top up salary by the Company. These Employees should apply for UIF benefits through the Department of Labour.
2	The HR MANAGER shall grant employees maternity leave for a period not exceeding 4 (four) months The HR MANAGER shall grant employees maternity leave for a period not exceeding 4 (four) months	The maternity leave shall commence with four (4) weeks prior to the employee's expected date of confinement and shall not expire for at least six (6) weeks after the date of confinement		Employees, who have been in the services for less than one (1) year at the commencement of maternity leave, shall qualify for unpaid leave where the provision of the UIF on maternity leave benefits shall apply.		Maternity leave shall be paid at a rate of 100% of such an employee's normal salary for a period not exceeding 3 (three) months for employees with one year's service or more.
3	Female employees will be entitled to four (4) months consecutive maternity leave.	An employee may commence maternity leave at any time from four (4) weeks before the expected date of birth, unless otherwise agreed; or on a date from which a medical practitioner or a midwife certifies that it is necessary for the employee's health or for that of her unborn child	An employee who has a miscarriage or who bears a stillborn child after twelve weeks of pregnancy is entitled to six weeks' maternity leave after the miscarriage or still birth		Male employees will be entitled to five (5) days consecutive paternity leave. The employee will be entitled to remuneration for those five (5) days only, if he has been employed for 12 consecutive months or longer Each situation will be assessed individually by the Managing Director and by a review panel – although adoption is seen in the same light as Maternity Leave.	The employee will be entitled to remuneration amounting to 100% of her Gross monthly salary for four (4) months of her maternity leave period, if she had been with the company for 12 months or more
Company	Duration	When	Miscarriage/Stillborn	Maternity Benefit Details/Qualifying	Paternity, Adoption and surrogacy	Paid/Unpaid

4	4 Months per pregnancy which is related to a maximum of one month's paid leave during the active career	Maternity leave must commence no later than one week before the expected confinement date.		The Employee has to be with the company for more than a year.	Maternity leave is also applicable in circumstances where an infant is adopted.	Paid maternity leave only applies to female employment.
5	A four-month maternity/adoption leave period, remunerated will be granted to all employees, commencing four weeks before the expected due date.	Employees at all levels, including Directors, have the option of taking one year's maternity/adoption leave, with the balance of the leave period taken as either unpaid or annual leave				Only Management, employees with completed training contract, other production staff with more than three years' employment term and administrative employees with more than four years' employment term receive 50% of their pay.
6	Staff members who have been employed at for at least 12 months at the time of confinement will be entitled to three months (12 weeks) maternity leave.			Any staff member employed for less than 12 months shall not be entitled to NTS's partially paid leave but shall apply for UIF.	This leave is also available to fathers who have been employed for at least 12 months at the time of birth of the child. In the case of both partners being employed in the company, not more than four weeks consecutive leave can be taken together.	Employer will pay 55% salary for this period and 45% may be claimed from UIF. If a staff member wishes to take longer than three months the additional leave will be unpaid leave if no annual leave is available and must be negotiated with the Owner.
7	An employee is entitled to at least four (4) month's consecutive maternity leave	An employee may commence maternity leave at any time from four (4) weeks before the expected date of birth, unless otherwise agreed; or on a date from which a medical practitioner or midwife certifies that it is necessary for the employee's health or that of her unborn child.	An employee who has a miscarriage during the third trimester of pregnancy or bears a stillborn child is entitled to unpaid maternity leave for six (6) weeks after the miscarriage or stillbirth			
8	An employee is entitled to at least 4 months of maternity leave, and no employee may come back to work before 6 weeks.		An employee who bears a stillborn child or miscarriage on the third trimester may remain on maternity leave for 6 weeks.		If an employee, spouse/partner adopts a child, provided that the adoption is a legal adoption, the employer will consider granting 4 months maternity leave to the employee on an equivalent basis to the maternity leave.	Bargaining and non- bargaining employees entitled to company maternity benefits will be paid 75% of her normal total remuneration for a maximum of 4 months
Company	**Duration**	**When**	**Miscarriage/Stillborn**	**Maternity Benefit Details/Qualifying**	**Paternity, Adoption and surrogacy**	**Paid/Unpaid**
9	Pregnant employees will be entitled to four consecutive months'	Maternity leave may commence at any time from four weeks before the expected date of birth, or on a date a doctor or midwife says is necessary				Unpaid maternity leave of 4 (four) months shall be granted to all female employees on the following

	maternity leave.	for the employee's health or that of the unborn child, or otherwise agreed upon.				conditions: The employee has applied for maternity leave on the prescribed form at least 2 (two) months prior to taking such leave. If the employee fails to return to work after the prescribed period of maternity leave, her absence will be dealt with as unauthorized conduct that could give rise to termination of service.
10	The Employee is entitled to 4 (four) consecutive months' maternity leave;	An Employee may commence maternity leave at any time from 4 (four) weeks before the expected date of birth				All maternity leave is on an unpaid basis and the Employee may claim maternity benefits from the UIF.
11	All employees are entitled to a maximum of four (4) months unpaid maternity leave.	The employee is required to notify the company in writing, and provide the company with a valid medical certificate at least 4 (four) weeks before proceeding on maternity leave.	An employee who has a miscarriage during the third trimester of the pregnancy or gives birth to a still born child is entitled to six (6) weeks maternity leave after the miscarriage or birth of a stillborn child.			All employees are entitled to a maximum of four (4) months unpaid maternity leave.

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Company	Duration	When	Miscarriage/Stillborn	Maternity Benefit Details/Qualifying	Paternity, Adoption and surrogacy	Paid/Unpaid
12	Maternity leave may be taken to a maximum of 4 months consecutively.	An employee may commence maternity leave at any time from four weeks before the expected date of birth, unless otherwise agreed, no employee may work for six weeks after the birth of her child, unless a medical practitioner or midwife certifies that she is fit to do so.	An employee 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 employee had commenced maternity leave at any time of the miscarriage or stillbirth.			
13	An employee is entitled to 4 consecutive month's maternity leave.	An employee who qualifies for Maternity Leave may not be allowed to work 4 weeks prior to the birth of the child, unless otherwise agreed. Furthermore, no employee may work for 6 weeks after the birth of her child, unless a medical practitioner.	An employee who has miscarriage during the third trimester of pregnancy or bears a stillborn child is entitled to maternity leave for 6 weeks after the miscarriage or stillbirth, whether or not the employee had commenced maternity leave at the time of the miscarriage or stillbirth.			**The Company provides four (4) months unpaid maternity** leave during which time an employee may claim unemployment benefits from the Unemployment Insurance Fund (UIF).

Company	Duration	When	Miscarriage/Stillborn	Maternity Benefit Details/Qualifying	Paternity, Adoption and surrogacy	Paid/Unpaid
14	An employee is entitled to 4 consecutive month's maternity leave.		An employee who has a miscarriage during the 3rd (third) trimester of the pregnancy or gives birth to a stillborn child, is entitled to 6 (six) weeks maternity leave after the miscarriage or stillbirth, whether or not the staff member has commenced maternity leave at the time of the miscarriage or stillbirth Permanent employees who have worked for the firm for a period exceeding 12 (twelve) months and who suffer from a miscarriage during the 3rd (third) trimester or who bears a stillborn child are entitled to one third of the cost to company package for a maternity leave period of 6 (six) weeks.			If a permanent employee has been with the firm for a 12 (twelve)-month period or longer prior to the expected date of birth of the baby, the employee will be entitled to 4 (four) months paid maternity leave. If a permanent employee has been with the firm for less than 12 (twelve) months, the employee would be entitled to one third salary payment for 3 (three) months, the 4th (fourth) month will be unpaid. The entitlement to a salary during maternity leave is calculated in conjunction A 5th (fifth) or 6th (sixth) month may be taken as unpaid leave at the discretion of management ith a UIF claim. If a fixed term contract employee (which include a trainee accountant) has been with the firm for 12 (twelve) months (in a fixed term capacity) and becomes a permanent employee, 50% of the time served under the fixed term contract will be counted towards 12 (twelve) months (consecutive) employment required for the eligibility for 4 (four) months paid maternity leave. All fixed term contract employees (excluding trainee accountants) will be entitled to 4 (four) consecutive month's maternity leave. This leave will be unpaid.
Company	Duration	When	Miscarriage/Stillborn	Maternity Benefit Details/Qualifying	Paternity, Adoption and surrogacy	Paid/Unpaid
15	Employees are entitled to four months maternity leave	Commencing from four weeks before the expected birth date unless otherwise agreed - or on a date certified by a medical practitioner or midwife for the health of the employee or unborn child.	A miscarriage in the third trimester or a still birth will entitle the employee to maternity leave for six weeks after the miscarriage or still birth.			Permanent employees will be paid 33.33 % of their monthly Cost to the Firm for three months of maternity leave. Trainee Accountants do not contribute to UIF and as such may not claim maternity benefits from the Fund.
16	The Employee is entitled to four (4) consecutive months'	An Employee is not required to remain away from work for the entire four (4) month period and may choose to return earlier if the well-being of mother and child are not	An Employee who has a miscarriage during the third trimester of pregnancy or gives birth to a still born child is entitled to six (6) weeks' maternity leave after the miscarriage			The Employee is entitled to four (4) consecutive months' unpaid maternity leave

		compromised	or birth of a stillborn child.			
17	The Employee, if female, is entitled to up to Four (4) consecutive months		If the Employee has a miscarriage during the third trimester of pregnancy or bears a stillborn child, she will be entitled to maternity leave for Six (6) weeks after the miscarriage or stillbirth, whether or not the Employee had commenced maternity leave at the time of the miscarriage or stillbirth.		The Employee is entitled to Three (3) consecutive months' adoption leave, subject to the following conditions: The Employee has adopted a child in terms of the Child Care Act, 1983; and The adopted child is below the age of Two (2) years; and The Employee, if he or she is one of two adopting parties, is the only one entitled to adoption benefits as contemplated in the UIF Act. The Employee will qualify for adoption benefits if he or she has been employed for at least Twenty Four (24) consecutive months. The monthly rate for adoption benefits will be calculated as follows: One Third (1/3) of One (1) month's gross salary for every completed, consecutive year of service, to a maximum of 3 years	The Employee, if female, is entitled to up to Four (4) consecutive months of paid maternity leave. Maternity leave may be extended, upon application, by the granting of up to Three (3) consecutive months of unpaid leave.
Company	Duration	When	Miscarriage/Stillborn	Maternity Benefit Details/Qualifying	Paternity, Adoption and surrogacy	Paid/Unpaid
18	Mother or both parents employed by ... are entitled to 11 months leave until the child is 4 years old. Parents may share the leave in whatever way they choose.	All permanent Female Staff have the right to a day-off to attend ante-natal clinics once a month for the first 6 months of pregnancy and thereafter one day every two weeks.	In the event of still born birth or miscarriage, female Staff will be granted paid leave in accordance with a medical practitioner's recommendation, and may take further unpaid leave if required. No annual leave will be taken by female in the year they take parental leave.		Adoptive parents of babies up to the age of 1 may take 10 months leave with 6 months at 30% and 2 months at 100% with the remaining 2 months unpaid. Where UIF is not forthcoming, Staff can choose which months they wish to take the 100%. Adoptive parents of babies between one (1) year and twelve (12) years may take three (3) months leave of which one (1) will be paid in full.	6 Months will be paid at 30% and 3 months at 100% of normal salary with the remaining 2 months unpaid.
19	The employee shall be entitled to 4(four) consecutive months maternity leave, commencing 4 (four) weeks					The employee will not be entitled to remuneration during her maternity leave period, but may claim maternity benefits as laid down in the provisions of the Unemployment Insurance Act.
20	As an expectant female employee, you will be granted a half-day's leave per month for prenatal visits in the first six months preceding the birth of					During the four consecutive months' maternity leave, the employee will receive a monthly amount equal to 100% of the fixed cash remuneration.

2018/19	your baby. In the last trimester of your pregnancy, you will be allowed two half-days off per month for prenatal visits. Maternity leave up to a maximum of four consecutive months or eighty-six (86) consecutive working days is granted. Should you wish to exceed this period of time, you must obtain the approval of the relevant executive director/Managing Director.					

Themes which can be distilled from these policies are as follows:

- Four months' maternity leave is the norm
- Full payment for maternity leave by the employer is relatively rare
- Partial payment or no payment by the employer with the possibility of claiming from UIF is more common
- Commencement of maternity leave is typically four weeks prior to confinement
- Miscarriage or stillbirth, when referred to (and not all policies do refer to this) typically refer to the BCEA provisions
- Where the employer pays fully or tops up UIF payments, there is typically a service requirement before or after the birth or both
- Reference to adoption is relatively rare
- Reference to surrogacy is even more rare

It is clear from this analysis that existing maternity policies will need to be revised in light of the Labour Laws Amendment Act and consideration should be given to renaming such policies as Parental policies in order to cater for parental, adoption and commissioning parental leave as provided for now in the legislation.

5.5 Employee survey Findings

5.5.1 Employee survey Demographics

The database used for the online employee survey originated with maternity benefits claimants who had provided email addresses when submitting their applications, between 2014 and 2018. Not all claimants provided email addresses, however, the number of claims per province and sector provide useful context for the survey. Below sets out how the sample was arrived at.

Province	2018	2017	2016	2015	2014	Total Claims as per UIF database	Total unique ID numbers	Total unique email addresses
Total	**21 751**	**107 378**	**100 754**	**102 659**	**81 319**	**413 861**	**374 242**	20 410
EASTERN CAPE	1 287	6 358	5 568	5 901	4 428	**23 542**	21 665	654
FREE STATE	629	3 472	3 321	3 622	3 148	**14 192**	12 881	337
GAUTENG	7 938	36 357	32 551	32 125	26 672	**135 643**	122 859	11 923
KWAZULU NATAL	3 540	16 778	16 541	17 674	13 362	**67 895**	62 915	2 130
LIMPOPO	718	4 238	3 909	3 679	3 166	**15 710**	13 491	325
MPUMALANGA	2 021	12 048	12 047	12 255	9 729	**48 100**	41 828	1 579
NORTH WEST	423	2 021	1 949	1 946	1 632	**7 971**	7 252	195
NORTHERN CAPE	363	2 242	2 179	2 254	1 672	**8 710**	7 415	166
WESTERN CAPE	4 831	23 859	22 678	23 196	17 500	**92 064**	83 902	3 091
UNKNOWN	1	5	11	7	10	**34**	34	10

Table 21 UIF database - employee claims by province

The above table shows –

- The total claims recorded on the UIF database between 2014- 2018 is **413 861** claims across South Africa's 9 provinces, with a marginal number where the province could not be determined.
- Of those 413 861 claims, only **374 242** were unique ID numbers, meaning they only appeared once as a claimant as some had claimed more than once from the UIF. The research sought to capture the knowledge and experience of claimants, therefore a claimant only need participate in the survey once and describe their overall knowledge of and experience with UIF claims processes. This also avoids duplication which may adversely affect the results.
- Of those unique ID numbers, only **20 410** (total across provinces) had unique, discernible email addresses.
  As set out above, in Table 15, from the 20 410 claimants with unique email addresses, 3 023 of the claimants' email addresses were invalid and were thus removed from the sample group, resulting in a total clean email list of **17 387** claimants, of which
  - 296 unsubscribed,
  - 2917 bounced
  - And only 2484 claimants responded to the survey.

Analysis of the above:

- The 2014 to 2015 claim hike of over 21 000 claims seemed to set the trend for the rate of claims going forward.
- Whilst the latest 2018 claims are not included, looking at the past 4 years' projection, at least 80 000 more claims will have been made across the country, since the study was done.
- Provinces have more or less remained consistent (not a high variance) in claim numbers throughout the 5-year period.
- The North-West has remained consistently low in the number of UIF claims, while Gauteng consistently has the highest number of claims across provinces. This can be attributed to
    - the North West's main economic activity is mining and the main employer in this province would be mining companies. Mining is a male-dominated industry in terms of employment and so we can expect to see lower maternity claims from those areas;
    - the relatively larger population in Gauteng compared to other provinces would result in a higher volume of claims from Gauteng;
    - as a major city and commercial capital of the country, there are more people employed in Gauteng relative to other provinces and thus we can expect to see more claims for unemployment insurance.

- The Western Cape is consistently, throughout the 5-year period, the second largest claiming province. This is largely attributed to economic activity and the overall economic input from the Western Cape. The Western Cape has managed to maintain its significant comparative trade advantage in the agri-processing value chain and several services sectors. Agri-processing and tourism are suitable sectors to support inclusive growth, as both are very labour intensive with rising productivity and allow for the creation of sustained jobs for all skill levels in both urban and rural areas.

Table 22 UIF database employee claims by industry

Industry	2018	2017	2016	2015	2014	TOTAL CLAIMS as per UIF database
TOTAL	21 751	107 378	100 754	102 659	81 319	413 861
AGRICULTURE	879	4 322	3 971	4 040	3 269	**16 481**
MINING	161	1 145	1 062	1 139	865	**4 372**
MANUFACTURING	2 513	12 385	11 703	12 599	9 806	**49 006**
UTILITIES	0	0	0	0	0	**0**
CONSTRUCTION	378	2 031	1 918	2 124	1 712	**8 163**
TRADE	6 582	32 034	29 771	30 508	23 854	**122 749**
TRANSPORT	970	4 440	4 332	4 545	3 655	**17 942**
FINANCE AND OTHER BUSINESS SERVICES	964	5 100	4 840	4 746	3 876	**19 526**
COMMUNITY AND SOCIAL SERVICES	8 892	43 645	40 798	40 484	32 029	**165 848**
PRIVATE HOUSEHOLDS	232	1 332	1 388	1 604	1 537	**6 093**
OTHER	180	944	971	870	716	**3 681**

Observations from the above are as follows:

- Industries have largely remained consistent in claim numbers over the past 5 years. There is no alarming hike in claims in any of the industries from year to year although again, the claims from 2014 to 2015 hiked considerably across all industries and provinces, above.
- There may be worthy correlations between the unemployment rate and the number of UIF claims in that –
    - 2014, unemployment rate was 25.5% - its highest since 2008. High unemployment contributes to lower UIF (maternity) claims.
    - 2015, unemployment rate dropped to 24.5% and so lower unemployment contributes to higher UIF claims.
- The Community and Social Services industry is the highest UIF (maternity benefit) claiming industry, largely attributed to the distribution of labour that is traditionally regarded as female occupation. Women are the largest occupier of community and social services employment. The same is reflected in the Trade industry, also dominated by female employees.
- Contrast the above to the mining and construction industries which is traditionally dominated by males and thus sees some of the lowest UIF maternity benefit claim numbers.
- Interesting is the Private Households industry, where despite domestic work accounting for over a million jobs in South Africa, the rate of claim remains relatively low. This can be attributed to
    - lack of proper registration on the UIF system by employers of domestic workers;
    - the informal nature of domestic work and thus struggles to enforce regulations;
    - as the findings from the Focus Group with domestic workers will show, there is still a lack of awareness of maternity benefits entitlements among domestic workers;
    - high unemployment in South Africa makes workers, particularly those in low-paying work, vulnerable and desperate and thus less likely to enforce their rights for fear of job loss.

Responses to the employee survey largely mirror the demographics of claimants, in that the majority of responses were received from Gauteng, followed by the Western Cape and Kwa-Zulu Natal, as shown below.

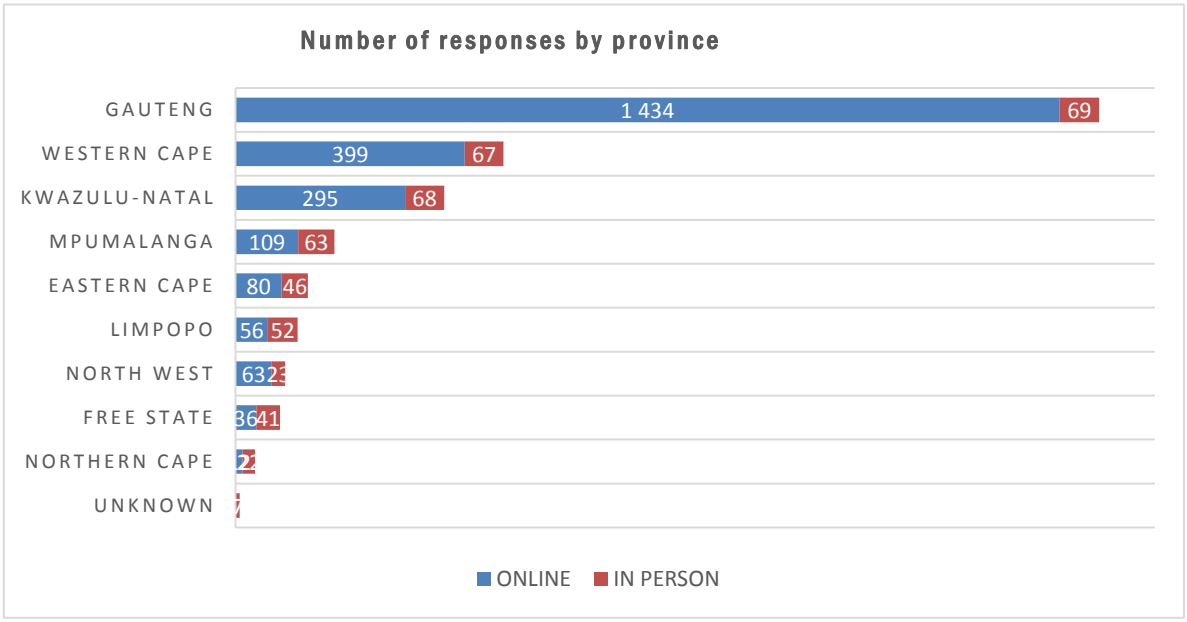


Figure 3 Employee responses received by province

Overall, most of the employee survey responses received were completed online. This is in line with current technological developments, where there is increased access to online platforms.

The number of employee survey responses received against the number of people emailed, per province is set out as follows –

			ONLINE SURVEY	MANUAL SURVEY	TOTAL	ONLINE SURVEY	MANUAL SURVEY	TOTAL
2 942	PROVINCE	EASTERN CAPE	80	46	**126**	63%	37%	**4,3%**
		FREE STATE	36	41	**77**	47%	53%	**2,6%**
		GAUTENG	1 434	69	**1 503**	95%	5%	**51,1%**
		KWAZULU-NATAL	295	68	**363**	81%	19%	**12,3%**
		LIMPOPO	56	52	**108**	52%	48%	**3,7%**
		MPUMALANGA	109	63	**172**	63%	37%	**5,8%**
		NORTH WEST	63	23	**86**	73%	27%	**2,9%**
		NORTHERN CAPE	12	22	**34**	35%	65%	**1,2%**
		WESTERN CAPE	399	67	**466**	86%	14%	**15,8%**
		UNKNOWN	0	7	**7**	0%	100%	**0,2%**
2 942	SECTOR	AGRICULTURE	43	9	**52**	83%	17%	**1,8%**
		FORMAL SECTOR (NON-AGRICULTURAL)	1 558	258	**1 816**	86%	14%	**61,7%**
		INFORMAL SECTOR (NON-AGRICULTURAL)	101	19	**120**	84%	16%	**4,1%**
		PRIVATE HOUSEHOLDS	263	45	**308**	85%	15%	**10,5%**
		PUBLIC SECTOR	519	74	**593**	88%	12%	**20,2%**
		UNKNOWN	0	53	**53**	0%	100%	**1,8%**

Gauteng manual and online survey responses combined, make up 51.1% of the total employee survey responses with 95% of these total responses occurring through online submission. According to the South African Provincial Review, 2016, Northern Cape has the smallest population and economy of any of the provinces. This finding explains why the Northern Cape, relative to the other known provinces, shows significantly reduced number of responses, making up only 1.2% of the total employee survey responses. Online submissions in the Northern Cape were lower than manual submissions which highlights the benefit of dual data collection methodologies where slow growth, infrastructure development, and in-access in traditionally rural communities can decrease online participation.

Also, with such a small population, a relatively small amount of UIF maternity benefits claims can be expected, especially since the main economic activities are male-dominated industries (mining, agriculture) The Western Cape, followed by Kwa-Zulu Natal were the second and third largest survey response contributors, also showing significantly large online submissions. These provinces have shown economic growth potential and thus see increased access to resources and infrastructure development, which leads to the development of its communities.

Similarly, responses mirrored the demographics of claimants in terms of sector and industry.

Figure 4 Employee responses by sector

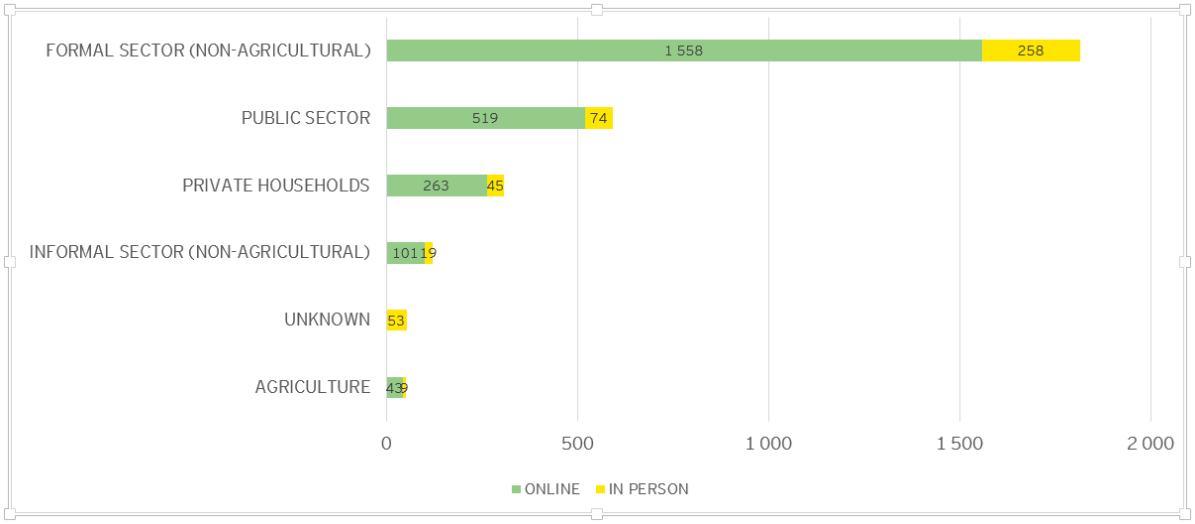


Figure 5 Employee responses by industry

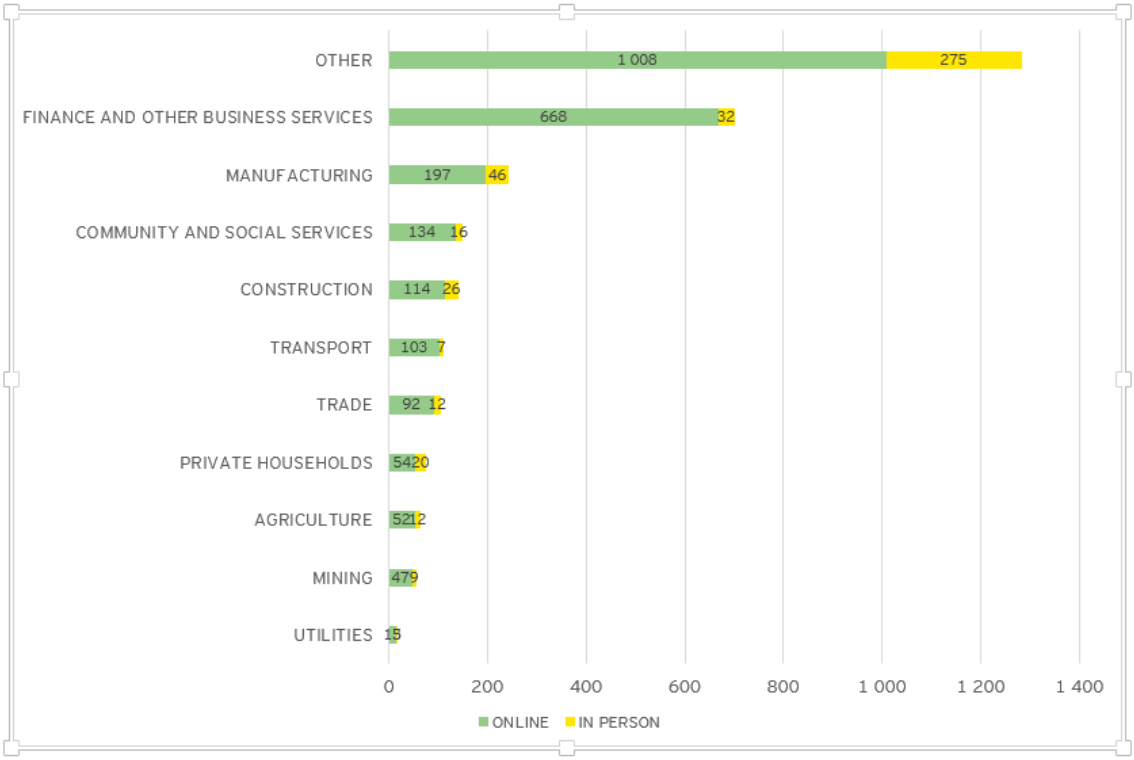
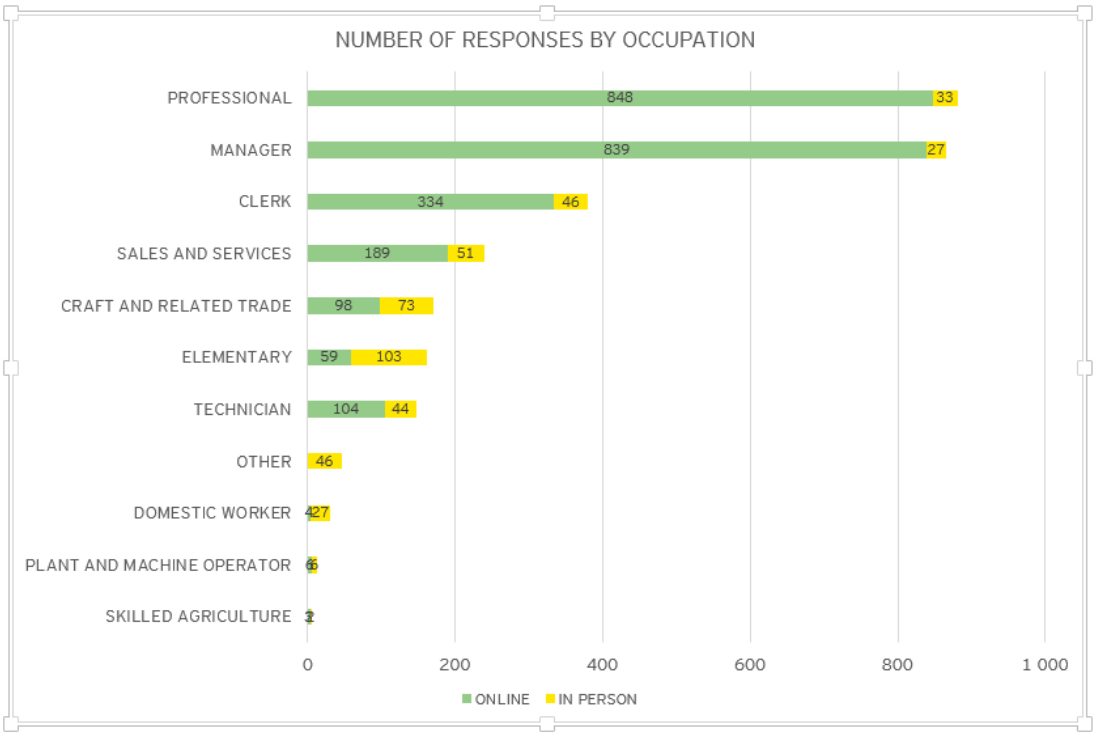
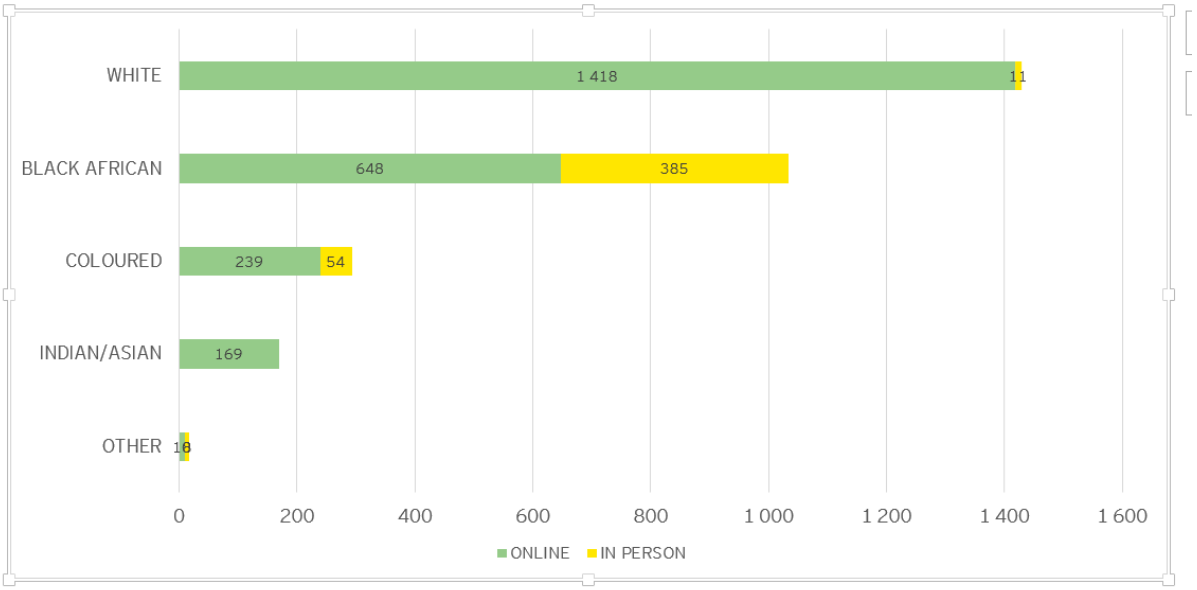


Figure 6 Employee responses by occupation



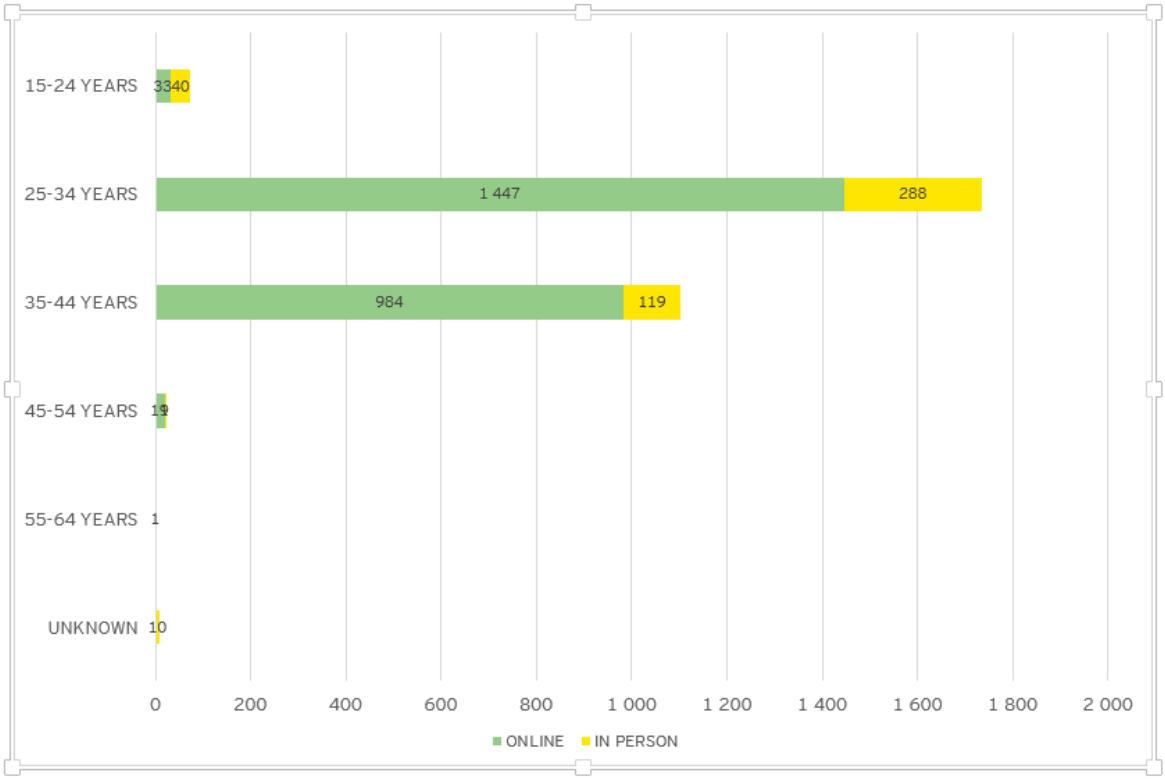
Professionals and managers, as expressed in the figure above, dominated employee survey responses which can be explained by the fact that by far the majority of total employee responses were online, a mechanism which would tend to exclude employees from occupations such as domestic work, agriculture and mining. Manual responses from these categories of employees dominated over online responses. This highlights the benefit of dual data collection strategies to help balance out the survey results.

Figure 7 Employee responses by race



Access to technology, resources and schooling, for completion of the online survey plays a critical role in the distribution of survey responses as the table above indicates. As reflected below, the white population dominates the online submissions. Labour distribution in South Africa is such that senior/managerial positions were traditionally reserved for the white population under systems of racial exclusion. With better access to resources and technology, it is to be expected for the white population to dominate online submissions. The Black African population makes up most of the country's population and so will be more likely to have more responses than their counterparts.

Figure 8 Employee responses by age



It is to be expected, as the above figure 8 shows, that the largest age group of respondents to the survey were those aged between 25 and 34 years old, as the average childbearing age in South Africa is 28.8 years. This age group represents an economically active population group.

Figure 9 Employee responses by employment status

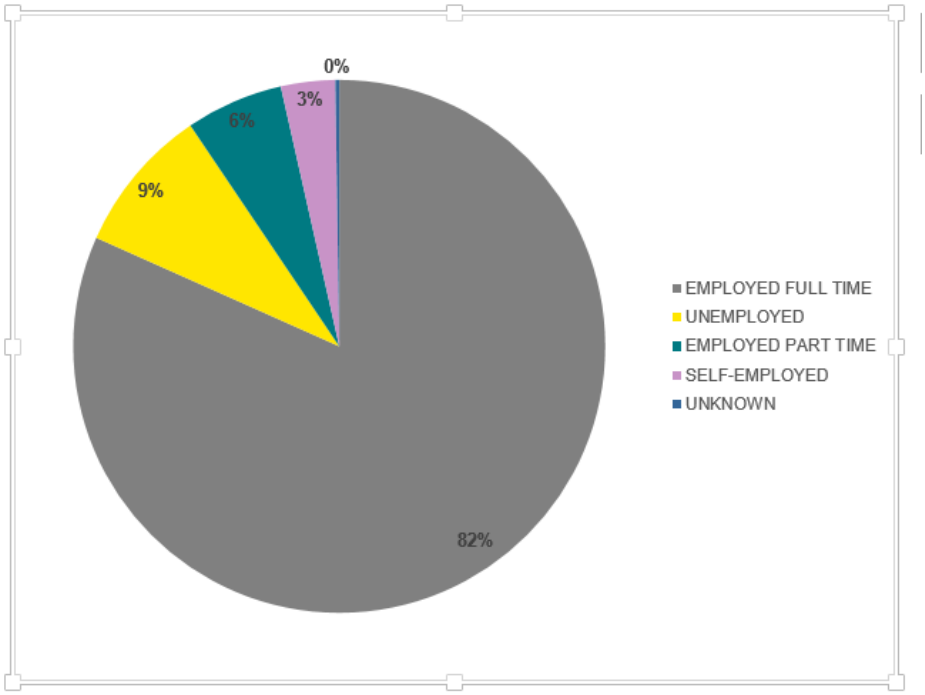
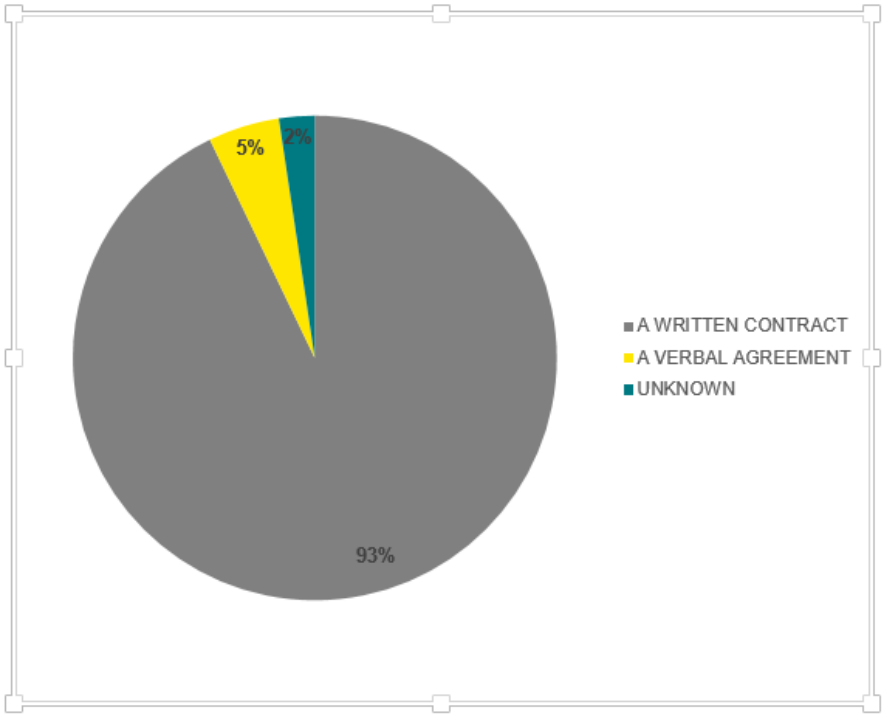


Figure 10 Number of responses by basis of employment agreement



Since most survey participants completed the online survey, were in professional, managerial and clerical positions in formal employment, it is unsurprising that most respondents indicated that they were employed full time in terms of a written contract, setting out their conditions of service. In this case there can be much more certainty about the conditions of employment between the employer and employee and naturally, entitlements and rights flow from these conditions of employment.

5.5.2 Employee Knowledge and Awareness Findings

The following section details the Research Findings from the online and manual surveys, relating specifically to employee knowledge and awareness of maternity provisions in South Arica. The findings have been arranged thematically, to speak to the research outputs and objectives. These themes are –

a) Discrimination on the ground of pregnancy;
b) UIF contributions and claiming from the UIF;
c) Duration of maternity leave;
d) Adoption and surrogacy, and
e) Return to work policies and arrangements.

a. Discrimination of the ground of Pregnancy

To understand the prevalence of discrimination in the workplace on the grounds of pregnancy, the employee responses to the survey questions were as follows -

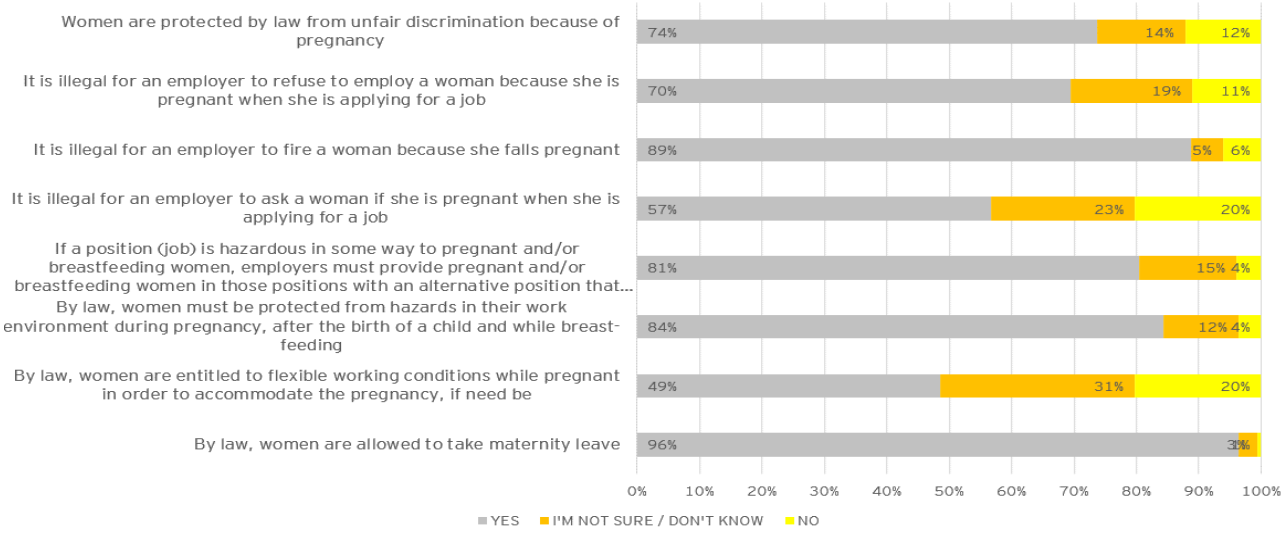


Figure 11 Discrimination on grounds of pregnancy

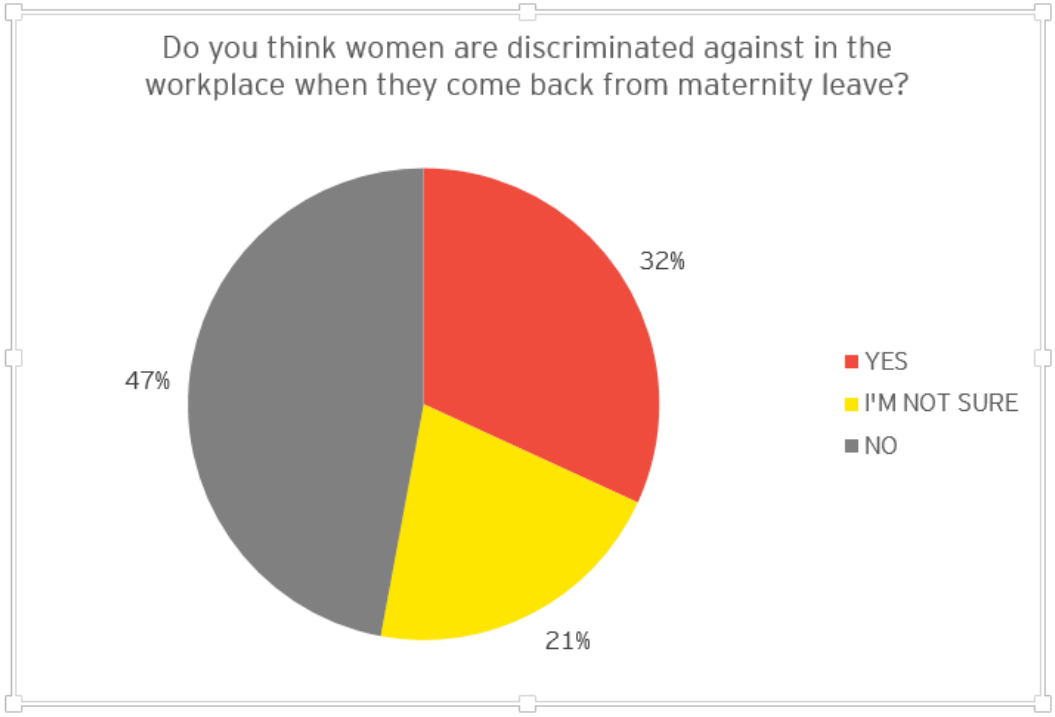
Most participants in the survey, 74%, are aware of the law's protection against unfair discrimination due to pregnancy and when the overall graph above is analysed, there exists a general understanding among a majority of those surveyed, that it is illegal to be refused a job or fired because of one's pregnancy. What is interesting to see is that over half of the survey participant group are not sure of the entitlements of working women to flexible working arrangements. This suggests that employers may not be doing enough in their workplaces to inform their staff of their maternity and parental entitlements.

An important consideration, as was gathered from the Focus Groups, is that often, pregnant women or new mothers, are reluctant to enforce their entitlements to flexible working conditions post-birth. Unemployment tensions in the country have lessened people's likelihood to insist on being accommodated, lest they lose their jobs. Similarly, as noted above, almost half (43%) are not clear on the legality of enquiring on a woman's pregnancy during a job interview. This question has been cleared by the courts in *Woolworths (Pty) ltd v Whitehead (CA06/99) [2000] ZALAC 4 (3 April 2000)*, in which the Labour Appeal Court (LAC) stated that societal considerations of women should be reviewed. The Labour Appeal Court in this case indicated that if women are to experience the full richness of life as citizens, issues of motherhood and parenting should be reflected on more deeply than a mere reliance on narrowly focussed rules of law.

The Employer group in the stakeholder diagnostic interviews shared that employers could do better to accommodate breastfeeding mothers with on-site nursing facilities. This is in line with the LAC's vision to be more critical and think deeply about how women are incorporated into workspaces.

The challenge often arises where employers, forced by their own workload pressures are reluctant to employ a pregnant woman as contingency arrangements have to be made which, to the employer, defeats the objective of acquiring more hands on board. The needs of the employer and that of a job applicant who is pregnant often have to be balanced, and considering that the employer is in a more powerful position to decide, the employer will most likely take the decision that is in the best interests of the business.

Figure 12 Discrimination in the workplace upon return from maternity leave



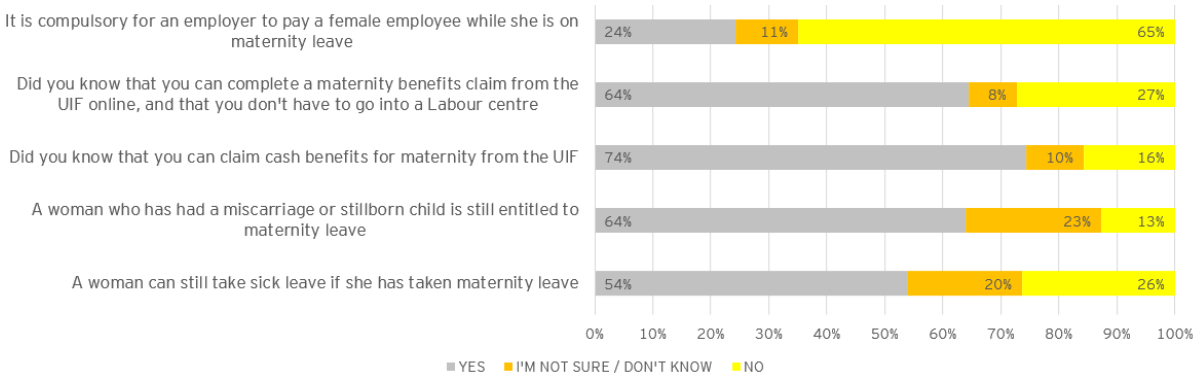
The majority of the survey findings (47%) show that most people don't think that pregnant women are frequently discriminated against upon their return from maternity leave. This can be juxtaposed against Focus Group findings which highlighted experiences of discrimination. Given that focus group participants were generally from more vulnerable sectors and occupations highlights the differences in experience between those women in professional and managerial positions with access to online technology and those in more vulnerable situations in how they experience discrimination.

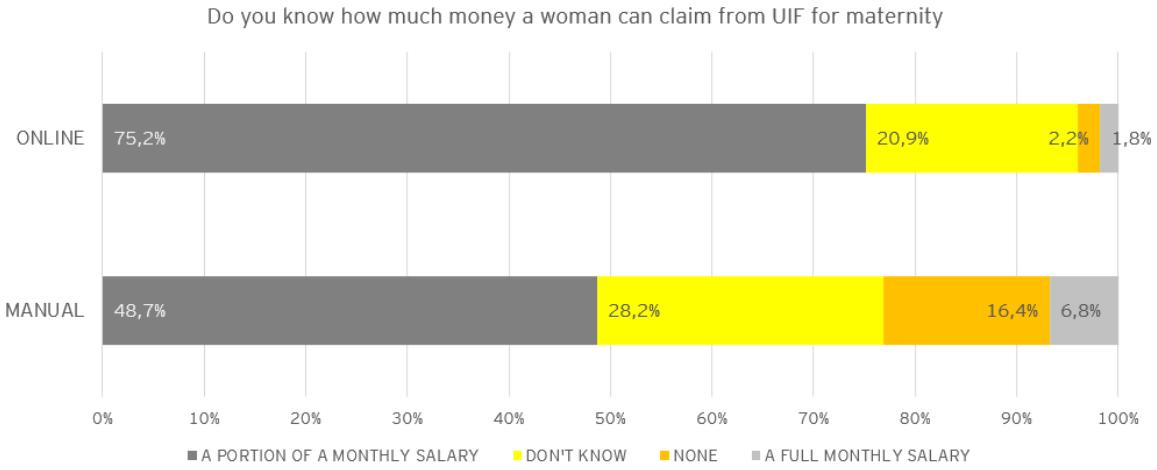
However, while not a majority, a considerable number of women (32%) believe discrimination on the grounds of pregnancy/ for reasons related to pregnancy to still exist in the workplace, despite explicit anti-discrimination laws in South Africa. This shows that more needs to be done to culture and orientate staff about pregnancy and accommodating pregnant colleagues, not just in gesture, but in anti-discriminatory attitude.

b. UIF Contributions/ Claims

The results below show that there is still a lot of uncertainty about the amount to be claimed from the UIF and how it is calculated. A lot of participants reported a lack of communication about the claims process and how to complete the claim forms, which people feel contributes to the delays in finalising the claim. A large number of participants who completed the survey manually were unaware of the online filing system and believed that one must go in to the labour centres physically. Due to a lack of knowledge, people have resorted to paying an agent to finalise their claims. Responses to knowledge questions on UIF contributions and claims are set out below:

Figure 13 UIF Contributions/Claims



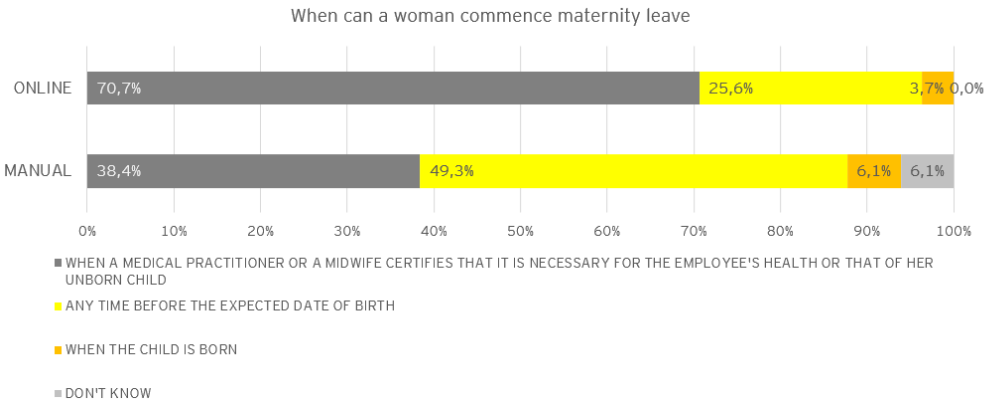


It is interesting to see the difference in responses from the online submissions against the manual submissions. Clearly, a lot more of those who answered online understood that there is some level of salary protection when going on maternity leave. 16.4% of participants believe there are no salary entitlements during maternity leave, which brings to the fore the vulnerabilities of women who go on maternity leave. Only a small fraction of online submissions believed there to be no salary entitlements during maternity leave. Again, the fact that the online responses where mostly completed by professionals and managers highlights the privilege of knowledge and access to information and certain protections in the workplace, where low-income workers understand their entitlements to be limited in comparison. Regarding the UIF claim applicable in the case of a miscarriage or stillborn child, out of 2942 online and manual responses, 1883 responses agreed that maternity benefits are to apply to her.

Across both online and manual survey platforms, the need for information and clarity on UIF claims is present.

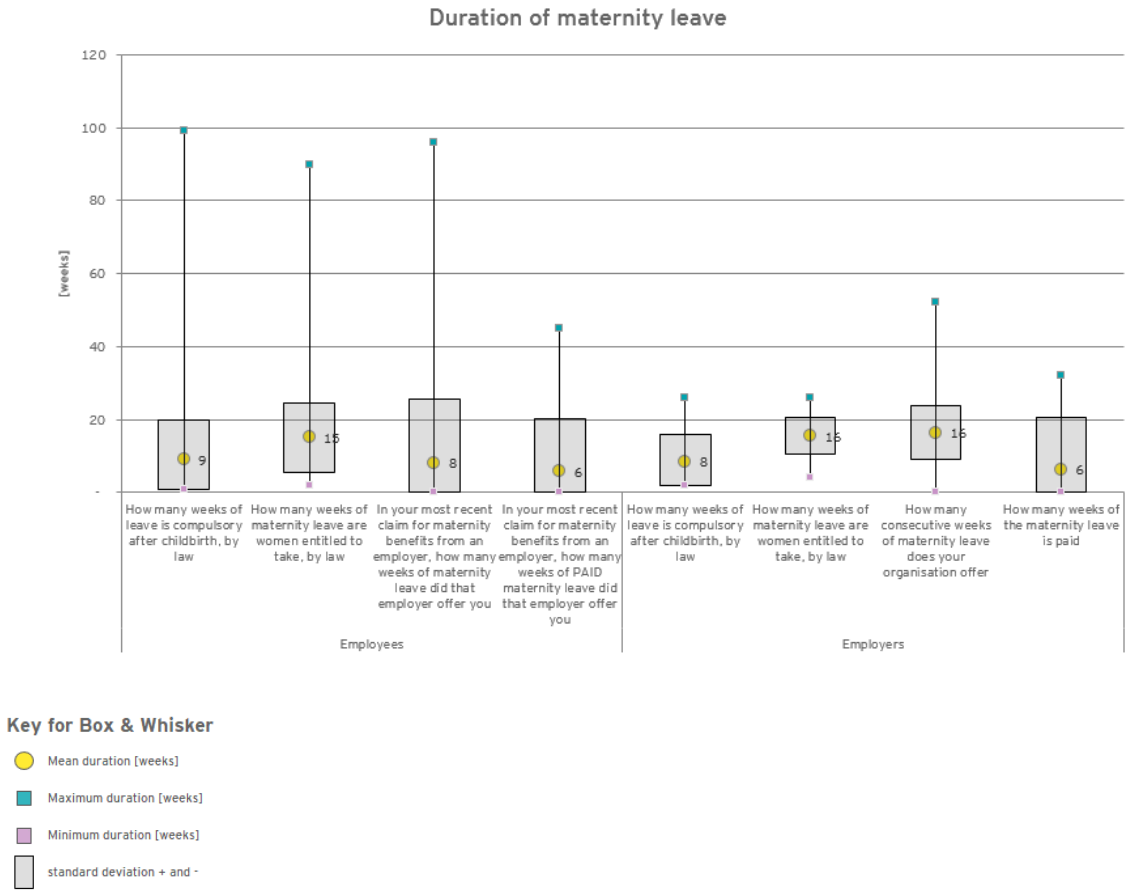
c. Duration of Maternity Leave

Figure: Commencing maternity leave



The awareness from both manual and online surveys amongst the participants is that by law, women are entitled to take maternity leave, with most of the online submissions understanding that a woman's maternity leave can commence when a medical practitioner/midwife certifies that it is necessary for the employee's health or that of her unborn child. Specific responses to the question of the duration of maternity leave are set out in the table below, the results are set out in terms of the average number of responses received:

Figure 14 Duration of maternity leave



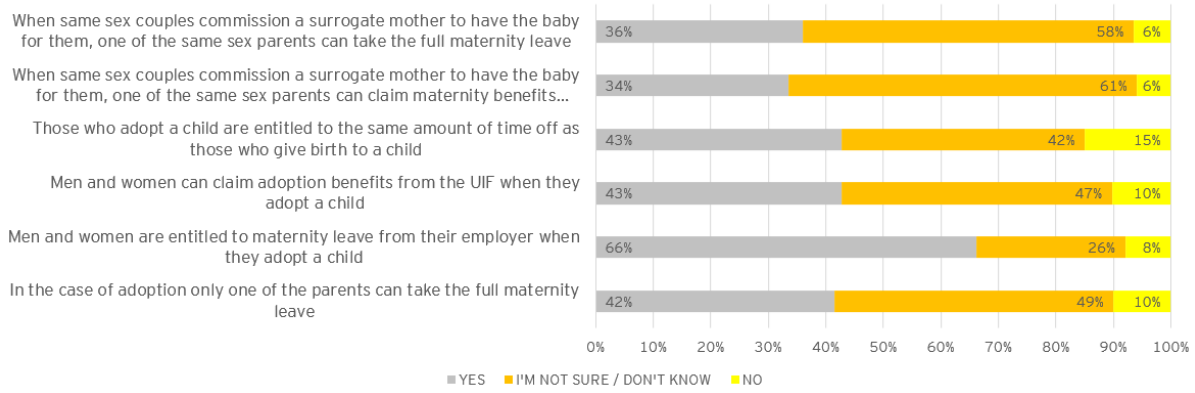
On average, as shown above, the understanding among the participants is that by law, a woman must take 9 weeks compulsory leave after childbirth, while on average, the participants believed women are entitled to 15 weeks maternity leave by law. These projections from the participants are not too far off from the actual legislated entitlements, where 6 weeks maternity leave is compulsory after birth and 16 weeks maternity leave is provided for under the BCEA. It is apparent however from the above, that most women received less that the legislated entitlements, as on average, most women were offered 8 weeks' maternity leave, 6 of which were paid by the employer.

d. Adoption and Surrogacy

A recurring observation noted during the Focus Groups and manual survey completion was that cultural perspectives also influence what people know about adoption and surrogacy, in that it is, for a number of people who participated in the manual survey especially and Focus Groups, somewhat of a taboo subject.

The findings from the employee survey are set out below:

Figure 15 Adoption and Surrogacy



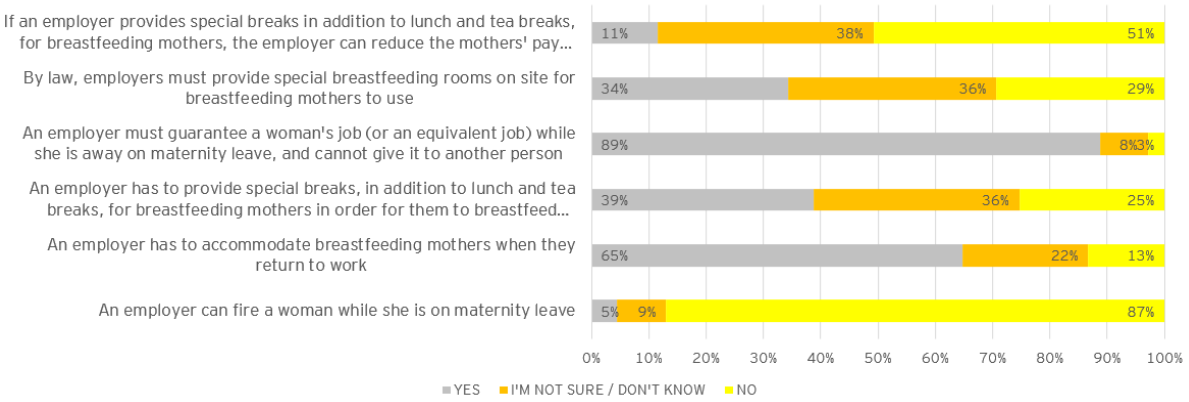
As can be gathered from the above, most of the responses to the adoption and surrogacy related questions were "I'm not sure, I don't know" – this suggests that there is quite a lot of uncertainty about the entitlements of adoptive parents/commissioning parents/surrogate mothers. This was a trend across the focus groups as well. It is not surprising though that there would be considerable uncertainty around the subject of adoption and surrogacy as these are largely non-traditional and relatively rare. As part of the DoL strategy to be more informative to the public about their entitlements, it would be important for the DoL to also lead information about adoption and surrogacy as child-birthing/ raising options as well as the legal entitlements. The public would need to be educated on the recent changes to labour law dealing with adoption and the extension of parental leave entitlements to meet a changing society.

The recent amendments to the labour law extending parental rights to men and women is in line with 66% of the participants to the survey where most feel that there should be parity between men and women who adopt a child in their entitlements to parental leave.

e. Return to work and protection from a hazardous working environment

As has been expressed throughout the report, high unemployment has limited people's likelihood to insist on being accommodated at work. While the survey results show that there is a general awareness that pregnant women are to be accommodated at work during and after pregnancy, while breastfeeding, the implementation is seldom applied. Survey results show the following -

Figure 16 Return to work



There is still a lot of uncertainty about the entitlement to flexible working arrangements while pregnant to accommodate the pregnancy. This is an area that the DoL needs to engage employers on and employers must in turn educate their staff on workplace policies surrounding applicable upon return from maternity leave. Employers are often having to balance the needs of the business and accommodating a pregnant employee/ new mother, and so operational requirements may dictate that a position of someone on maternity leave be filled, in these cases, employers opt for temporary staff placement, which employers, should aim to do.

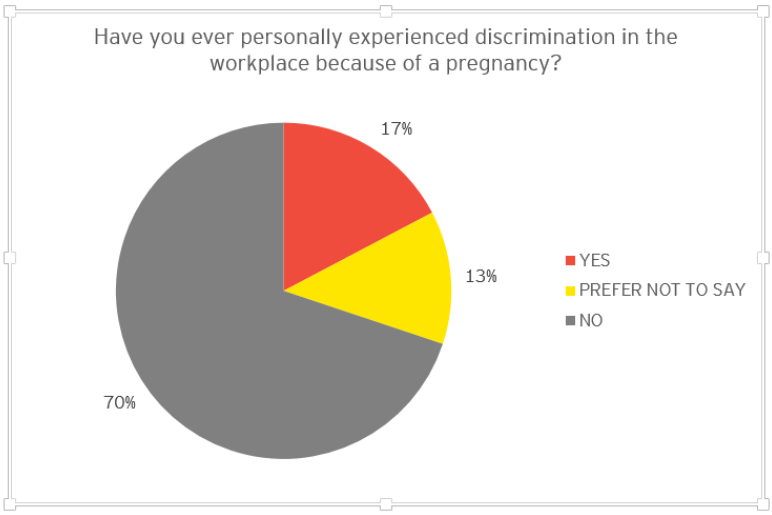
5.5.3 Employee Experiences Findings

This section details the Research Findings from the online and manual surveys, relating specifically to employee experiences of maternity provisions in South Arica. The findings have been arranged thematically, to speak to the research outputs and objectives. These themes are –

- Discrimination on the ground of pregnancy;
- UIF contributions and claiming from the UIF;
- Duration of maternity leave;
- Adoption and surrogacy, and
- Return to work policies and arrangements.

a. Discrimination on the ground of pregnancy

Figure 17 Discrimination on the ground of pregnancy



While the above shows a relatively small number of people (17%) reported to have personally experienced discrimination on the ground of pregnancy, tables below show, there is still discriminatory behaviour prevalent in workplaces against pregnant women, and people feel that while they may not have been personally discriminated against, discrimination in the workplace on account of pregnancy is still prevalent. This is specifically depicted in the below figure 18.

Looking at this representation per sector and per province below, the responses are relatively proportionate, as such there is no province or sector particularly outstanding in how people rate the presence of discriminatory practice against pregnant women in the workplace. However, trends in the Northern Cape can raise alarm. The percentage of people who think that workplace discrimination on account of pregnancy is prevalent is 44%, which, considering the small population of the Northern Cape relative to Gauteng, for example, the perceptions of discrimination can be seen to be relatively high.
This is depicted below -

Figure 18 Discrimination against in workplace per province

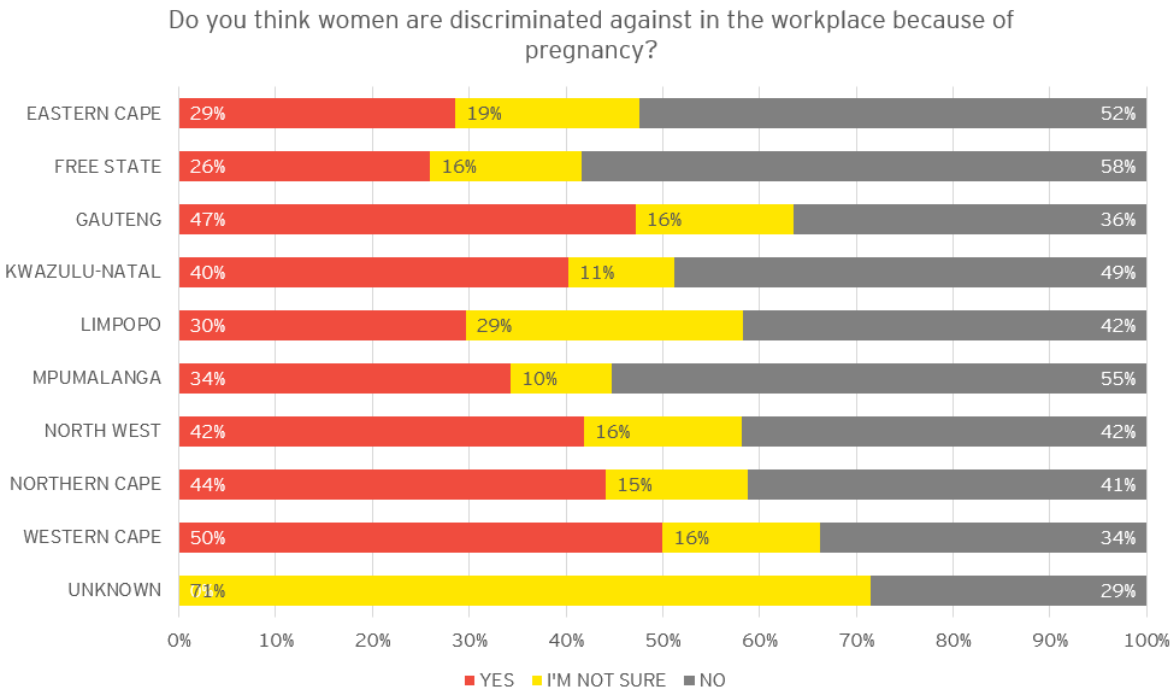
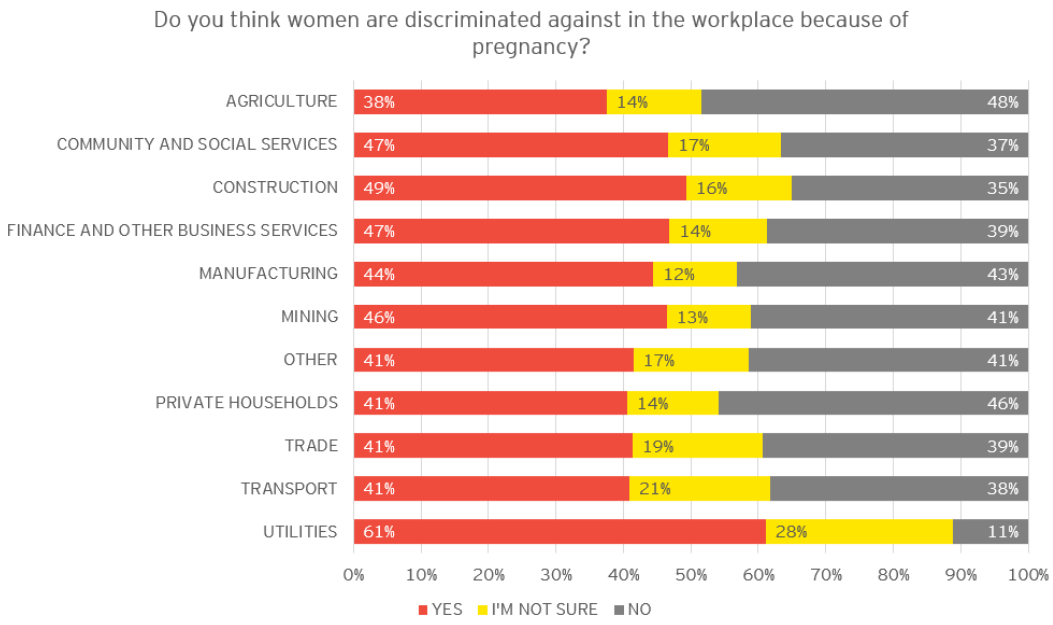


Figure 19 Discrimination against in workplace per industry

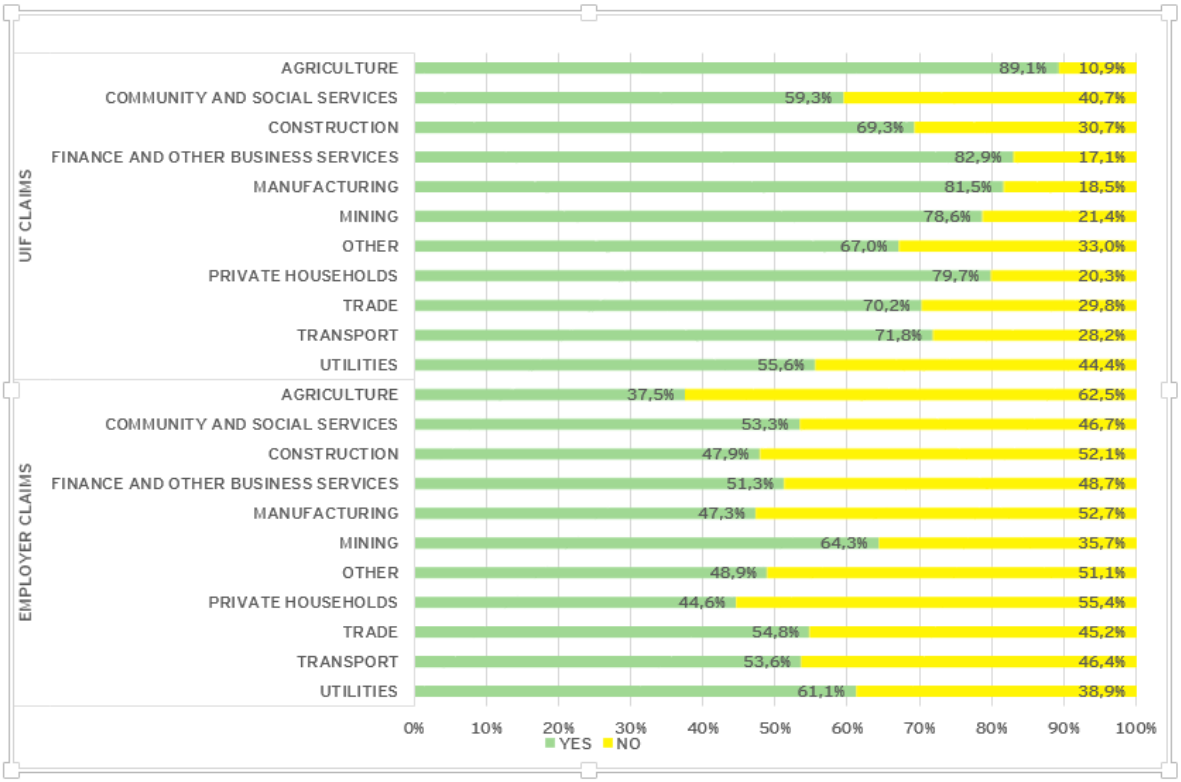


Some of the commonly shared experiences of discriminatory practices included job offers being withdrawn when an applicant disclosed she was pregnant, bonuses being affected by absence due to maternity leave and being overlooked for promotion because of maternity leave. It is likely that those in low-paying work such as domestic workers, would be vulnerable to discriminatory practices on the basis of pregnancy.

> *"As a domestic worker, employers don't want us to be pregnant while working for them. When you return from maternity, your job is not guaranteed."*

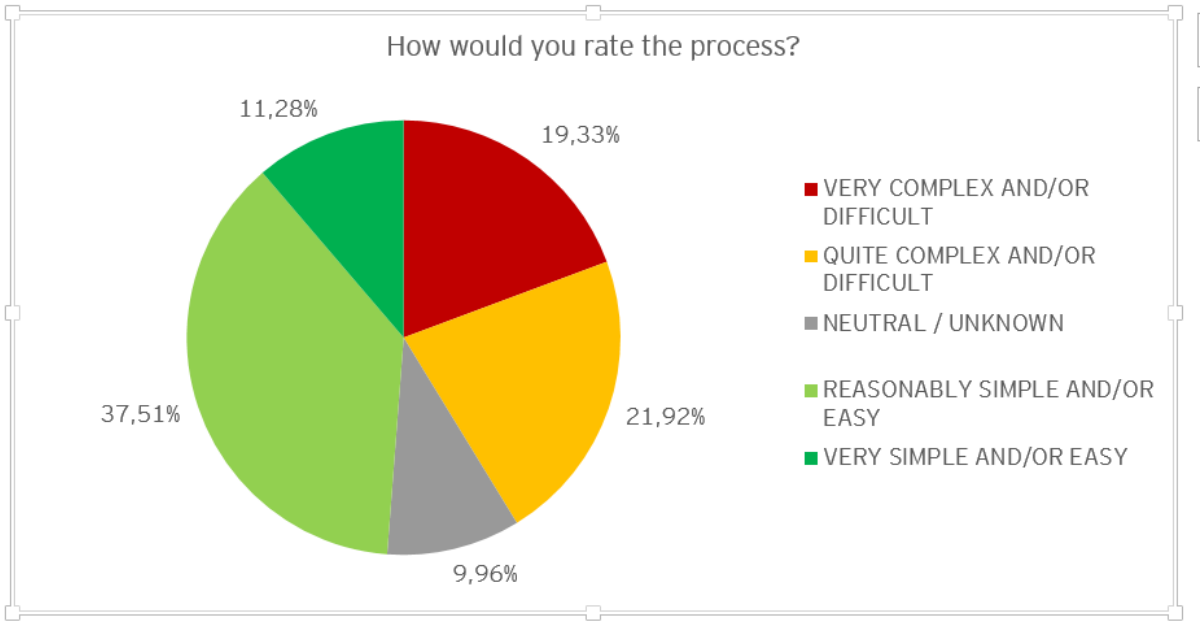
b. UIF Contribution/Claim

Figure 20 Percentage of Maternity Benefit Claims per industry



Almost half of the responses from people who had claimed from the UIF in the last 5 years found the process complex and difficult and very time consuming. A common problem experienced by the participants was incorrect/incomplete completion of the claim forms which is only discovered by DOL officials much later into the process. Fixing these errors requires a lot of back-and-forth visits/correspondence with the labour centres. A lot of people surveyed experienced delays in receiving their claim amounts with some only receiving it at the end of their maternity leave, which is not particularly useful, given the nature of the benefit. A lot of new mothers are often anxious about how they will survive without their income. A common trend amongst the survey results were that employer HR departments do not know or are not filling the claim forms in correctly, which delays the process. A number of people mentioned that there is no effective, constant communication from the labour centres regarding the status of claims throughout, meaning one has to physically attend at the labour centre numerously for status enquiries. For pregnant mothers or mothers with small children the back-and-forth is impractical, time-wasting and expensive to travel. Those that had claimed online say the process is not much easier as one would still have to attend the labour centres physically to make enquiries on the claim. An overall lack of knowledge and awareness about the claim process has made claiming from the UIF a complex process for. The experiences are noted below -

Figure 21 Experience of the UIF



Overall, the above figure suggests that from the research participant survey sample, the experience with claiming from the UIF has been relatively ok. These findings juxtaposed to the results from the Focus Groups show that there is merit on both sides of the fence, in that a considerable number of people find the process manageable, whereas, in other instances, groups found that more needs to be done to improve the quality and efficiency of the service. It is worth noting that over 30% rated the experience as very poor or poor.

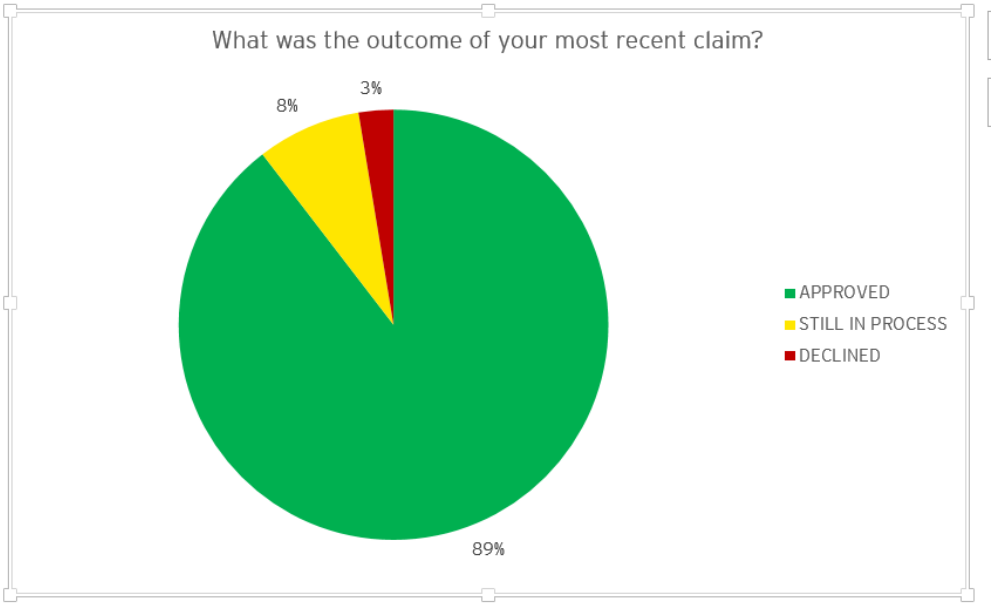
"Absolutely no feedback was received"

The results do indicate, in a lot of respects that the UIF process is not wholly inefficient and from time to time, renders good or excellent service. It is worthwhile for the DoL to look at the operation of the different labour centres and identify outstanding service centres that have a track record of providing efficient service, and roll out those operation techniques that work to the rest of the labour centres in need of support.

> *"A simple answering of phones and when answered people actually attending to the query"*

This is set out more specifically in Recommendation 1 below.

Figure 22 Claim outcome



It is positive to note that even where the UIF claims process is found to be challenging, a great majority of claims still get approved. The next consideration is when and how payment of an approved claim is made.

> *"Claimed online and took 6 months before I got money, I even got my money when I was back at work."*

Only receiving maternity benefits upon return to work completely goes against the purpose for which the benefit was put in place. It should therefore be a priority that claims are paid out during maternity leave. A lot of responses from the Focus Groups and the survey spoke of anxiety because one is never actually sure when payment is going to come, how much they will receive etc. and this creates anxiety and frustration for new mothers who have to try and take care of their new babies without the financial support. Reasons for delays in payment noted from the survey participants included –

- Submitted claim forms going missing, requiring numerous visits to the labour centres to file the forms;
- Incorrect information captured on the forms, delaying the finalisation of the claim;
- No efficient communication and feedback on claim status enquiries;
- Lack of awareness of the claim process.

Figure 23 Salary paid by employer during maternity leave

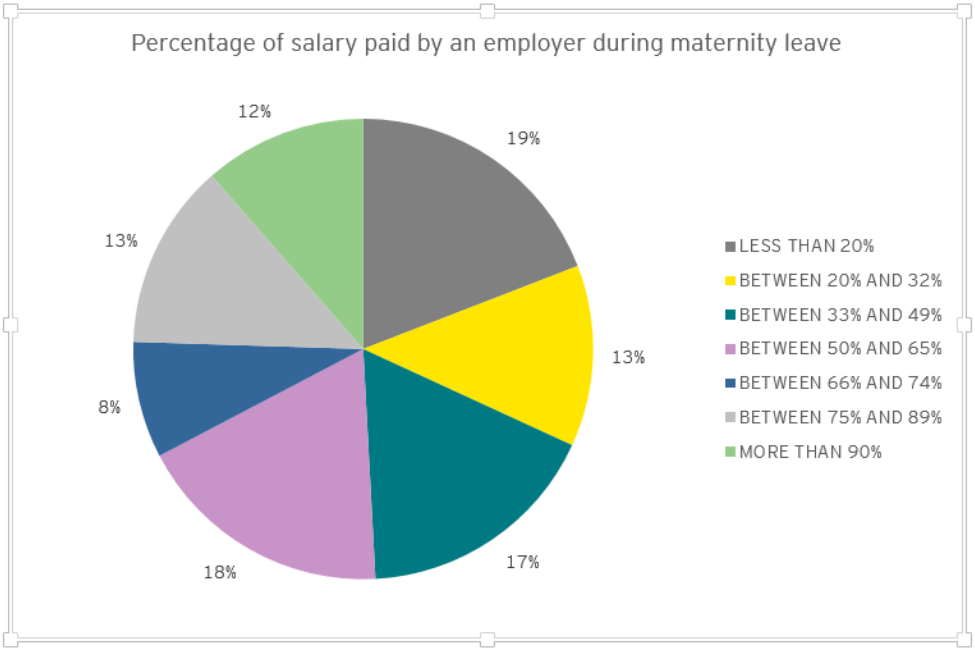
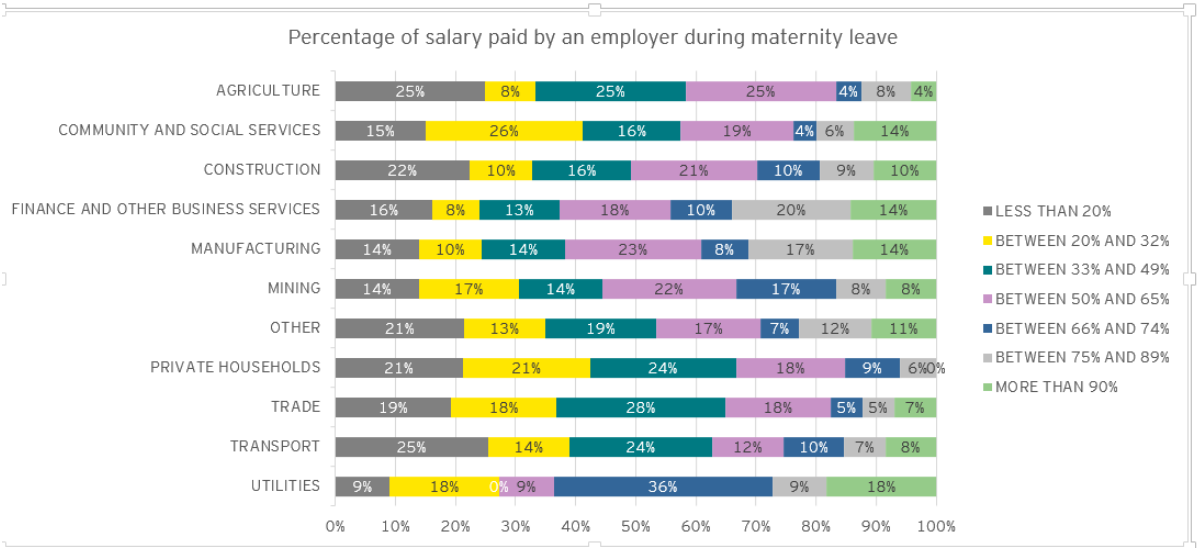


Figure 24 Percentage of salary paid by an employer by industry



Currently there is no legislative obligation for employers to pay any contribution towards an employee's maternity benefit other than the compulsory 6 week maternity leave after childbirth (which is unpaid). While ideally, more and more employers should be looking to pay towards maternity benefits, often businesses are dictated to by the needs of the business and the financial responsibility the business would be taking on. Larger employers are providing world-class maternity benefits in terms of maternity leave and pay during leave, accommodation of pregnancy and upon return to work. Only 8% of the survey participants did not claim from the UIF because their employer paid their maternity leave.

Often the smaller employers struggle to match these benefits, which leads to the large dependency by most employees on UIF as the exclusive income during maternity leave. This increases the pressure on the UIF system to pay out claims timeously and so effective system management has to become an increasing priority of the DoL.

c. Duration of Maternity Leave

On average, most employees surveyed were offered 16.42 weeks maternity leave by their employer, of which, on average 11 weeks were paid by their employer.

Figure 25 Average number of weeks

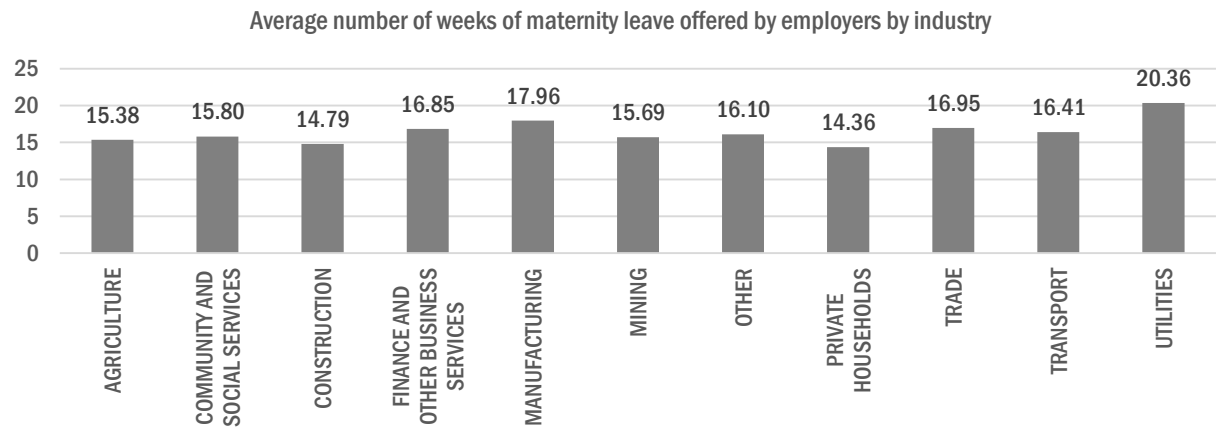
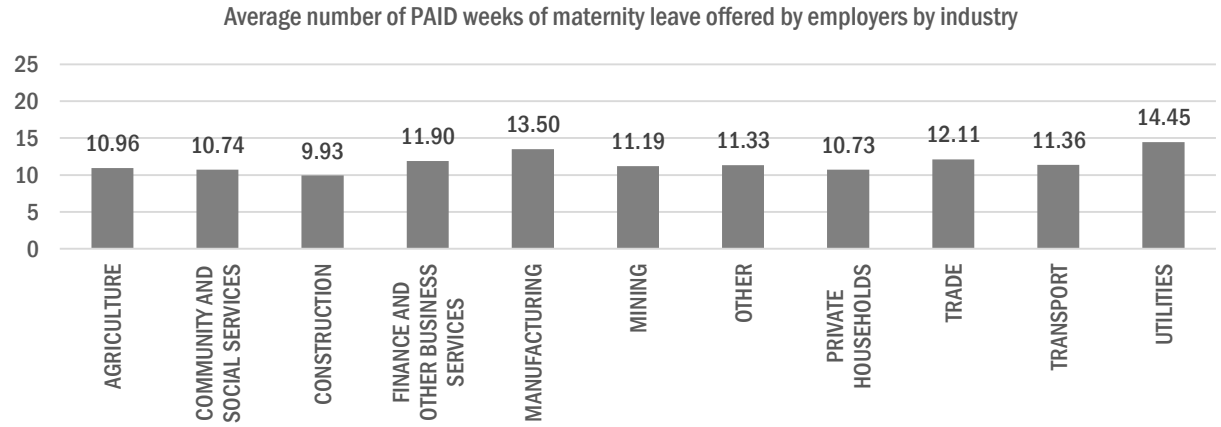


Figure 26 Average number of paid weeks

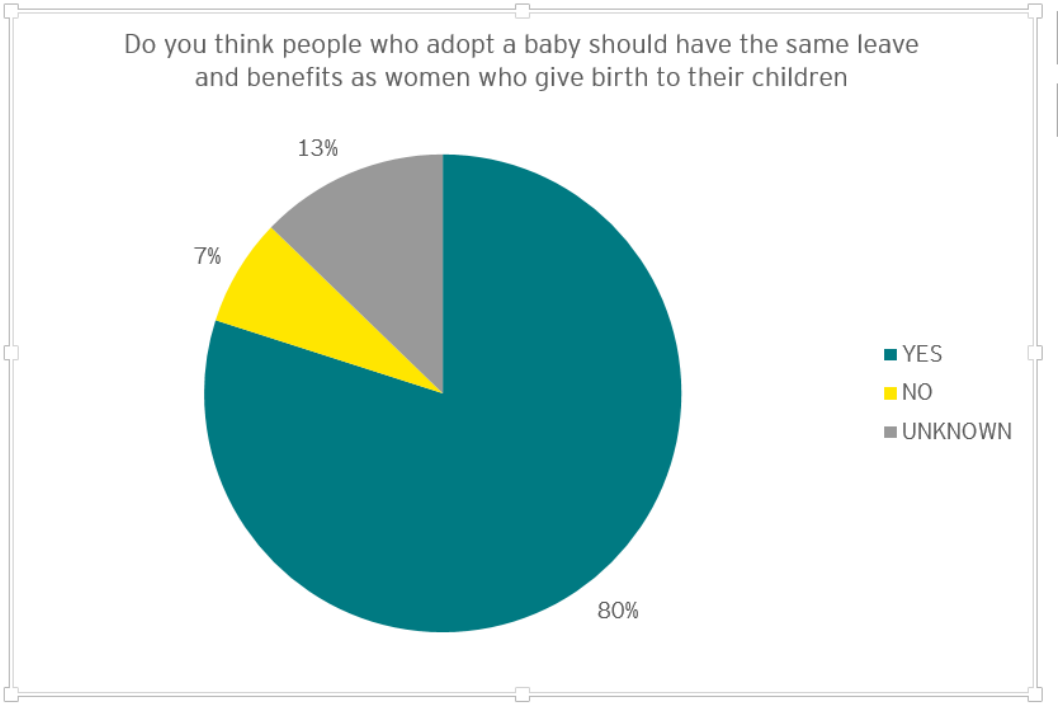


"Babies are all the same adopted or not they demand the same care and attention"

d. Adoption/Surrogacy

At least 80% of the employee survey participants held the sentiment that a baby is a baby and requires full attention from, at the very least one parent and so felt that adoptive parents/commissioning parents should too be entitled to parental leave, also to allow them time to bond with their child and integrate their child into the family. To not allow adoptive parents this time, some said, would be discriminatory. Most people believed that a legally adopted child is still a new child to the family and is equally entitled to family time. These sentiments are well aligned to the legislative intention of the Labour Law amendment Act regarding the extension of parental leave.

Figure 27 Adoption



As a similar trend noticed with the Focus Groups, a lot of the responses were that the surrogate mother should be allowed time (most feel 2 months is appropriate) to recover from childbirth, while the receiving and raising parent (primary care-giver) be allowed 4 months parental leave.

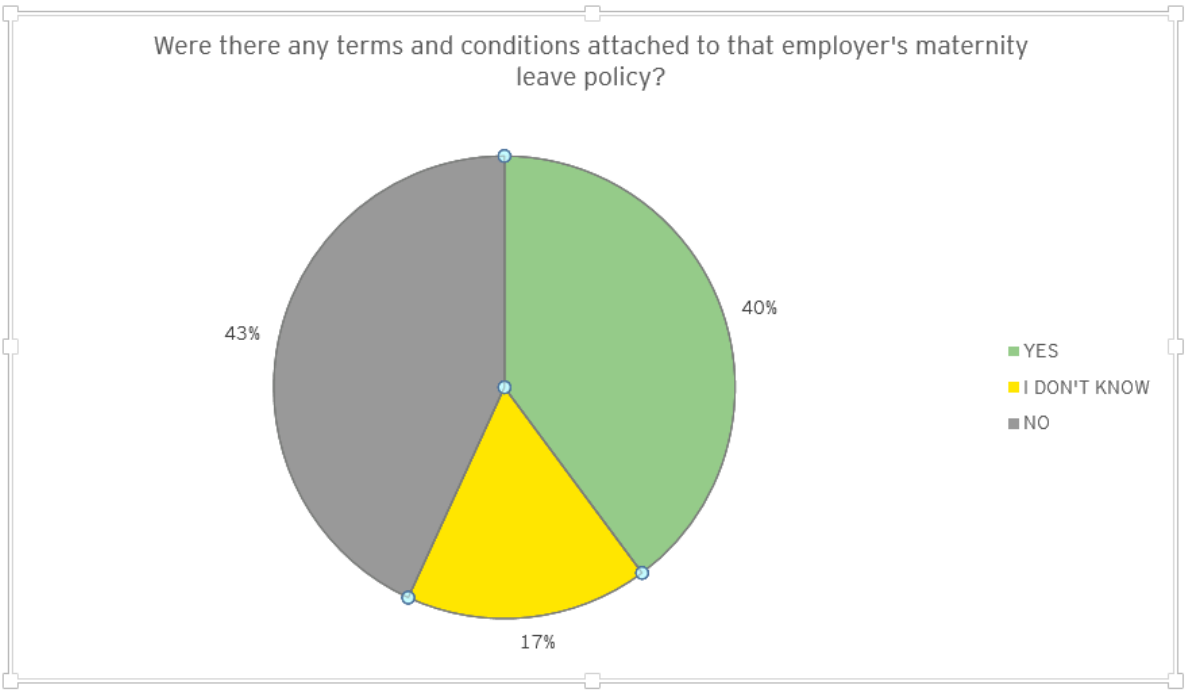
A few responses made reference to religion as a reason for why same-sex couples should not have a baby, with some believing that same-sex relationships are against the will of God.

In general, it would seem that people's sentiments are aligned with the legislative advancements to allow parental leave for adoptive/ commissioning parents, even though the survey participants were largely in the dark about the specific legislative entitlements of adoptive parents.

e. Return to work and protection from a hazardous working environment

Most employees reported a work-back period applicable to their maternity leave, as part of the terms and conditions of leave, in the event that part or all of their salary was paid by their employer.

Figure 28 Terms and Conditions for employer's maternity leave policy



A number of responses received showed that it is not always the case that women are accommodated during pregnancy and upon their return to work. Workplaces in some cases mentioned in the survey results, expect the pregnant employee to continue work as usual despite her pregnancy. Women also shared the hostility they receive at work for being pregnant and often are considered to be slowing the team down and would be told -

> "It is not my fault that you are pregnant, just get the job done".

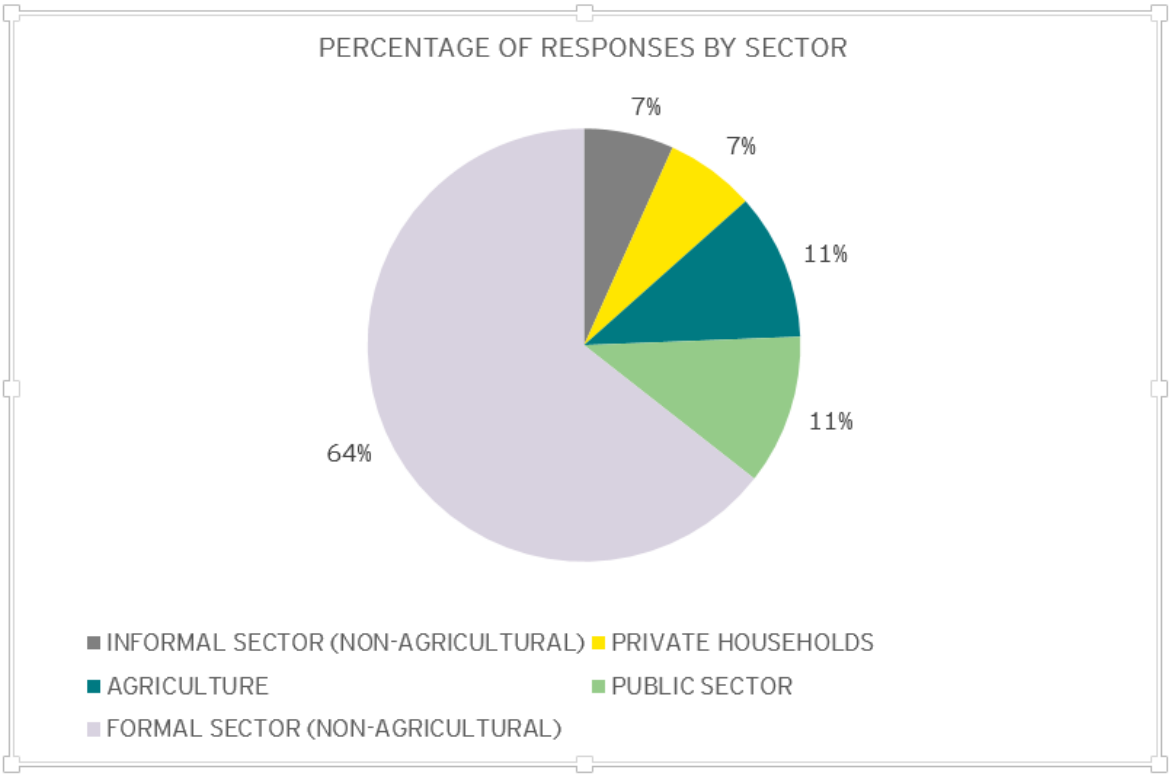
This is an interesting finding considering that in general, all the employer workplace policies which were analysed as part of this research included the provision to accommodate pregnant and/or breastfeeding employees and employees who return to work from maternity leave. It would seem as though the employer policies are not efficiently implemented by the company. This also raised a need for behavioural change management interventions needed to align employer HR to human-centred approaches when dealing with staff. As expressed in the stakeholder interview with the employer group, more can be done by employers to accommodate pregnant employees during and after pregnancy and while breastfeeding with on-site nursing facilities, on-site crèche and flexible working arrangements. Employers need to be sensitised to the needs of their pregnant / new mother employees in order to better accommodate them, while effectively balancing the needs of the employer. Most employers include a work-back policy where maternity benefits have been paid to an employee. This ranges between 4 months to a year, depending on the portion of the salary paid to an employee during maternity leave.

5.6 Employer survey findings

5.6.1 Employer Demographics

The total number of responses per sector in the employer survey are summarized as follows -

Figure 29 Employer Demographics by sector



It is to be expected that employers in the formal sector would be the largest contributors to the survey responses as these employers were more likely to have email addresses in the UIF database (so they would have been sent the online survey) and the EY database largely contained employers in the formal sector.

Interestingly however, most of the employer responses came from relatively smaller employers who employ between 0-10 and 11- 50 employees. Notwithstanding the survey brief, which clearly outlines the objectives of the research and voluntary participation, the impression from some telephone calls when the survey was sent out, was that some of the employers were under the impression that the survey was a compliance measure of the DoL, and they were thus obliged to complete it. This is reflected in the figure below –

Figure 30 Number of employer responses by number of employees

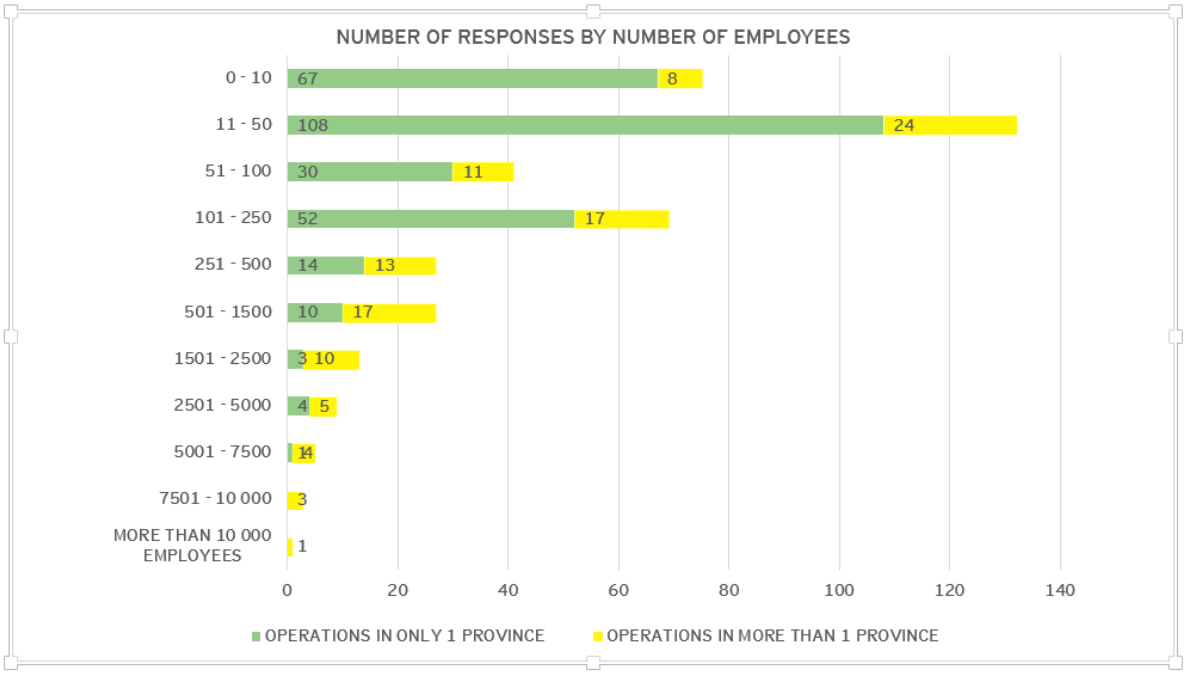
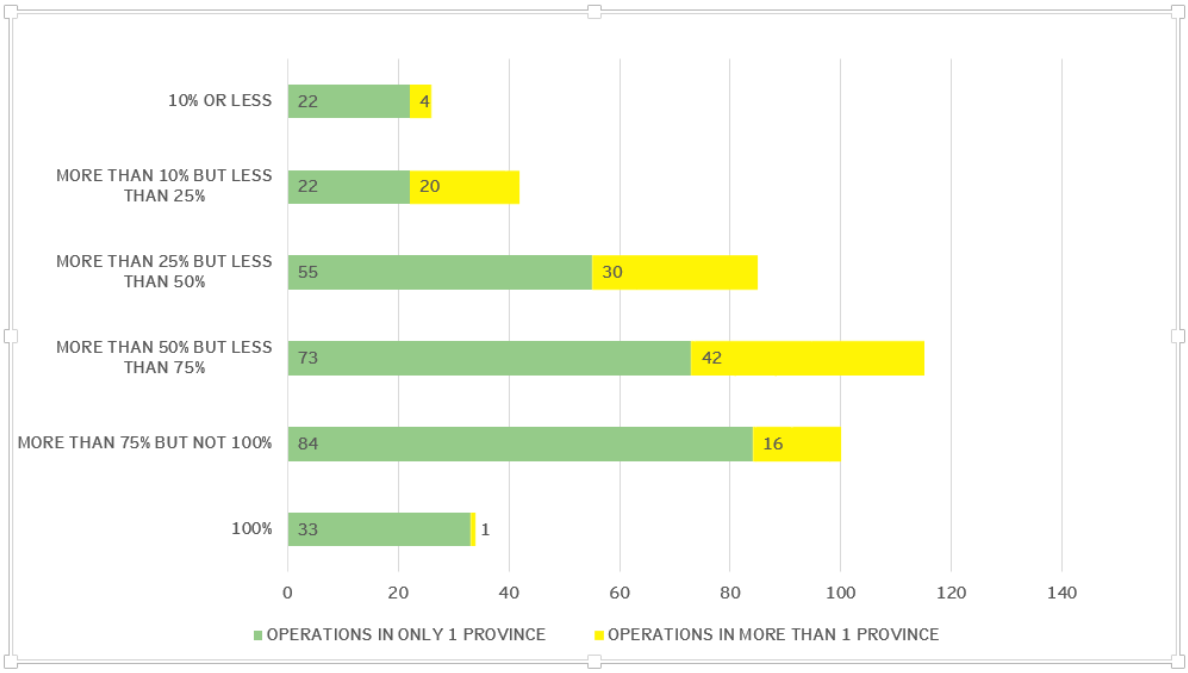


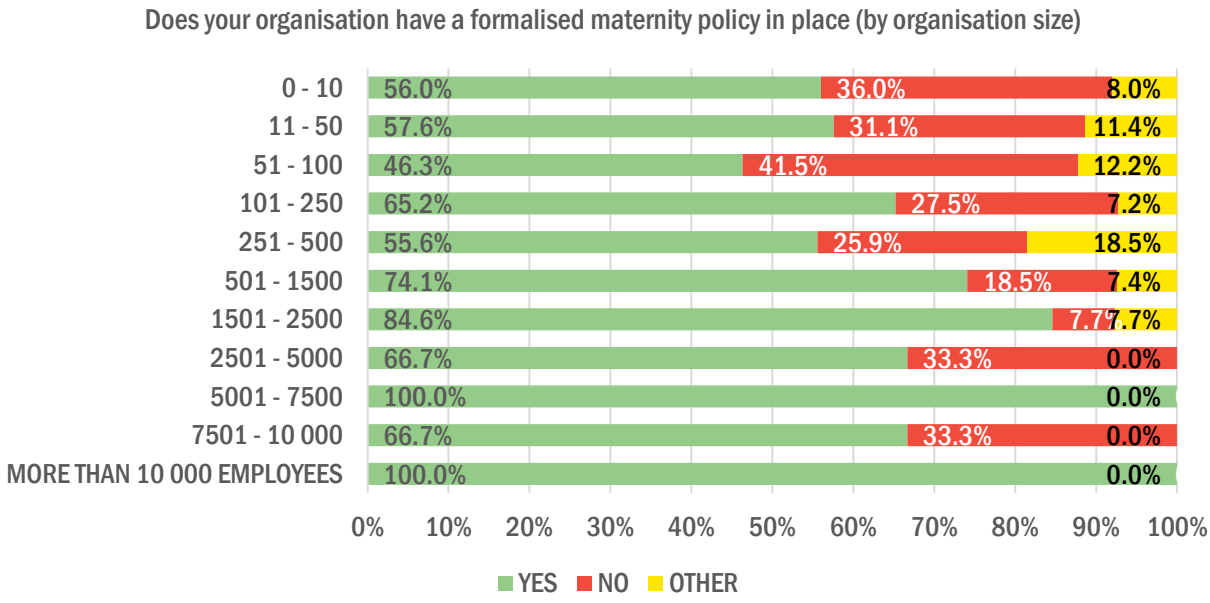
Figure 30 Employer responses by % of female employees



The table above shows that the employer responses received were largely from employers with a female population of above 75%, making it a useful study for purposes of our research.

5.6.2 General policy and practice around pregnancy in the workplace

Figure 31 General policy and practice around pregnancy in the workplace

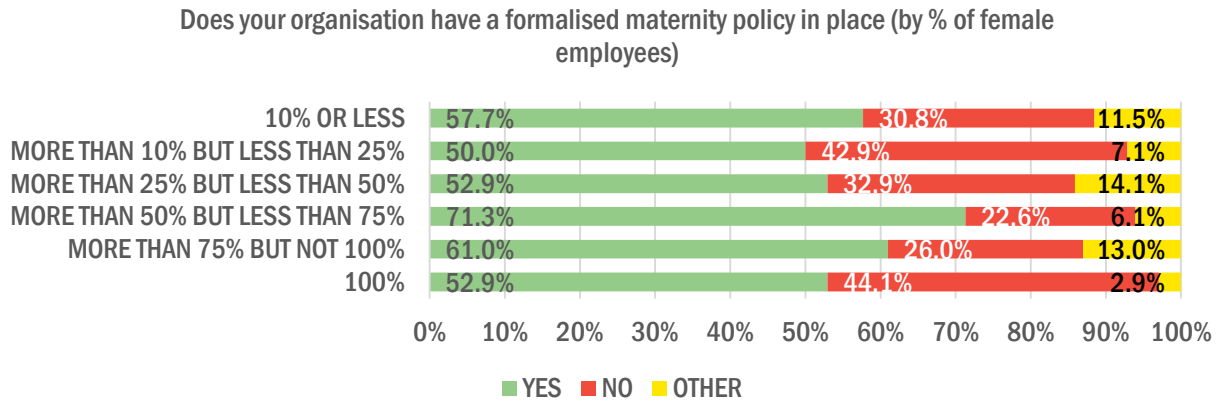


From the above depiction we can deduce that most employers who responded to the survey have a formal policy regulating their practices around maternity provisions. This provides a lot of workplace certainty around policies and workplace behaviour.

Typically, as depicted above, the larger the number of employees, the more likely it is that an employer would put practices in place to ensure effective, consistent and efficient management of its people.

Details of those policies which were attached to the survey responses have been summarised in the Desktop analysis of employer policies section above.

Figure 32 Formalised maternity policy in place (by % of female employees)



It is interesting to note here that there are organisations that employ 100% female population but operate without formalised maternity policies. Considering that over 90% of the participants surveyed were employed in terms of a written contract of employment, it is alarming that there may be some employment engagements with females absent a maternity leave policy. This is a point that the DoL can raise with employers through effective communication.
The findings also show that smaller employers often do not afford to provide maternity benefits to their employees in the way that larger employers are able to. A response from an employer who participated in the survey:

> *"Small businesses have less policies, but have the benefit of being able to be more hands on with providing for suitable arrangements. Regulatory obligations should be differentiated to cater for small businesses."*

Almost all employers have built in communication measures to inform their employees about the relevant policies operational in the workplace. Company induction programmes at the commencement of employment as well as employee handbooks are typically the most common and efficient way that employers communicate policies.

Overall, over 97% of employers surveyed confirmed that their maternity leave policy has been consistently applied across the organisation.

6. Conclusions

The conclusions drawn from the research are summarised according to the research objectives which were to understand the experience of employees in accessing maternity protection benefits as well as their knowledge of the legislative maternity protections and process to be followed when claiming from the UIF.

Knowledge and Awareness of Maternity protections and process to be followed when claiming from the UIF

Stakeholder Interviews	Stakeholder interviews showed some lack of knowledge and awareness among both employees and employers regarding maternity benefits, particularly the calculation of the benefit and the mechanism for claiming it. Suggestions from the Stakeholders were that DoL run awareness campaigns for both employers and employees on the legislation and best practices. Knowledge campaigns should target vulnerable groups and male dominated industries. Lack of knowledge of employee rights and entitlements perpetuates discriminatory practices in workplaces.

	The fact of high unemployment in South Africa has made more people vulnerable to unfair/ discriminatory practices which most endure unquestioned for fear of losing their employment.
Focus Groups	Focus groups showed a lack of knowledge on the amount of UIF contribution deducted monthly as well as the claim amount. There was not sufficient understanding on maternity benefits entitlements. Awareness campaigns need to be rolled out to better inform employees and employers on maternity legislation and entitlements. Some said even though they might have some knowledge of their rights relating to maternity protections, employers make it difficult for them to exercise their rights. Adoptive parents and surrogate mothers should be entitled to some form of parental leave, although participants were not clear what the legal provisions are on this.
Case Studies	The case study participants were well aware of the legislative entitlements relating to maternity/parental leave entitlements.
Employee Surveys	The majority of employees surveyed showed a reasonable level of awareness and knowledge. The majority of participants were aware that by law women are entitled to take maternity leave (though some did not have the knowledge of the duration) as well as the law's protection against unfair discrimination due to pregnancy. Uncertainty about the amount to be claimed from the UIF and how it is calculated, was apparent. Notably, participants reflected that they needed awareness campaigns that will inform the employees and the employer on the "how" to claim for the UIF. The trend around adoption was "I do not know", "I am not sure." Most participants were reluctant to be drawn around this. Some expressed their views that it was a somewhat taboo subject but those who were positive mentioned that there should be equal treatment.
Employer Surveys	It has been expressed that a number of employer HR departments are not completing UIF claim forms correctly, which oftentimes delays the process of finalising the claim. The DoL should look to upskill employers and make them aware of how to properly complete the forms and prevent unwanted delays. Smaller employers have less policies, but have the benefit of being able to be more hands on with providing for suitable arrangements. Regulatory obligations should be differentiated to cater for small businesses.

Experiences of employees in accessing maternity protection benefits

Stakeholder Interviews	Compliance with labour legislation is very low in South Africa. Employers are not proactively supporting pregnant employees /new mothers and since vulnerable employees do not speak for themselves, their maternity protections don't receive due attention. The UIF benefit could be improved by paying new mothers their full salaries, as new mothers need more money and not less. The claiming process could be made easier and fully electronic so new mothers/pregnant women do not have to travel to labour centres to apply for maternity protection. The government should explore alternative options for unemployed mothers and extend coverage to them as the child support grant is insufficient to raise a child. Paternity leave can be extended to centralise the father's role in the life of the child. Adoption leave should be stated more clearly in the legislation.
Focus Groups	More could be done to ensure the rights of pregnant women are protected from harm in the workplace. Discrimination in the workplace on the ground of pregnancy is prevalent. The service received from the labour centres was good but the system is inefficient and impractical for pregnant women/ new mothers. Delays in receiving payments were widely reported which defeats the purpose of the maternity benefit, leaving new mothers vulnerable and anxious, and possibly having to return to work early because of no income. Employers are not always accommodating pregnant employees in terms of working conditions, even upon return to work. The online filing system could be improved to prevent expensive and time-consuming back-and forth trips to labour centres. Vulnerable sector workers experience a lot of limitations to the exercise of their maternity protections and are often not accommodated.

Case Studies	Employees working for multi-nationals may be more likely to benefit from world-class maternity provisions. Adoption needs well-resourced employees in terms of finances, occupational level and legislative knowledge. The Labour Laws Amendment Act has extended coverage of parental entitlements to fathers and care-givers of children, the experiences of the same-sex couple participants were aligned with the legislative intent and both received favourable leave entitlements and accommodation by the employer.
Employer Policies	Four months' maternity leave is the norm. Full payment for maternity leave by the employer is relatively rare as most surveyed employers pay a partial or no salary contribution to the employee. Commencement of maternity leave is typically four weeks prior to confinement. Miscarriage and stillbirth provisions, when they do appear in policies, are aligned with the BCEA. Most employers apply a work-back policy where the employer pays fully or tops up UIF payments. Reference to adoption is relatively rare across policy, with surrogacy references even more rare.
Employee Surveys	Relatively small numbers of people reported to have personally experienced discrimination on the ground of pregnancy, there is still discriminatory behaviour prevalent in workplaces against pregnant women, and people feel that while they may not have been personally discriminated against, discrimination in the workplace on account of pregnancy is still prevalent. Almost half of the responses from people who had claimed from the UIF in the last 5 years found the process complex and difficult and very time consuming. A common problem experienced by the participants was incorrect/incomplete completion of the claim forms which is only discovered by DOL officials much later into the process and receiving the money while having returned to work, which serves no purpose at all. A number of responses received showed that it is not always the case that women are accommodated during pregnancy and upon their return to work.
Employer Surveys	Smaller employers often do not afford to provide maternity benefits to their employees in the way that larger employers are able to. Employers who responded to the survey have a formal policy regulating their practices around maternity provisions. This provides a lot of workplace certainty around policies and workplace behaviour.

7. Recommendations

Recommendation 1: Make it easier to claim benefits and monitor the progress of claims

A common theme from the interviews, focus groups and survey results was the practical challenges which employees face when claiming maternity benefits from the DoL. Almost half of the employees surveyed found claiming from the UIF a difficult and complex experience. The practical challenges experienced included:

- Having to make repeated visits to the labour centres because they were not told that their documents were not in order initially;
- Being told to come to the labour centre on an incorrect day;
- Long delays in being paid without communication from the Department to keep them appraised of progress in their claim;
- Poor communication from the Department when a pay-out is delayed as to the reasons for the delay;
- Employees not being aware that they can apply online;
- Long queues at the labour centres;
- Lack of facilities at the labour centres for pregnant or nursing mothers.

A range of initiatives could be introduced/strengthened to make it easier for employees to claim benefits. Some of these initiatives are already in place and merely need to be strengthened (e.g. a dedicated queue for pregnant and nursing mothers was witnessed at Polokwane, online applications are being used but are under-utilized). These can be seen as "quick wins."

Other initiatives would require investigation and possible investment – such as exploring an SMS notification system such as is used by the Department of Home Affairs to notify claimants of their claim progress and when they need to come in to the labour centre. In addition, consideration should be given to an alternative mechanism to applicants having to physically come in to the labour centre on a monthly basis. Presumably this requirement derives from the Regulations to the UIA (GN 400 of 2002) which require submission of a UI 4 for each period for which the maternity benefits are claimed. Possible alternatives which could be explored include:

- Electronic submission of these forms;
- Electronic submission of these forms at DOL satellite offices where a Labour Officer can, on a designated day of the week process claims and submit forms electronically.

This recommendation, if implemented efficiently will likely achieve the following –

- An SMS notification system would reduce the amount of trips to the labour centre, where research has shown most trips to be futile and a waste of money. Receiving an SMS notification about the status of one's claim means claimants do not have to do status enquiries physically at the Labour Centre, but only attend when required as per SMS.
- If the forms are filled out correctly by suitably advised HR departments in companies, and can be submitted online, claimants do not have to attend at the Labour Centre physically to submit forms, reducing the resource cost.

The above recommendation can be effected by commissioning a task team to specifically work on improving and upgrading the UIF system by addressing its inefficiencies, in the ways recommended above.

Recommendation 2: Raise awareness of parental and maternity rights and protections among employees and employers

A recurring finding of this research has been a lack of knowledge/awareness on the rights and maternity protections available in South Africa. For most women who formed part of the study, maternity protections have been rendered inaccessible in a lot of respects due to insufficient necessary information at their disposal. Ignorance of the benefits and the process for obtaining them as well as ignorance of employee rights and employer obligations was not limited to employees but evident among employers as well.

This generally observed uncertainty about the maternity protection and lack of awareness on the rights that cover maternity protections has meant –

- Incorrect completion of UIF claim forms, which triggers delays in the processing of claims;
- Many potential beneficiaries of maternity protections being left vulnerable without due access to available protections;
- Many pregnant women/new mothers/parents being discriminated against at their places of work;
- Disruptions in employer and employee relationships;

- A general mistrust and lack of confidence in the government's ability to efficiently provide maternity protections to South Africans;
- A continuance of abusive and illegal practices by employers against employees who are unaware of their rights;
- Time consuming and money wasting back-and-forth visits to labour centres, which could be prevented if claimants fully understood the process;
- Underutilisation of the online system;
- Inadequate preparation of people to sustain themselves and their families during maternity leave;
- Delays in payment of UIF claims
- South Africans not accessing and benefiting from the maternity protections available in South Africa.

One way to raise awareness could be for the DOL to launch a National Maternity and Paternity/Rights of Employed Parents Week to take place annually during a suitable week, where the focus is on creating awareness and promoting understanding of maternity provisions in South Africa. This week could involve reaching the South African public through multiple channels and national roadshows to spread knowledge and create awareness on maternity, parental, surrogacy and commissioning parent provisions in South Africa. These channels could include –

- ☐Radio inserts and interviews with DOL officials who will unpack maternity, parental, surrogacy and commissioning parent provisions for a radio audience. Data released by the Broadcast Research Council in South Africa (BRC) (2 December 2017) estimates that there are approximately 38.3 million radio listeners in South Africa, making it the most consumed form of media in the country, with most listeners (60%) living in urban areas and the rest of the listenership is split evenly (20% each) across small urban and rural areas.
- Television interviews with DOL officials who will unpack maternity, parental, surrogacy and commissioning parent provisions for a television audience.
- ☐Print media such as newspaper alerts, FAQ pamphlets for distribution.
- ☐Setting up DOL information hubs (gazebos) at community centres nationally. These can be areas such as clinics/hospitals. The DOL can hire and train unemployed youths on a contract basis. This is in line with President Cyril Ramaphosa's Youth Employment initiative (YES!). This campaign can be a collaborative one with other government departments such as the Department of Health (DoH) to also drive awareness about pregnancy health. These information hubs can also serve as UIF application points, where people can check their UIF registrations, submit their maternity benefits claims etc.
- ☐Design and print maternity benefits charts/posters to be displayed at workplaces, clinics/hospitals and similar public spaces. Importantly, these charts should always carry the message of prohibitions on discrimination on the grounds of pregnancy. This also creates employer awareness on various maternity protections such as adjustments to working conditions of pregnant women.
- ☐Design easy to follow maternity checklists for employers to circulate to their staff.
- ☐Social Media campaigns across major social media channels (Twitter, Facebook, Instagram, Whatsapp) as a point of information sharing, including information about how to file claims online – social media campaigns are instant and wide-reaching.

Recommendation 3: Focus on enforcement

The research indicated that while only 17% of the research sample reported to have experienced discrimination personally, perceptions of the research participants are that there is significant discrimination that continues to exist in the workplace, even at the job application stage as well as workplace accommodation of pregnant and nursing mothers. There is no doubt that in the context of extremely high levels of unemployment, pregnant applicants, particularly those in low-paid sectors such as domestic and agriculture and those in male-dominated sectors such as mining and manufacturing, are particularly vulnerable to unfair discrimination on the grounds of pregnancy at the point of entry into employment. The research findings show that such employees are also vulnerable during employment when accommodation should be made for pregnant and nursing mothers in terms of hazardous working conditions.

According to the South African Human Rights Commission Equality Report, despite the promulgation of the Employment Equity Act (1998) as the key legal instrument promoting gender equality in the workplace thirteen years ago, and the existence of other equally important legislative instruments aimed at promoting equality and fair treatment in other areas of

economic, political, social and cultural rights, women continue to face intense discrimination and unfair treatment in many areas of life, particularly in the workplace. In fact, there is significant evidence suggesting that gender discrimination and unfair treatment of women in general, and in the workplace in particular, continues unabated. This implies clear, deep-seated and systemic barriers towards the advancement of the interests of women.

The MIA case illustrates powerfully the effect that one high profile, strategic case can have on the rights of employees. Consideration should therefore be given to a specific Departmental focus on enforcement of maternity, parental, adoption, surrogacy and commissioning parent rights. This could be linked to driving the implementation of the Labour Laws Amendment Act. This strategic focus could also include developing alliances with relevant NGOs and activist law firms so that cases of unfair discrimination on grounds of pregnancy or parenthood can the appropriately dealt with.

Recommendation 4: Target vulnerable sectors

Edward Webster, Professor Emeritus at the Society, Work and Development Institute, University of the Witwatersrand writes in an IOL business report that in South Africa, the Gini coefficient (a measure which reflects levels of inequality, where 0 is absolute equality, and 1 is absolute inequality) sat at 0.66 in 2015, making South Africa one of the world's most unequal countries. Gender inequality in wealth and income continues to be pervasive in South Africa. Significantly, Black women continue to carry the burden of low-paid work. In 2015, there were 1.1 million domestic workers in South Africa, 887,000 of them women, who earned less than R3 500 per month.

In community services, 1.2 million workers, of which approximately 800,000 are women, earn less than R3 500 per month. Discriminatory practices towards women in the workplace were also emerging themes among the women interviewed. Important to note, a significant majority of the women interviewed through focus groups and surveys who had claimed from the UIF in the last 5 years were Black and employed in low-income work, who all shared their realities, that being pregnant places their employment at risk. A study into maternity protections in South Africa also speaks to the overall trends observed in South Africa.

This evidence suggest that the DoL should target vulnerable employees in sectors such as domestic and agriculture for particular support in respect of parental rights and benefits. Trade unions and NGOs that render support to vulnerable employees are generally under-resourced and in need of support to continue investigating, following up and supporting domestic workers' workplace claims and concerns. The DOL can sponsor personnel (such as unemployed youths) whom it could engage on a contract basis, provide training for and roll-out to be able to respond to the workplace challenges of vulnerable workers.

Recommendation 5: Facilitate implementation of the Labour Laws Amendment Act

The Labour Laws Amendment Act represents a significant advance in parental rights and benefits. Although adoption and surrogacy situations may be relatively rare, the experience of employees accessing these benefits could be significantly improved through co-operation between the departments of Home Affairs and Labour. From the case studies discussed above, the difficulties experienced by adoptive parents were mainly with the registration of the child's birth at the Department of Home Affairs, as opposed to access to parental leave – since both couple's leave were favourably provided for by their respective employers. The main difficulty that came up was that in some cases, registration of a child's name has taken at least 4 years to finalise with the Department of Home Affairs. Consideration should be given to the establishment of an inter-departmental task team to:

- Identify the practical implications of the Labour Laws Amendment Act;
- Identify the necessary areas of alignment and co-operation between the departments (i.e. issuing of birth certificates, adoption documents etc.) and
- Identify dedicated resources/specialists who could be deployed to assist employees in the process of adoption and surrogacy in claiming their benefits. This DoL's involvement in this process is limited to assisting adoptive parents claim their parental benefits and not assisting parents with the process of adopting a child, as this largely falls outside the DoL's scope.

The DoL must continuously and consistently undertake advocacy and training on new legislation that is being tabulated for promulgation. This ensures that the Department is fully advised of new legislation that will significantly impact their operations. Advocacy and training must be a continuous exercise of the DoL. Part of this includes having dedicated statutory services, as appropriate, per labour centre, to train and upskill labour centres on changes to legislation and their work.

Recommendation 6: Work towards improving the benefit

While the Labour Laws Amendment Act has improved parental benefits and rights and brought them more in line with international norms, the research showed that the basic maternity benefit is insufficient, particularly in terms of the amount of salary which can be claimed but also in terms of the duration of the benefit. Many respondents in focus groups and the survey indicated how anxiety was induced with the loss of income during maternity leave at a time when if anything they needed more income rather than less.

The research also revealed that larger, often multinational employers, pay a full benefit to employees so these employees are not claiming from UIF. Consideration should be given to identifying a mechanism and adopting a programme over time to increasing the benefit to a full salary while on maternity leave. This would bring South Africa closer to the ILO Convention and Recommendation, as set out in Table 7 and 8 above. Consideration should also be given to extending to the number of months of maternity leave, to 6 months, in line with the ILO and extending the paternity leave to 1 month- as a way to also centre the role of the father in a child's life. Traditionally, socially and contextually, the maternal parent has always been considered the primary care-giver of the child. This has been the case throughout legislative enactments, where the mother of the child has had the benefit of a 4-month maternity leave, and in the Constitutional Court case of President of the Republic of South Africa and Another v Hugo (CCT11/96) [1997] ZACC 4; 1997 (6) BCLR 708; 1997 (4) SA 1 (18 April 1997) the generalization of the mother as the primary care-giver was unpacked:

"*The reason given by the President for the special remission of sentence of mothers with small children is that it will serve the interests of children. To support this, he relies upon the evidence of Ms Starke that mothers are, generally speaking, primarily responsible for the care of small children in our society. Although no statistical or survey evidence was produced to establish this fact, I see no reason to doubt the assertion that mothers, as a matter of fact, bear more responsibilities for child-rearing in our society than do fathers. This statement, of course, is a generalisation. There will, doubtless, be particular instances where fathers bear more responsibilities than mothers for the care of children. In addition, there will also be many cases where a natural mother is not the primary care giver, but some other woman fulfils that role, whether she be the grandmother, stepmother, sister, or aunt of the child concerned.*"

Women who are unemployed, not economically active, work in the informal sector, are casual or temporary workers, independent contractors or the self-employed are excluded from maternity protection and benefits under the BCEA and the UIA. Expanding coverage to non-standard work situations would assist to ensure the health and well-being of a greater numbers of employees and their children.

It is important that the DOL continue to promote the realisation of citizen's rights. Beyond just knowledge and awareness of maternity rights, there are broader rights campaigns across the country. Rights to sexuality, human dignity, freedom continue to be emphasised and so the DOL as part of its own vision to promote labour peace, ought to make good on its promises. In South Africa the challenge is unfair labour practices, which is why the LRA was enacted, so the lack of provision of adequate maternity provisions is an extension of the lack of access generally to basic human rights for a large portion of people in South Africa.

Recommendation 7: Encourage employers to review their maternity/paternity leave policies in light of changes to legislation

In line with raising awareness on maternity protections to both employers and employees, it may be worthwhile for the DoL to consider, in light of the recent legislative amendments to labour laws, developing template policies and checklists which are updated in line with current maternity, paternity, parental leave provisions. This will serve as an easy tool which employers can use to ensure their policies are updated in line with the recent amendments to Labour Laws and ensure better compliance with the updated provisions.

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https://www.iol.co.za/business-report/opinion/opinion-need-for-fresh-approach-to-high-levels-of-inequality-12395118
Edward Webster, Professor Emeritus at the Society, Work and Development Institute, University of the Witwatersrand.

9. Appendices

Appendix A Stakeholder Diagnostic Interviews

Stakeholder Diagnostic Interview Guide- Law Firm
Department of Labour Maternity Provisions Project

Thank you for your time.

The Department of Labour has appointed Ernst and Young (EY) to investigate various aspects of maternity provisions across industries and occupations in South Africa.

The Department has identified you as a key stakeholder and values your views on maternity protection policy and practice in South Africa. Specifically, the Department is looking for your perspective on the current maternity provision legislative framework and its effectiveness and implementation, and to obtain your views on what you believe to be the main themes and/or challenges.

These stakeholder interviews form part of a larger research process, including surveys, focus groups and case studies to further engage with various stakeholders around the country. Your responses will thus inform the design of the subsequent fieldwork, areas to investigate further and the results write up of the overall project.

Name of interviewee: _____

Position: _____

Organisation: _____

Date: _____

Section A – All Stakeholders

What is your opinion of South Africa's maternity protection legislation?

(Probe: i.e. BCEA mandated 4 months of leave, UIF paid maternity benefit, health and job protection and protection against discrimination).

Do you think South Africa's maternity protection legislation could be improved?

→If no, please describe why.

→If yes, please describe why as well as how you think it could be improved.

(Probe: What is working and what is not working? What are some of the biggest challenges faced?)

Do you think that women are disadvantaged/discriminated against in the workplace when going on maternity leave?

→If yes, can you please describe some examples?

Do you think workplaces provide expecting women and new mothers with enough support?

→If yes, please describe why.

→If no please describe why as well as how they could be better supported.

What is your opinion of protection and benefits in South Africa for fathers as well as parents from non-traditional families, for example paternity leave, adoption leave, surrogacy, same sex couples and others?

Do you think protection and benefits fathers as well as parents from non-traditional families can be improved?

☐→If no, please describe why.

☐→If yes, please describe why as well as how you think it could be improved.

(Probe: What is working and what is not working? What are some of the biggest challenges faced?)

Section B – Stakeholder Specific

As a Union/Gender Commission/Law Firm, what are some of the key maternity provision cases you have dealt with that have key learnings for the Department?

→NB: List the key learnings

(For Law firm probe specific questions for each case)

Have you had any dismissal or discrimination cases where employees were dismissed or discriminated against due to them being pregnant or taking maternity leave?

Do you think employers should afford non-traditional parents/families (such as single fathers, same-sex couples) who adopt, become a legal guardian or have a baby through surrogacy, the same maternity benefits as pregnant women?

If legislation around protection and benefits for non-traditional parents/families had to change, what impact would this have?

For Domestic Workers Union and Gender Commission only

What are your thoughts on access to maternity protection for women employed in the informal/domestic workers

sector?

(Probe: What is working and what is not working? What are some of the biggest challenges faced?)

For Domestic Workers Union and Gender Commission only

How can coverage and access for women employed in the informal/domestic workers sector be improved?

Based on the nature of the project, are there any specific things that you think we should investigate further or focus on in the rest of the fieldwork?

Thank you for your time // Next steps

Name of interviewer _____

Stakeholder Diagnostic Interview Guide- Employers

Department of Labour Maternity Leave Practical Experiences Project

Thank you for your time.

The Department of Labour has appointed Ernst and Young (EY) to investigate various aspects of maternity provisions across industries and occupations in South Africa.

The Department has identified you as a key stakeholder and values your views on maternity protection policy and practice in South Africa. Specifically, the Department is looking for your perspective on the current maternity provision legislative framework and its effectiveness and implementation, and to obtain your views on what you believe to be the main themes and/or challenges.

These stakeholder interviews form part of a larger research process, including surveys, focus groups and case studies to further engage with various stakeholders around the country. Your responses will thus inform the design of the subsequent fieldwork, areas to investigate further and the results write up of the overall project.

Name of interviewee: _____

Position: _____

Organisation: _____

Date: _____

Section A

What is your opinion of South Africa's maternity protection legislation? (Probe: i.e. BCEA mandated 4 months of leave, UIF paid maternity benefit, health and job protection etc).

Do you think South Africa's maternity protection legislation could be improved? (If no, please describe why. If yes, please describe why as well as how you think it could be improved). *(Probe: What is working and what is not working? What are some of the biggest challenges faced?)*

Do you think that women are disadvantaged/discriminated against in the workplace for going on maternity leave? (If yes, probe: can you describe some examples?).

Do you think workplaces provide expecting women and new mothers with enough support? (If yes please describe why. If no please describe why as well as how they could be better supported).

What is your opinion of protection and benefits in South Africa for fathers as well as parents from non-traditional families, for examples paternity leave, adoption leave, surrogacy, same sex couples and others?

Section B

What maternity provisions does your organisation offer?
(Ask for number of weeks of paid leave, unpaid leave offered, % of income during paid leave and list other benefits such as child day care on site, breastfeeding rooms etc.)

What challenges, if any, does your organisation face in implementing its maternity provisions policy? (Probe: % of coverage, number of women employees of child bearing age, % of take up, if there have been any complaints about maternity policy).

What provisions does your organisation make for couples or same-sex couples adopting or having a baby through surrogacy? (Ask for number of weeks of paid leave, unpaid leave offered, % of income during paid leave and list other benefits)

(Only applicable to Construction company employer)

How does your organisation, if needed, accommodate an employee that is expecting/pregnant? *(Probe: For example if as part of their job role works in a strenuous or hazardous environment do you accommodate the employee by moving them or assigning them different activities?*
(If yes, what challenges, if any, does your organisation face when accommodating in these cases)

(Only applicable to Pick n Pay employer)

What benefits, if any, have there been for the organisation in providing employees with more maternity leave and benefits than required by legislation?

Based on the nature of the project, are there any specific things that you think we should investigate further or focus on in the rest of the fieldwork?

Thank you for your time // Next steps

Name of interviewer _____

Stakeholder Diagnostic Interview Guide- Adoption
Department of Labour Maternity Provisions Project

Thank you for your time.

The Department of Labour has appointed Ernst and Young (EY) to investigate various aspects of maternity provisions across industries and occupations in South Africa.

The Department has identified you as a key stakeholder and values your views on maternity protection policy and practice in South Africa. Specifically, the Department is looking for your perspective on the current maternity provision legislative framework and its effectiveness and implementation, and to obtain your views on what you believe to be the main themes and/or challenges.

These stakeholder interviews form part of a larger research process, including surveys, focus groups and case studies to further engage with various stakeholders around the country. Your responses will thus inform the design of the subsequent fieldwork, areas to investigate further and the results write up of the overall project.

Name of interviewee: _____

Position: _____

Organisation: _____

Date: _____

Section A – All Stakeholders

What is your opinion of South Africa's maternity protection legislation?

(Probe: i.e. BCEA mandated 4 months of leave, UIF paid maternity benefit, health and job protection and protection against discrimination).

What is your opinion on the level of awareness and knowledge of legal rights and legislation that cover maternity protection in South Africa among women/general public/employees?

(Probe: Are people/women aware of the benefits that they have access to?)

→Ask about the level of awareness and knowledge of surrogacy and adoption rights/legislation

Do you think South Africa's maternity protection legislation could be improved?

→If no, please describe why.

→If yes, please describe why as well as how you think it could be improved.

(Probe: What is working and what is not working? What are some of the biggest challenges faced?)

Do you think that women are disadvantaged/discriminated against in the workplace when going on maternity leave?

→If yes, can you please describe some examples?

Do you think workplaces provide expecting women and new mothers with enough support?

→If yes, please describe why.

→If no please describe why as well as how they could be better supported.

What is your opinion of protection and benefits in South Africa for fathers as well as parents from non-traditional families, for example paternity leave, adoption leave, surrogacy, same sex couples and others?

Do you think protection and benefits for fathers as well as parents from non-traditional families can be improved?

☐→If no, please describe why.

☐→If yes, please describe why as well as how you think it could be improved.

(Probe: What is working and what is not working? What are some of the biggest challenges faced?)

Do you know of any best practice/gold standard approaches to maternity, paternity and non-traditional parent benefit provisions?

☐→If yes, please describe the detail as to what makes this best practice/best case?

(Probe: For example do you know of specific cases, research studies or counties that are getting it right?).

Section B – Stakeholder Specific

What kind of challenges, if any, do parents who adopt face in the workplace?

(Probe: Do they receive the same leave and benefits as women who have given birth? If benefits differ how do they differ?).

How are challenges be addressed, and how could they be better addressed?

(Probe: Do you think that the amendments to the current legislation would assist?)

(Probe: Is the current 10 weeks for one parent and proposed 10 tens for the other parent suitable?)

What kind of challenges do same-sex couples face in the workplace when adopting or going through a surrogacy process?

(Probe: Are there any cases that you are aware of where they face discrimination or resistance from their employers?)

(Probe: In your opinion are the proposed amendments suitable?)

Are you aware of any cases where same-sex couples where discriminated against?

→ What were the details of the case(s)?

Based on the nature of the project, are there any specific things that you think we should investigate further or focus on in the rest of the fieldwork?

Thank you for your time, we will be conducting the rest of the fieldwork over the next six months. Once we have gone into analysis and completed the final report we will be in contact to share the results with you, which is anticipated to be in early 2019.

Name of interviewer _____

Appendix B Focus Group Questionnaire

Focus group guide: Employees

Welcome and Introductions

Hello everyone, thank you to all of you for accepting our invite we value your time and opinions. The Department of Labour (DoL) has commissioned research on maternity provisions across industries and occupations in South Africa. The outcome of this investigation is intended to;

- Establish employer policies and practices relating to maternity protection.
- Understand the experiences of employees during the process and period of accessing maternity protection benefits.
- Establish the extent of knowledge of legal rights and legislation that cover maternity protection including benefits for surrogacy and adoption.

You have been identified as a participant with a valued view and experience on maternity protection policy and practice in South Africa. Specifically, the Department is looking for your awareness, knowledge and experience on maternity provisions in South Africa.

Today we will talk about some sensitive topics such as pregnancy, child birth, adoption and discrimination. While we highly value your views and experiences, if for any reason you feel you would rather not participate at these points in the discussion please do not feel obligated to.

Icebreaker

Conduct a quick ice breaker to get the group acquainted and energised

Section 1: Examine the extent of knowledge of legal rights and legislation that cover maternity protection, including benefits for surrogacy and adoption.

Using the big blue voting hands, vote yes or no to the question. To vote yes put your blue hand up, keep it down to vote no. Probe conversation based on responses. Capture the number of yes answers on the flipchart.

- Women are unfairly discriminated against in the workplace because of pregnancy?
    - Probe: Many hands are up? Please tell me more? What is happening to pregnant women in the workplace? Ask for ways to improve/prevent if applicable

- Is an employer required to pay your salary while you are on maternity leave?
    - Probe: I see a few hands went up, why are employers required to pay?
        - Answer: Actually employers are only required to provide 4 months of maternity leave – they are not required to pay during leave.

- Women are protected from hazards in their work environment during pregnancy, after the birth of a child and while breast-feeding?
    - Probe: I see some hands are down – what is happening to women in the workplace.

- It is illegal for an employer to ask a woman if she is pregnant when she is applying for a job?
    - Probe: All hands yes! That's correct it is illegal, does anyone have any stories or examples to share about employers asking women if they are pregnant when applying for a job

- A woman can still take sick leave if she has taken maternity leave?
    - Probe: hmmm those who say no, why do you say that?
        - Answer: women can still take stick leave after maternity leave, provided it is in accordance with the BCEA, which states you may take 30 days sick leave in a 3 years.

- A woman that has had a miscarriage or stillborn child is still entitled to maternity leave?

- Probe: why can a women who has had a miscarriage take maternity leave?
  - Answer: If the miscarriage took place in the third trimester
- Probe: And why can a women who has had a stillborn take maternity leave?
  - Answer: Women who have had a stillborn are entitled to 6 weeks of compulsory leave

- Can a women who has adopted a child take maternity leave?
  - Probe: Why /Why not?
    - Answer: **People** (either male or female) can take maternity leave and claim UIF for children they adopt who are under the age of 2 years old
  - Can men who are in a same sex relationship who get a baby from a surrogate mother take maternity leave?
    - Why / why not?
      - Answer: In SA currently men who get a baby by means of surrogacy cannot take maternity or claim from UIF …What do you think about this?

Question: How many months maternity leave are mother's entitled to take by law in South Africa?
(write down the responses on the flip chart). Discuss the answers if necessary.

- Answer = 4 months (17.32 weeks).
- Ask for ways to improve/prevent if applicable

Question: How many weeks of leave is compulsory after childbirth, by law?
(write down the responses on the flip chart). Discuss the answers if necessary.

- Answer = 6 weeks
- Ask for ways to improve/prevent if applicable

Section 2: Establish the experiences of employees during the process and period of accessing maternity protection benefits.

Top of mind - Projection exercise:

Practice round: I am going to give you a scenario to think of and then ask you to say the first words that come to mind. You are sitting in the park and eating an ice cream…what words, feelings and thoughts pop into you head.
Capture on the flip chart. Highlight themes and dig deeper into unclear areas. Discuss the overall experience patterns.

Scenario 1: Thinking back to when you were about to go off on maternity leave, and you were pregnant and still at work and you had to fill in forms and find out information etc etc, what words, feelings and thoughts pop into your head?
Capture on the flip chart. Highlight themes and dig deeper into unclear areas. Discuss the overall experience patterns.

Scenario 2: (For those who claimed UIF) thinking back to when you claimed UIF for maternity what words, feelings and thoughts pop into your head?
Capture on the flip chart. Highlight themes and dig deeper into unclear words and areas. Discuss the overall experience patterns.
Ask for examples of good and poor experiences. After an example ask if anyone else in the group experienced this.

Experiences Exercise:

Please take 5 mins to complete the following worksheet. I would then like to hear from each of you, during your pregnancy while still at work, what did **you experience:**

What did you:	What did others (in your workplace)

Think	**Say to you**
Feel	**Do to you**
Hear	
Say	

→Ask for ways to improve/prevent if applicable

Please take 5 mins to complete the following worksheet. I would then like to hear from each of you, when you were on maternity leave, what did **you experience:**

What did you:	**What did others (in your workplace)**
Think	**Say to you**
Feel	**Do to you**
Hear	
Say	

→Ask for ways to improve/prevent if applicable

Please take 5 mins to complete the following worksheet. I would then like to hear from each of you, when you went back to work after maternity leave, what did **you experience:**

What did you:	**What did others (in your workplace)**
Think	**Say to you**
Feel	**Do to you**
Hear	
Say	

→ Ask for ways to improve/prevent if applicable

Magic wand /genie in a bottle exercise:

Participants are provided with a slip of paper with space to write on and told, "if you could be given just one wish that would change anything related to maternity leave and benefits in South Africa, what would that wish be? Ask them to write their maternity provision related wish down and put it in a container.

Suggestion box exercise:

Participants are provided with a suggestions card with space to write on and told, "if you could suggest anything related to maternity leave and benefits to **employers,** what would that suggestion be? Ask them to write their maternity provision related wish down and put it in a container.

Stop, continue, start exercise:

Ask participants to think about what they think the UIF (in relation to maternity benefits) can stop, continue and start doing. Capture responses on the flip chart, clarify words, concepts where necessary and probe deeper in themed areas.

Section 3: Wrap up and close

Thank the participants for their time and engagement, ask each of them to go around the table and give any closing remarks.

Hand out any incentives. Collect all worksheets and materials and flip charts and capture them.

Participant experience worksheets:

During your **pregnancy** while still at work, what did you think, feel, say and hear?

Think	Feel
Say	Hear

And what did others (in your workplace)

Say to you	Do to you

When you were on **maternity** leave, what did you think, feel, say and hear (regarding work and colleagues)?

Think	Feel
Say	Hear 

And what did others (in your workplace)

Say to you	Do to you

When you went **back to work** after maternity leave what did you think, feel, say and hear?

Think 	Feel 
Say 	Hear 

And what did others (in your workplace)

Say to you 	Do to you 

Appendix C Case Study Questionnaire

labour

Department:
Labour
REPUBLIC OF SOUTH AFRICA

Building a better working world

Employees on Surrogacy and/or Adoption

Welcome and Introductions

Thank you for accepting our invitation to participate in this focus group. We value your time and contribution. The Department of Labour (DoL) has commissioned research on maternity provisions across industries and occupations in South Africa. The outcome of this investigation is intended to;

- Establish employer policies and practices relating to maternity protection.
- Understand the experiences of employees during the process and period of accessing maternity protection benefits.
- Establish the extent of knowledge of legal rights and legislation that cover maternity protection including benefits for surrogacy and adoption.

You have been identified as a participant couple with a valued view and experience on maternity protection policy and practice in South Africa. Specifically, the Department is looking for your awareness, knowledge and experience on maternity provisions in South Africa.

If for any reason you feel you would rather not participate at these points in the discussion please do not feel obligated to. Your participation is completely voluntary and the findings will be recorded anonymously under a pseudonym. Please indicate your consent to the interview by signing below.

I hereby voluntarily consent to be part of this interview on the above terms.

_____ Date: _____

_____ Date: _____

Questions –

Background

1. Please tell us a bit about your background (these questions are meant to assist us gain a demographic understanding)-
    a. How you identify (nationality, age, race, gender, sexual orientation)
    b. Your qualifications
    c. Your work and business interests/pursuits (industry, level of seniority etc.)
    d. Residence
    e. Marital /partnership status

Experience

2. In the last 5 years, have you adopted a child? If yes, please give more detail about when such adoption took place.
3. Why did you decide to adopt?
4. Describe, as widely as you can, your experience with going through an adoption process in South Africa, response would include -

    a. How did you identify the child you adopted?
    b. How long did the adoption process take? Please describe this process to us.
    c. What were the costs of adoption?
    d. Did you hold any pre-conceived thoughts/notions about adoption? Share some of those with us?
    e. What were some of the challenges you faced with the adoption process?
    f. Do you think the adoption process is co-ordinated in the best interests of the child?
    g. Any other general concerns you may have with the adoption process?
    h. What do you think can be done to better the adoption process?
    i. What has been the general response to your adoption from friends, family and public?
    j. What were the contractual or other obligations (if any) flowing from the adoption process?
    k. Have you encountered other couples who may have gone through or are going through an adoption process, can you perhaps share any experiences you have learnt from them?

Knowledge and Rights

5. Please take us through your understanding of adoption provisions and policies. Did you know how these provisions are applied at the time of adoption?
6. Do you feel like there is enough information readily accessible about adoption processes in South Africa?
7. What is your understanding on surrogacy provisions and protections in South Africa?
8. To your understanding, what were (are) your legal entitlements, particularly from your employment perspective, as adoptive parents? (Time-off work, monetary benefits etc.)
9. To your understanding, what is your employer policy on maternity benefits?
10. Have you accessed any sort of maternity/parental benefit in the last 5 years? Describe the process to claim such a benefit.
11. Have you claimed from the UIF in the last 5 years? If so, describe your experience with the UIF claim process. If not, please explain why.
12. How much were you able to claim (if you have claimed from UIF).
13. Are there areas where you think the Department of Labour could improve when it comes to the processing and allocation of adoption and maternity benefits?

Appendix D Employee Online Survey

DoL Maternity Research Project
Employee Survey

The Department of Labour (DoL) has commissioned Ernst & Young (EY) to conduct research on maternity provisions across industries and occupations in South Africa. The outcome of this investigation is intended to:

- Establish employer policies and practices relating to maternity protection
- Understand the experiences of employees during the process and period of accessing maternity protection benefits Establish the extent of knowledge of legal rights and legislation that cover maternity protection including benefits for surrogacy and adoption

You have been identified as a potential participant with a valued view and experience on maternity protection policy and practice in South Africa. Specifically, the Department is looking for your awareness, knowledge and experience on maternity provisions in South Africa. This survey does have some sensitive questions around topics of pregnancy, child birth, adoption and discrimination. While we highly value your views and experiences, if for any reason you feel you would rather not participate please do not feel obligated to.

Please note that your participation in the survey is voluntary and you may withdraw at any time. There are no foreseeable risks involved in participating in this study. This survey is anonymous as we will not collect any identifying information such as your name, identity number, or email address.

The combined results of all survey participants will be analysed and reported; and no individual results will be published. You are welcome to direct any queries regarding the ethical procedures of this study contact Ms Tendani Ramulongo at 012 309 4231 Tendani.Ramulongo@labour.gov.za or Ms Nokuthula Ngangile at 012 309 4321 Nokuthula.Ngangile@labour.gov.za.

Thank you for taking the time to

complete the survey! Kind

regards,

Mr Virgil Seafield
Deputy Director General: Labour Policy and Industrial Relation

Privacy & Consent

As mentioned, your participation in this research study is voluntary and you may choose not to participate. If you decide to participate in this research survey, you may choose to withdraw at any time.

Choosing the option *"I agree to participate in the survey"* below indicates that you have read and understood the information above and on the previous page, and provide your consent to voluntarily participate in the survey.

If you do not wish to participate in the survey, please decline participation by choosing the *"I do not agree to participate"* option below.

- [ ] I agree to voluntarily participate in the survey
- ○ I do not agree to participate in the survey

Section 1: Qualifying questions

At this time we would like to focus on the views and experiences of female employees in South Africa, who have had recent maternity provision experiences. The first section of questions thus asks specific screening questions to ensure this focus. If you are a female employee with a maternity provision experience in the last 5 years, you will then be directed to the full survey and answer about 44 questions, which will take approximately 30 mins of your time.

Please answer all questions from your own individual experience within the last 5 years.

1. What is your biological sex?

At this time we would like to focus on the views and experiences of **female** employees in South Africa, who have had recent maternity provision experiences.

- [x] Female
- [ ] Male

2. Are you a South African citizen, living and working in South Africa?

- [ ] Yes
- [ ] No

3. In which sector do you work?

- [ ] Formal sector (Non-agricultural)
- [ ] Informal sector (Non-agricultural)
- [ ] Agriculture
- [ ] Private households
- [ ] Public Sector

4. In the last 5 years, have you been pregnant or legally adopted a child?

At this time we would like to focus on the views and experiences of female employees in South Africa, who have had **recent maternity provision experiences.**

- [ ]
- [ ] Yes I have been pregnant in the last 5 years
- [ ] 'es, I have legally adopted a child in the last 5 years
- [ ] I am currently pregnant
- I am currently in the process of adopting a child

5. What is your current employment status?

- [ ] Employed part time
- Employed full time
- Self-employed
- Unemployed

6. If you answered unemployed to the previous question (question 5) - How long have you been unemployed?

At this time we would like to focus on the views and experiences of female **employees** in South Africa, who have had recent maternity provision experiences.

- [ ] Less than 1 year
- [ ] 2 years
- [ ] 3 years
- 4 years
- 5 years or more → *if this is your answer choice you do not have to complete the rest of the survey as we would like to focus on*

7. If you answered self-employed to question 5- How long have you been self-employed?

At this time we would like to focus on the views and experiences of female **employees** in South Africa, who have had recent maternity provision experiences.

- ☐ Less than 1 year
- ☐ 2 years
- ☐ years
- 4 years
- ☐ 5 years or more

Since you have been self-employed for 5 years or more, please can you describe how you fund/funded your maternity leave during this time of not working?

_____
_____
_____
_____
_____

8. On what basis are you currently employed?

If you are currently unemployed or self-employed but were previously employed by an employer, on what basis were you previously employed?

- ☐ A written contract
- ◯ A verbal agreement

Section 2: Demographics

9. In which age category do you fall?

- 15–24 years
- 25-34 years
- 35-44 years
- 45-54 years
- 55-64 years

10. Please indicate your race.

- Black African
- Coloured
- White
- Indian/Asian
- Other

11. Which province do you currently reside in?

- Eastern Cape
- Free State
- Gauteng
- KwaZulu-Natal
- Limpopo
- Mpumalanga
- North West
- Northern Cape
- Western Cape

12. In which industry is your current employment?

If you are currently unemployed or self-employed, please select the industry in which you were previously employed (if it was in the last 5 years).

- [ ] Agriculture
- [ ] Mining
- [ ] Manufacturing
- [ ] Utilities
- [ ] Construction
- [ ] Trade
- [ ] Transport
- [ ] Finance and other business services
- [ ] Community and social services
- [ ] Private households
- [ ] Other

13. What is your current level of occupation?

If you are currently unemployed or self-employed, please select your previous level of occupation (if it was in the last 5 years).

- [ ] Top Management/Executive
- [ ] Senior Management
- [ ] Professionally Qualified
- [ ] Experienced Specialist
- [ ] Middle Management
- [ ] Skilled Technical/Technician
- [ ] Junior management
- [ ] Supervisor/Foreman/Superintendent
- [ ] Semi-Skilled
- [ ] Manager
- [ ] Professional
- [ ] Clerk
- [ ] Sales and services
- [ ] Skilled agriculture
- [ ] Craft and related trade
- [ ] Plant and machine operator
- [ ] Domestic worker
- [ ] Entry Level

14. How many children do you have?

If this is your first pregnancy or adoption and you have no other children, please select *"none"*.

- [ ] None
- [ ] 1 child
- [ ] 2 children
- [ ] 3 children
- [ ] 4 children
- [ ] 5 children
- [ ] More than 5

15. Have you had a miscarriage or stillbirth in the last 5 years?

- [ ] No
- [ ] Yes

→ ***We are so very sorry for your loss. May we please ask what went wrong?***

- [ ] I had a stillbirth
- [ ] I had a miscarriage

→ ***Again, we are so very sorry for your loss. May we please ask at what stage in your pregnancy you miscarried?***

- [ ] In the first trimester
- [ ] In the second trimester
- [ ] In the third trimester

16. Have you claimed maternity benefits from the *UIF* in the last 5 years?

☐ No

☐ Yes

How many times in the last 5 years have you claimed maternity benefits from the UIF?

17. Have you claimed maternity benefits from an *employer* in the last 5 years?

☐ NO

☐ YES

How many times in the last 5 years have you claimed maternity benefits from an employer?

_____ *time(s)*

18. How many weeks of rest in total did you take before, during and after your most recent pregancy?

i.e. for how many weeks did you do no work?

_____

week(s)

19. Please answer the following questions choosing Yes, No or I'm not sure / Don't know

	Yes	No	I'm not sure / Don't know
Does your employer contribute to the UIF for you?	○	○	○
Do you know how much your employer contributes to the UIF on your behalf? (the maximum monthly contribution to the UIF, for both an employee and an employer is R148.72 each)	○	○	○
Did you know that domestic workers can claim maternity benefits from the UIF provided their employers have complied with and submitted all documentation and payments?	○	○	○

Section 3: Awareness of maternity protection

20. Please answer the following questions to the best of your knowledge and within the *South African context*.

	Yes	No	I'm not sure / Don't know
Women are protected by law from unfair discrimination because of pregnancy	○	○	○
By law, women must be protected from hazards in their work environment during pregnancy, after the birth of a child and while breast-feeding	○	○	○
If a position (job) is hazardous in some way to pregnant and/or breastfeeding women, employers must provide pregnant and/or breastfeeding women in those positions with an alternative position that is non-hazardous	○	○	○
It is illegal for an employer to ask a woman if she is pregnant when she is applying for a job	○	○	○
It is illegal for an employer to refuse to employ a woman because she is pregnant when she is applying for a job	○	○	○
It is illegal for an employer to fire a woman because she falls pregnant	○	○	○
By law, women are entitled to flexible working conditions while pregnant in order to accommodate the pregnancy, if need be	○	○	○
By law, women are allowed to take maternity leave	○	○	○

21. How many weeks of maternity leave are women entitled to take, by law?

Use 4 weeks as an approximation for a month

_____ weeks

22. How many weeks of leave is compulsory after childbirth, by law?

Use 4 weeks as an approximation for a month

_____ weeks

23. When can a woman commence maternity leave?

- Any time before the expected date of birth
- When the child is born
- When a medical practitioner or a midwife certifies that it is necessary for the employee's health or that of her unborn child

24. Please answer the following questions to the best of your knowledge and within the *South African context*.

	Yes	No	I'm not sure / Don't know
It is compulsory for an employer to pay a female employee while she is on maternity leave			
A woman can still take sick leave if she has taken maternity leave			
A woman who has had a miscarriage or stillborn child is still entitled to maternity leave			
Did you know that you can claim cash benefits for maternity from the UIF?			
Did you know that you can complete a maternity benefits claim from the UIF online, and that you don't have to go into a Labour centre?			

25. Do you know how much money a woman can claim from UIF for maternity?

- None
- A portion of a monthly salary
- A full monthly salary

26. Please answer the following questions to the best of your knowledge and within the *South African context*.

	Yes	No	I'm not sure / Don't know
An employer must guarantee a woman's job (or an equivalent job) while she is away on maternity leave, and cannot give it to another person An	○	○	○
employer can fire a woman while she is on maternity leave	○	○	○
An employer has to accommodate breastfeeding mothers when they return to work	○	○	○
By law, employers must provide special breastfeeding rooms on site for breastfeeding mothers to use	○	○	○
An employer has to provide special breaks, in addition to lunch and tea breaks, for breastfeeding mothers in order for them to breastfeed during the day	○	○	○
If an employer provides special breaks in addition to lunch and tea breaks, for breastfeeding mothers, the employer can reduce the mothers' pay because of the reduced hours being worked	○	○	○

27. Please answer the following questions to the best of your knowledge and within

	Yes	No	I'm not sure / Don't know
Men and women are entitled to maternity leave from their employer when they adopt a child	○	○	○
Men and women can claim adoption benefits from the UIF when they adopt a child	○	○	○
Those who adopt a child are entitled to the same amount of time off as those who give birth to a child	○	○	○
In the case of adoption only one of the parents can take the full maternity leave	○	○	○
When same sex couples commission a surrogate mother to have the baby for them, one of the same sex parents can take the full maternity leave	○	○	○
When same sex couples commission a surrogate mother to have the baby for them, one of the same sex parents can claim maternity benefits from the UIF	○	○	○

Section 4: Experience of maternity protection

If you have not claimed maternity benefits from the UIF in the last 5 years.

28. Why did you not claim maternity benefits from the UIF?

Only answer this question if you have not claimed maternity benefits from the UIF in the last 5 years

- ○ I claimed paid leave from my employer
- ○ I didn't know I could claim maternity benefits from the UIF
- ○ I didn't know how to claim from the UIF
- ○ I am currently pregnant with / in the process of adopting my first child, and have not applied for maternity benefits from the UIF yet
- ○ Other (please explain) _____

If you have claimed maternity benefits from the UIF in the last 5 years.

29. What was the outcome of your most recent maternity benefits claim at the UIF?

Only answer this question if you have claimed maternity benefits from the UIF in the last 5 years

- ○ Approved
- ○ Still in process
- ○ Declined

30. In your most recent claim for maternity benefits from the UIF, how would you rate the process?

Only answer this question if you have claimed maternity benefits from the UIF in the last 5 years

Very simple and/or easy	Reasonably simple and/or easy	Quite complex and/or difficult	Very complex and/or difficult
○	○	○	○

31. Please describe some details or examples of your most recent UIF claim process

Only answer this question if you have claimed maternity benefits from the UIF in the last 5 years

31. How would you rate your most recent overall experience of claiming maternity benefits from the UIF?

Only answer this question if you have claimed maternity benefits from the UIF in the last 5 years

Very poor	Poor	Fine / OK	Good	Excellent
○	○	○	○	○

32. How could your experience in claiming maternity benefits have been improved?

Only answer this question if you have claimed maternity benefits from the UIF in the last 5 years

If you have claimed maternity benefits from an employer in the last 5 years, please answer the following questions

33. In your most recent claim for maternity benefits from an employer, how many weeks of maternity leave did that employer offer you? (total number of weeks, including paid and unpaid maternity leave)

Only answer this question if you have claimed maternity benefits from **an employer** in the last 5 years

Please use 4 weeks as an approximation for a month

_____ weeks

34. In your most recent claim for maternity benefits from an employer, how many weeks of PAID maternity leave did that employer offer you?

Only answer this question if you have claimed maternity benefits from **an employer** in the last 5 years

Please use 4 weeks as an approximation for a month

_____ weeks

35. In your most recent claim for maternity benefits from an employer, what % of your salary was paid during maternity leave by that employer?

Only answer this question if you have claimed maternity benefits from **an employer** in the last 5 years
Please use 4 weeks as an approximation for a month

- ☐ Less than 20%
- ☐ Between 20% and 32%
- ○ Between 33% and 49%
- ☐ Between 50% and 65%
- ○ Between 66% and 74%
- ○ Between 75% and 89%
- ○ More than 90%

36. In your most recent claim for maternity benefits from an employer, did that employer's policy cover the continuation of all existing salary related benefits such as medical aid, provident fund and risk cover while on maternity leave?

' answer this question if you have claimed maternity benefits from an employer in the last 5 years

- Yes
- Not all, but some benefits
- No
- Not applicable

37. Are there / were there any terms and conditions attached to that employer's maternity leave policy? (e.g. work back clauses)

Only answer this question if you have claimed maternity benefits from **an employer** in the last 5 years

If you answer *"yes"*, please can you provide more detail on the terms and conditions of the maternity leave.

- Yes
- No
- I don't know

Make a comment on your choice here:

Section 5: Discrimination, Adoption and Surrogacy

38. Do you think women are discriminated against in the workplace because of pregnancy?

- [ ] Yes
- ○ No
- ○ I'm not sure

39. To what extent do you think women are discriminated against in the workplace because of pregnancy?

Only answer this question if you answered 'Yes' to the previous question

To a very large extent	To a large extent	Sometimes	Hardly ever
○	○	○	○

40. Have you ever personally experienced discrimination in the workplace because of a pregnancy?

- [ ] Yes
- ○ No
- ○ Prefer not to say

→If yes, would you mind briefly explaining what happened?

Only answer this question if you answered 'Yes' to the previous question

41. Do you think women are discriminated against in the workplace when they come back from maternity leave?

- [ ] Yes
- ○ No
- ○ I'm not sure

➔ **If yes, to what extent do you think women are discriminated against in the workplace when they come back from maternity leave?**

Only answer this question if you answered 'Yes' to the previous question

To a very large extent	To a large extent	Sometimes	Hardly ever
○	○	○	○

42. Did you personally experience any discrimination in the workplace when you went back to work after maternity leave?

- [ ] Yes
- ○ No
- ○ Prefer not to say

If yes, would you mind briefly explaining what happened?

Only answer this question if you answered 'Yes' to the previous question

43. Do you think people who adopt a baby should have the same leave and benefits as women who give birth to their children?

- [ ] Yes
- ○ No

Would you mind briefly explaining why you think so?

44. Do you think people who commission a surrogate mother to have the baby for them should have the same leave and benefits as women who give birth to their children?

- Yes
- No

Would you mind briefly explaining why you think so?

Thank you for completing the survey

Appendix E Employer Online survey

DoL Maternity Research Project Employers Survey

Online survey for South African Employers

Department of Labour Maternity Research Project

The Department of Labour (DoL) has commissioned Ernst & Young (EY) to conduct research to evaluate the implementation and experiences of regulations, policies and practices relating to maternity provision across industries and occupations in South Africa. The outcome of this investigation is intended to;

- Establish employer policies and practices relating to maternity protection
- Understand the experiences of employees during the process and period of accessing maternity protection benefits
- Establish the extent of knowledge of legal rights and legislation that cover maternity protection including benefits for surrogacy and adoption

This survey seeks to gather information from the employer's perspective. The DoL will also be conducting employee surveys and other fieldwork in order to obtain the perspectives of employees and other stakeholders on the topic around the country.

Your responses are highly valued and will contribute significantly to the outcomes of the overall project. Please be assured that your responses will be treated confidentially. When we present the results of this survey, only overall results and themes will be presented as opposed to individual responses.

In order to thank you for your participation in the survey, EY and the DoL will be inviting you to join a seminar session presenting the results of this research, which will offer value to you as an employer in understanding your standing in relation to best practice maternity policy and practice in South Africa and globally.

Should you have any queries please contact Ms Tendani Ramulongo at 012 309 4231 Tendani.Ramulongo@labour.gov.za or Ms Nokuthula Ngangile at 012 309 4321 Nokuthula.Ngangile@labour.gov.za.

Thank you for taking the time to complete the survey!

Kind regards,

Mr Virgil Seafield
Deputy Director General: Labour Policy and Industrial Relations

Privacy & Consent

As mentioned, your participation in this research study is voluntary and you may choose not to participate. If you decide to participate in this research survey, you may choose to withdraw at any time.

Clicking the *"I agree to participate in the survey"* button indicates that you have read and understood the information above and on the previous page, and provide your consent to voluntarily participate in the survey.

If you do not wish to participate in the survey, please decline participation by clicking on the *"I do not agree to participate in the survey"* button below.

*

- ○ I agree to voluntarily participate in the survey
- ○ I do not agree to participate in the survey

{if(Consent.NAOK == 2, "You have opted out of participating in this survey.", "")}

{if(Consent.NAOK == 2, "Exit", "")}

Organisation Details

Name and surname

In which sector is your organisation?

*

if you are completing this survey as an employer in your personal capacity of a domestic worker (or similar) in your home, please select "*private households*" from the options below

- ○ Formal sector (Non-agricultural)
- ○ Informal sector (Non-agricultural)
- ○ Agriculture
- ○ Private households
- ○ Public Sector

Please answer all the questions from <u>your organisation's perspective</u> as an HR professional, and not your own individual perspective, unless you are an employer in your personal capacity.

Thank you again for taking the time to complete the survey.

Job title *

Only answer this question if the following conditions are met:
Answer was 'Formal sector (Non-agricultural)' or 'Informal sector (Non-agricultural)' or 'Agriculture' or 'Public Sector' at question '6 [S1Q200]' (In which sector is your organisation?)

- ○ Human Resources Director
- ○ Senior Human Resources Manager
- ○ Human Resources Manager
- ○ Other

Organisation name *

Only answer this question if the following conditions are met:
Answer was 'Formal sector (Non-agricultural)' *or* 'Informal sector (Non-agricultural)' *or* 'Agriculture' *or* 'Public Sector' at question '6 [S1Q200]' (In which sector is your organisation?)

In which industry is your organisation? *

Only answer this question if the following conditions are met:
Answer was 'Formal sector (Non-agricultural)' *or* 'Informal sector (Non-agricultural)' *or* 'Agriculture' at question '6 [S1Q200]' (In which sector is your organisation?)

- ○ Agriculture
- ○ Mining
- ○ Manufacturing
- ○ Utilities
- ○ Construction
- ○ Trade
- ○ Transport
- ○ Finance and other businesses services
- ○ Community and social services
- ○ Private households
- ○ Other

Which of the following best describes your entity? *

Only answer this question if the following conditions are met:
Answer was 'Public Sector' at question '6 [S1Q200]' (In which sector is your organisation?)

- ○ National Government Department
- ○ Provincial Government Department
- ○ Municipality
- ○ State Owned Entity / Enterprise / Company

My organisation is best described as: *

Only answer this question if the following conditions are met:
Answer was 'Formal sector (Non-agricultural)' *or* 'Informal sector (Non-agricultural)' *or* 'Agriculture' at question '6 [S1Q200]' (In which sector is your organisation?)

- ○ South Africa originated with operations only in South Africa
- ○ Africa originated with operations in more than one country in Africa
- ○ Multinational

Approximately how many employees does your organisation employ in South Africa? *

- ○ 0 - 10
- ○ 11 - 50
- ○ 51 - 100
- ○ 101 - 250
- ○ 251 - 500
- ○ 501 - 1500
- ○ 1501 - 2500
- ○ 2501 - 5000
- ○ 5001 - 7500
- ○ 7501 - 10 000
- ○ More than 10 000 employees

Approximately what percentage of your organisation's employees in South Africa, are *female*? *

- ○ 10% or less
- ○ More than 10% but less than 25%
- ○ More than 25% but less than 50%
- ○ More than 50% but less than 75%
- ○ More than 75% but not 100%
- ○ 100%

{if(S1Q200.NAOK == 4, "In which province is your private household?", "Which province(s) in South Africa does your organisation operate? (select any that apply)")} *

- [ ] Eastern Cape
- [ ] Free State
- [ ] Gauteng
- [ ] KwaZulu-Natal
- [ ] Limpopo
- [ ] Mpumalanga
- [ ] North West
- [ ] Northern Cape
- [ ] Western Cape

Pregnancy and Maternity Practices and Policies

{if(S1Q200.NAOK == 4, "Do you have a maternity policy or agreement in place with your domestic worker(s)?", "Does your organisation have an existing formalised maternity policy currently in place?")} *

- ○ Yes
- ○ No
- ○ Other (please describe) _____

If you are happy to share your maternity policy (or agreement) with us, you can upload it here

Only answer this question if the following conditions are met:
Answer was 'Yes' *or* 'Other' at question '18 [S2Q100]' ({if(S1Q200.NAOK == 4, "Do you have a maternity policy or agreement in place with your domestic worker(s)?", "Does your organisation have an existing formalised maternity policy currently in place?")})

(maximum upload size is 10Mb, only filetyps .png, .gif, .jpg, .doc, .odt, .docx, .pdf allowed)

Has your organisation's existing formalised maternity policy been communicated to employees? *

Only answer this question if the following conditions are met:
Answer was NOT 'Private households ' at question '6 [S1Q200]' (In which sector is your organisation?) *and* Answer was NOT 'No' at question '18 [S2Q100]' ({if(S1Q200.NAOK == 4, "Do you have a maternity policy or agreement in place with your domestic worker(s)?", "Does your organisation have an existing formalised maternity policy currently in place?")})

- ○ Yes
- ○ No

Can you indicate how your organisation's maternity policy is communicated to employees (select any that apply) *

Only answer this question if the following conditions are met:
Answer was NOT 'Private households ' at question '6 [S1Q200]' (In which sector is your organisation?) *and* Answer was NOT 'No' at question '18 [S2Q100]' ({if(S1Q200.NAOK == 4, "Do you have a maternity policy or agreement in place with your domestic worker(s)?", "Does your organisation have an existing formalised maternity policy currently in place?")}) *and* Answer was NOT 'No' at question '20 [S2Q102]' (Has your organisation's existing formalised maternity policy been communicated to employees?)

- ☐ The policy is communicated during induction
- ☐ The policy is made available with other policies on the company's intranet
- ☐ The policy is available with other policies in the "Company's Policy Handbook" accessible to all employees
- ☐ By union representatives
- ☐ Policies are emailed to employees whenever they are amended
- ☐ Other (please describe): _____

What is the official name of your organisation's maternity policy? (i.e. what is the exact name of the policy – what is it called?) *

Only answer this question if the following conditions are met:
Answer was NOT 'Private households ' at question '6 [S1Q200]' (In which sector is your organisation?) *and* Answer was NOT 'No' at question '18 [S2Q100]' ({if(S1Q200.NAOK == 4, "Do you have a maternity policy or agreement in place with your domestic worker(s)?", "Does your organisation have an existing formalised maternity policy currently in place?")})

_____

Who determines your organisation's maternity practice and/or policy? (select any that apply) *

Only answer this question if the following conditions are met:
Answer was NOT 'Private households ' at question '6 [S1Q200]' (In which sector is your organisation?)

- ☐ Local organisation management
- ☐ The organisation's global head office
- ☐ The organisation's parent company
- ☐ The organisation's holding company
- ☐ Not applicable
- ☐ Other (please describe): _____

Is maternity practice and/or policy being implemented consistently across your organisation? *

Only answer this question if the following conditions are met:
Answer was NOT 'Private households ' at question '6 [S1Q200]' (In which sector is your organisation?)

- ○ Yes
- ○ No

You answered "*no*" to the previous question. Why is maternity practice and/or policy being not being implemented consistently across your organisation? *

Only answer this question if the following conditions are met:
Answer was 'No' at question '24 [S2Q500]' (Is maternity practice and/or policy being implemented consistently across your organisation?)

Has your organisation experienced any unintended consequences in implementing the maternity practice and/or policy? *

Only answer this question if the following conditions are met:
Answer was NOT 'Private households ' at question '6 [S1Q200]' (In which sector is your organisation?)

- ○ Yes
- ○ No

You answered "*yes*" to the question above. Please can you describe the unintended consequences. *

Only answer this question if the following conditions are met:
Answer was 'Yes' at question '26 [S2Q600]' (Has your organisation experienced any unintended consequences in implementing the maternity practice and/or policy?)

What, if any, do you believe are the 5 key barriers to implementation of your organisation's maternity practice and/or policy?

Only answer this question if the following conditions are met:
Answer was NOT 'Private households ' at question '6 [S1Q200]' (In which sector is your organisation?)

1
2
3
4
5

What, if any, do you believe are the 5 key facilitators to implementation of your organisation's maternity practice and/or policy?

Only answer this question if the following conditions are met:
Answer was NOT 'Private households ' at question '6 [S1Q200]' (In which sector is your organisation?)

1
2
3
4
5

Has your organisation informed employees about the importance of immediate notification of pregnancy? *

Only answer this question if the following conditions are met:
Answer was NOT 'Private households ' at question '6 [S1Q200]' (In which sector is your organisation?)

- ○ Yes
- ○ No

How does your organisation inform employees about the importance of immediate notification of pregnancy? (select any that apply) *

Only answer this question if the following conditions are met:
Answer was NOT 'Private households ' at question '6 [S1Q200]' (In which sector is your organisation?) *and* Answer was 'Yes' at question '30 [S2Q900]' (Has your organisation informed employees about the importance of immediate notification of pregnancy?)

- ☐ Employees are informed during induction
- ☐ The policy is communicated via email
- ☐ The policy is communicated via email, whenever there are amendments
- ☐ The policy is communicated via the organisation's newsletter
- ☐ Employees are informed at town halls
- ☐ Employees are informed at wellness days/events
- ☐ Other (please describe): _____

Does your organisation keep a record of every notification of pregnancy? *

Only answer this question if the following conditions are met:
Answer was NOT 'Private households ' at question '6 [S1Q200]' (In which sector is your organisation?)

- ○ Yes
- ○ No

Has your organisation informed employees about the importance of immediate notification of pregnancy? *

Only answer this question if the following conditions are met:
Answer was NOT 'Private households ' at question '6 [S1Q200]' (In which sector is your organisation?)

- ○ Yes
- ○ No

How does your organisation inform employees about the importance of immediate notification of pregnancy? (select any that apply) *

Only answer this question if the following conditions are met:
Answer was NOT 'Private households ' at question '6 [S1Q200]' (In which sector is your organisation?) *and* Answer was 'Yes' at question '30 [S2Q900]' (Has your organisation informed employees about the importance of immediate notification of pregnancy?)

- ☐ Employees are informed during induction
- ☐ The policy is communicated via email
- ☐ The policy is communicated via email, whenever there are amendments
- ☐ The policy is communicated via the organisation's newsletter
- ☐ Employees are informed at town halls
- ☐ Employees are informed at wellness days/events
- ☐ Other (please describe): _____

Does your organisation keep a record of every notification of pregnancy? *

Only answer this question if the following conditions are met:
Answer was NOT 'Private households ' at question '6 [S1Q200]' (In which sector is your organisation?)

- ○ Yes
- ○ No

{if(S1Q200.NAOK == 4, "How many consecutive weeks * of maternity leave do you offer your domestic worker(s)?", "How many consecutive weeks * of maternity leave does your organisation offer employees?")}

*** consecutive weeks includes both paid AND unpaid leave**

*

use 4 weeks as an approximation for a month

weeks

How many weeks of the maternity leave provided is paid? At what rate?

(i.e. 16 weeks of maternity leave is paid, at a rate of 45% of gross earnings)

*

use 4 weeks as an approximation for a month

{if(S1Q200.NAOK == 4, "Does your maternity policy/agreement with your domestic worker(s) have a work back clause/agreement?", "Does your organisation's maternity practice and/or policy have a work back clause/agreement?")}

*

A work back clause/agreement means that the employee shall be required to pay back money paid out during maternity leave should they leave before the stipulated timeframe.

- ○ Yes
- ○ No

Please indicate the number of weeks of work back required and the number of weeks of paid leave taken

*

Only answer this question if the following conditions are met:
Answer was 'Yes' at question '37 [S2Q300]' ({if(S1Q200.NAOK == 4, "Does your maternity policy/agreement with your domestic worker(s) have a work back clause/agreement?", "Does your organisation's maternity practice and/or policy have a work back clause/agreement?")})

use 4 weeks as an approximation for a month

The policy requires work back of	
for paid maternity leave taken of	

{if(S1Q200.NAOK == 4, "Do you submit all UIF forms and pay UIF monthly for your domestic worker(s)?", "Does your organisation submit all UIF forms and pay UIF monthly for employees?")}

*

- ○ Yes
- ○ No

{if(S1Q200.NAOK == 4, "Do you provide guidance to your domestic worker(s) on how to claim maternity benefits from the UIF?", "Does your organisation provide guidance to employees on how to claim maternity benefits from the UIF?")} *

- ○ Yes
- ○ No
- ○ Not applicable

You answered "yes" to the question above. Please can you briefly describe the UIF claim guidance provided.

*

Only answer this question if the following conditions are met:
Answer was 'Yes' at question '40 [S2Q4002]' ({if(S1Q200.NAOK == 4, "Do you provide guidance to your domestic worker(s) on how to claim maternity benefits from the UIF?", "Does your organisation provide guidance to employees on how to claim maternity benefits from the UIF?")})

i.e. In our maternity policy FAQ guide we inform employees of the following: "You can claim UIF for the unpaid portion of your leave by contacting or visiting a UIF office."

{if(S1Q200.NAOK == 4, "Do you cover the continuation of all existing salary related benefits such as medical aid, provident fund and risk cover while your domestic worker(s) is on paid maternity leave?", "Does your organisation cover the continuation of all existing salary related benefits such as medical aid, provident fund and risk cover while an employee is on paid maternity leave?")} *

- ○ Yes
- ○ Not all, but some benefits
- ○ No
- ○ Not applicable

{if(S1Q200.NAOK == 4, "Do you allow your domestic worker(s) to accrue annual leave while on maternity leave?", "Does your organisation allow employees to accrue annual leave while on maternity leave?")} *

- ○ Yes
- ○ No

{if(S1Q200.NAOK == 4, "How can your maternity related practices and policy (whether formal or informal) be improved?", "How can your organisation's maternity related practices and policy (whether formal or informal) be improved?")}

Awareness of Maternity Protection

Please answer the following questions to the best of your knowledge and within the *South African context*. *

	Yes	No	I'm not sure / Don't know
Women are protected by law from unfair discrimination because of pregnancy	○	○	○
By law, women must be protected from hazards in their work environment during pregnancy, after the birth of a child and while breast-feeding	○	○	○
If a position (job) is hazardous in some way to pregnant and/or breastfeeding women, employers must provide pregnant and/or breastfeeding women in those positions with an alternative position that is non-hazardous	○	○	○
In some cases, it is legal for an employer to ask a woman if she is pregnant when she is applying for a job	○	○	○
In some cases, it is legal for an employer to refuse to employ a woman because she is pregnant when she is applying for a job	○	○	○
It is illegal for an employer to fire a woman because she falls pregnant	○	○	○
By law, women are entitled to flexible working conditions while pregnant in order to accommodate the pregnancy, if need be	○	○	○
By law, women are allowed to take maternity leave	○	○	○

How many weeks of maternity leave are women entitled to take, by law?

use 4 weeks as an approximation for a month

[ ]

weeks

How many weeks of leave is <u>compulsory</u> after childbirth, by law?

use 4 weeks as an approximation for a month

[ ]

weeks

When can a woman commence maternity leave? (select any that apply) *

- ☐ At any time from 4 weeks before the expected date of birth, unless otherwise agreed
- ☐ On a date from which a medical practitioner or midwife certifies that it is necessary for the employee's health, or that of her unborn child
- ☐ When the child is born
- ☐ I don't know / I'm not sure

Please answer the following questions to the best of your knowledge and within the *South African context*. *

	Yes	No	I'm not sure / Don't know
It is compulsory for an employer to pay a female employee while she is on maternity leave	○	○	○
A woman can still take sick leave if she has taken maternity leave	○	○	○
A woman who has had a miscarriage or stillborn child is still entitled to maternity leave	○	○	○
Where employers do not provide paid maternity leave, employees can claim cash benefits for maternity from the UIF	○	○	○
Where employers do not provide paid maternity leave, employees can claim UIF online, and they do not need to go into a Labour Centre	○	○	○

Where employers do not provide paid maternity leave, how much money can a woman claim from UIF for maternity? *

- ○ None
- ○ A portion of a monthly salary
- ○ A full month salary

Please answer the following questions to the best of your knowledge and within the *South African context*. *

	Yes	No	I'm not sure / Don't know
An employer must guarantee a woman's job (or an equivalent job) while she is away on maternity leave, and cannot give it to another person	○	○	○
An employer can fire a woman while she is on maternity leave	○	○	○
An employer has to accommodate breastfeeding mothers when they return to work	○	○	○
By law, employers must provide special breastfeeding rooms on site for breastfeeding mothers to use	○	○	○
An employer has to provide special breaks, in addition to lunch and tea breaks, for breastfeeding mothers in order for them to breastfeed during the day	○	○	○
If an employer provides special breaks in addition to lunch and tea breaks, for breastfeeding mothers, the employer can reduce the mothers' pay because of the reduced hours being worked	○	○	○

Please answer the following questions to the best of your knowledge and within the *South African context*. *

	Yes	No	I'm not sure / Don't know
Men and women are entitled to maternity leave from their employer when they adopt a child	○	○	○
Men and women can claim adoption benefits from the UIF when they adopt a child	○	○	○
Those who adopt a child are entitled to the same amount of time off as those who give birth to a child	○	○	○
In the case of adoption only one of the parents can take the full maternity leave	○	○	○
When same sex couples commission a surrogate mother to have the baby for them, one of the same sex parents can take the full maternity leave	○	○	○
When same sex couples commission a surrogate mother to have the baby for them, one of the same sex parents can claim maternity benefits from the UIF	○	○	○

Paternity, Adoption and Surrogacy

{if(S1Q200.NAOK == 4, "Which employees are offered long term leave to care for an infant child in your household? (select any that apply)", "Which employees are offered long term leave to care for an infant child in your organisation? (select any that apply)")}

*

i.e. this is not family responsibility or discretionary leave for a few days

- [ ] Biological mothers
- [ ] Biological fathers
- [ ] Adoptive mothers
- [ ] Adoptive fathers
- [ ] Male commissioning parent (male surrogate parent)
- [ ] Female commissioning parent (female surrogate parent)

{if(S1Q200.NAOK == 4, "Do you have a paternity policy / agreement? (other than the 5 legislated days of family responsibility leave)", "Does your organisation have a paternity policy / agreement? (other than the 5 legislated days of family responsibility leave)")}

*

- ○ Yes
- ○ No
- ○ Other (please describe) _____

If you are happy to share your paternity policy / agreement with us, you can upload it here

Only answer this question if the following conditions are met:
Answer was NOT 'Private households ' at question '6 [S1Q200]' (In which sector is your organisation?) *and* Answer was NOT 'No' at question '54 [S3Q500]' ({if(S1Q200.NAOK == 4, "Do you have a paternity policy / agreement? (other than the 5 legislated days of family responsibility leave)", "Does your organisation have a paternity policy / agreement? (other than the 5 legislated days of family responsibility leave)")})

(maximum upload size is 10Mb, only filetyps .png, .gif, .jpg, .doc, .odt, .docx, .pdf allowed)

You answered "yes" or "other" when asked if your organisation has a paternity policy / agreement. Please answer the following questions as they relate to this policy / agreement.

Only answer this question if the following conditions are met:
Answer was NOT 'Private households ' at question '6 [S1Q200]' (In which sector is your organisation?) *and* Answer was NOT 'No' at question '54 [S3Q500]' ({if(S1Q200.NAOK == 4, "Do you have a paternity policy / agreement? (other than the 5 legislated days of family responsibility leave)", "Does your organisation have a paternity policy / agreement? (other than the 5 legislated days of family responsibility leave)")})

Who is covered under this policy? (select any that apply) *

Only answer this question if the following conditions are met:
Answer was NOT 'Private households ' at question '6 [S1Q200]' (In which sector is your organisation?) *and* Answer was NOT 'No' at question '54 [S3Q500]' ({if(S1Q200.NAOK == 4, "Do you have a paternity policy / agreement? (other than the 5 legislated days of family responsibility leave)", "Does your organisation have a paternity policy / agreement? (other than the 5 legislated days of family responsibility leave)")})

- ☐ Biological fathers
- ☐ Adoptive fathers
- ☐ The male or female partner of an adoptive parent
- ☐ The male or female partner of a commissioning parent
- ☐ Other (please describe): _____

How many consecutive days of leave does this policy provide?

*

Only answer this question if the following conditions are met:
Answer was NOT 'Private households ' at question '6 [S1Q200]' (In which sector is your organisation?) *and* Answer was NOT 'No' at question '54 [S3Q500]' ({if(S1Q200.NAOK == 4, "Do you have a paternity policy / agreement? (other than the 5 legislated days of family responsibility leave)", "Does your organisation have a paternity policy / agreement? (other than the 5 legislated days of family responsibility leave)")})

_____
days

If you'd like to provide any additional details on the number of consecutive days of leave this policy provides, please do so below.

Only answer this question if the following conditions are met:
Answer was NOT 'Private households ' at question '6 [S1Q200]' (In which sector is your organisation?) *and* Answer was NOT 'No' at question '54 [S3Q500]' ({if(S1Q200.NAOK == 4, "Do you have a paternity policy / agreement? (other than the 5 legislated days of family responsibility leave)", "Does your organisation have a paternity policy / agreement? (other than the 5 legislated days of family responsibility leave)")})

How many consecutive days of paid leave does this policy provide?

*

Only answer this question if the following conditions are met:
Answer was NOT 'Private households ' at question '6 [S1Q200]' (In which sector is your organisation?) *and* Answer was NOT 'No' at question '54 [S3Q500]' ({if(S1Q200.NAOK == 4, "Do you have a paternity policy / agreement? (other than the 5 legislated days of family responsibility leave)", "Does your organisation have a paternity policy / agreement? (other than the 5 legislated days of family responsibility leave)")})

days

If you'd like to provide any additional details on the number of consecutive days of paid leave this policy provides, please do so below.

Only answer this question if the following conditions are met:
Answer was NOT 'Private households ' at question '6 [S1Q200]' (In which sector is your organisation?) *and* Answer was NOT 'No' at question '54 [S3Q500]' ({if(S1Q200.NAOK == 4, "Do you have a paternity policy / agreement? (other than the 5 legislated days of family responsibility leave)", "Does your organisation have a paternity policy / agreement? (other than the 5 legislated days of family responsibility leave)")})

What percentage (if any) of the employee's total earnings is paid according to this policy? *

Only answer this question if the following conditions are met:
Answer was NOT 'Private households ' at question '6 [S1Q200]' (In which sector is your organisation?) *and* Answer was NOT 'No' at question '54 [S3Q500]' ({if(S1Q200.NAOK == 4, "Do you have a paternity policy / agreement? (other than the 5 legislated days of family responsibility leave)", "Does your organisation have a paternity policy / agreement? (other than the 5 legislated days of family responsibility leave)")})

percent (%)

If you'd like to provide any additional details on the percentage of the employee's total earnings paid that this policy provides, please do so below.

Only answer this question if the following conditions are met:
Answer was NOT 'Private households ' at question '6 [S1Q200]' (In which sector is your organisation?) *and* Answer was NOT 'No' at question '54 [S3Q500]' ({if(S1Q200.NAOK == 4, "Do you have a paternity policy / agreement? (other than the 5 legislated days of family responsibility leave)", "Does your organisation have a paternity policy / agreement? (other than the 5 legislated days of family responsibility leave)")})

Does this policy cover the continuation of all existing salary related benefits such as medical aid, provident fund and risk cover while on leave? *

Only answer this question if the following conditions are met:
Answer was NOT 'Private households ' at question '6 [S1Q200]' (In which sector is your organisation?) *and* Answer was NOT 'No' at question '54 [S3Q500]' ({if(S1Q200.NAOK == 4, "Do you have a paternity policy / agreement? (other than the 5 legislated days of family responsibility leave)", "Does your organisation have a paternity policy / agreement? (other than the 5 legislated days of family responsibility leave)")})

- ○ Yes
- ○ Not all, but some benefits
- ○ No
- ○ Not applicable

{if(S1Q200.NAOK == 4, "Do you have an adoption/surrogacy or primary caregiver policy that is different from your maternity policy / agreement?", "Does your organisation have an adoption/surrogacy or primary caregiver policy that is different from your organisation's maternity policy?")}

*

i.e. in circumstances of the birth of a child?

- ○ Yes
- ○ No
- ○ Other (please describe) [ ]

If you are happy to share this adoption/surrogacy or primary caregiver policy with us, you can upload it here

Only answer this question if the following conditions are met:
Answer was NOT 'Private households ' at question '6 [S1Q200]' (In which sector is your organisation?) *and* Answer was NOT 'No' at question '65 [S3Q200]' ({if(S1Q200.NAOK == 4, "Do you have an adoption/surrogacy or primary caregiver policy that is different from your maternity policy / agreement?", "Does your organisation have an adoption/surrogacy or primary caregiver policy that is different from your organisation's maternity policy?")})

(maximum upload size is 10Mb, only filetyps .png, .gif, .jpg, .doc, .odt, .docx, .pdf allowed)

You answered "yes" or "other" when asked if your organisation has an additional adoption/surrogacy or primary caregiver policy that is different from your organisation's maternity policy. Please answer the following questions as they relate to this policy.

Only answer this question if the following conditions are met:
Answer was NOT 'Private households ' at question '6 [S1Q200]' (In which sector is your organisation?) *and* Answer was NOT 'No' at question '65 [S3Q200]' ({if(S1Q200.NAOK == 4, "Do you have an adoption/surrogacy or primary caregiver policy that is different from your maternity policy / agreement?", "Does your organisation have an adoption/surrogacy or primary caregiver policy that is different from your organisation's maternity policy?")})

Who is covered under this policy? (select any that apply) *

Only answer this question if the following conditions are met:
Answer was NOT 'Private households ' at question '6 [S1Q200]' (In which sector is your organisation?) *and* Answer was NOT 'No' at question '65 [S3Q200]' ({if(S1Q200.NAOK == 4, "Do you have an adoption/surrogacy or primary caregiver policy that is different from your maternity policy / agreement?", "Does your organisation have an adoption/surrogacy or primary caregiver policy that is different from your organisation's maternity policy?")})

- ☐ Adoptive mothers
- ☐ Adoptive fathers
- ☐ Male commissioning parent (male surrogate parent)
- ☐ Female commissioning parent (female surrogate parent)
- ☐ Other (please describe): _____

How many consecutive weeks of leave does this policy provide?

*

Only answer this question if the following conditions are met:
Answer was NOT 'Private households ' at question '6 [S1Q200]' (In which sector is your organisation?) *and* Answer was NOT 'No' at question '65 [S3Q200]' ({if(S1Q200.NAOK == 4, "Do you have an adoption/surrogacy or primary caregiver policy that is different from your maternity policy / agreement?", "Does your organisation have an adoption/surrogacy or primary caregiver policy that is different from your organisation's maternity policy?")})

use 4 weeks as an approximation for a month

_____
weeks

If you'd like to provide any additional details on the number of consecutive weeks of leave this policy provides, please do so below.

Only answer this question if the following conditions are met:
Answer was NOT 'Private households ' at question '6 [S1Q200]' (In which sector is your organisation?) *and* Answer was NOT 'No' at question '65 [S3Q200]' ({if(S1Q200.NAOK == 4, "Do you have an adoption/surrogacy or primary caregiver policy that is different from your maternity policy / agreement?", "Does your organisation have an adoption/surrogacy or primary caregiver policy that is different from your organisation's maternity policy?")})

How many consecutive weeks of paid leave does this policy provide?

*

Only answer this question if the following conditions are met:
Answer was NOT 'Private households ' at question '6 [S1Q200]' (In which sector is your organisation?) *and* Answer was NOT 'No' at question '65 [S3Q200]' ({if(S1Q200.NAOK == 4, "Do you have an adoption/surrogacy or primary caregiver policy that is different from your maternity policy / agreement?", "Does your organisation have an adoption/surrogacy or primary caregiver policy that is different from your organisation's maternity policy?")})

use 4 weeks as an approximation for a month

weeks

If you'd like to provide any additional details on the number of consecutive weeks of paid leave this policy provides, please do so below.

Only answer this question if the following conditions are met:
Answer was NOT 'Private households ' at question '6 [S1Q200]' (In which sector is your organisation?) *and* Answer was NOT 'No' at question '65 [S3Q200]' ({if(S1Q200.NAOK == 4, "Do you have an adoption/surrogacy or primary caregiver policy that is different from your maternity policy / agreement?", "Does your organisation have an adoption/surrogacy or primary caregiver policy that is different from your organisation's maternity policy?")})

What percentage (if any) of the employee's total earnings is paid according to this policy? *

Only answer this question if the following conditions are met:
Answer was NOT 'Private households ' at question '6 [S1Q200]' (In which sector is your organisation?) *and* Answer was NOT 'No' at question '65 [S3Q200]' ({if(S1Q200.NAOK == 4, "Do you have an adoption/surrogacy or primary caregiver policy that is different from your maternity policy / agreement?", "Does your organisation have an adoption/surrogacy or primary caregiver policy that is different from your organisation's maternity policy?")})

percent (%)

If you'd like to provide any additional details on the percentage of the employee's total earnings paid that this policy provides, please do so below.

Only answer this question if the following conditions are met:
Answer was NOT 'Private households ' at question '6 [S1Q200]' (In which sector is your organisation?) *and* Answer was NOT 'No' at question '65 [S3Q200]' ({if(S1Q200.NAOK == 4, "Do you have an adoption/surrogacy or primary caregiver policy that is different from your maternity policy / agreement?", "Does your organisation have an adoption/surrogacy or primary caregiver policy that is different from your organisation's maternity policy?")})

Does this policy cover the continuation of all existing salary related benefits such as medical aid, provident fund and risk cover while on leave? *

Only answer this question if the following conditions are met:
Answer was NOT 'Private households ' at question '6 [S1Q200]' (In which sector is your organisation?) *and* Answer was NOT 'No' at question '65 [S3Q200]' ({if(S1Q200.NAOK == 4, "Do you have an adoption/surrogacy or primary caregiver policy that is different from your maternity policy / agreement?", "Does your organisation have an adoption/surrogacy or primary caregiver policy that is different from your organisation's maternity policy?")})

- ○ Yes
- ○ Not all, but some benefits
- ○ No
- ○ Not applicable

{if(S1Q200.NAOK == 4, "Do you provide guidance to domestic worker(s) who adopt a child on how to claim benefits from the UIF?", "Does your organisation provide guidance to adoptive employees on how to claim benefits from the UIF?")} *

- ○ Yes
- ○ No
- ○ Other (please describe)

Would you be open to being contacted to discuss your adoption/surrogacy or primary caregiver policy / agreement in further detail? *

Only answer this question if the following conditions are met:
Answer was NOT 'No' at question '65 [S3Q200]' ({if(S1Q200.NAOK == 4, "Do you have an adoption/surrogacy or primary caregiver policy that is different from your maternity policy / agreement?", "Does your organisation have an adoption/surrogacy or primary caregiver policy that is different from your organisation's maternity policy?")})

- ○ Yes
- ○ No

{if(S1Q200.NAOK == 4, "To what extent do you agree with the following principles when considering parental leave in relation to your employees?", "To what extent does your organisation agree with the following principles when considering parental leave?")}

*

{if(S1Q200.NAOK == 4, "", "*Please remember to provide your organisation's point of view and not your own individual point of view*")}

	completely disagree	somewhat disagree	neutral	somewhat agree	completely agree
Employers should adopt a gender-neutral approach to granting parental leave to employees	○	○	○	○	○
Regardless of whether the employee gives birth to the child, an employee (of any sex or gender) should be entitled to parental leave if that employee is to be the primary caregiver of the child and is either the child's biological parent or parent by law	○	○	○	○	○
A non-parent primary caregiver of a child should be entitled to parental leave (e.g. a biological mother dies during childbirth, a surviving grandparent is your employee and requests parental leave)	○	○	○	○	○

{if(S1Q200.NAOK == 4, "If regulations extended maternity policy beyond female employees and biological mothers only, what would be your biggest concerns (if any), in relation to your employees?", "If regulations extended maternity policy beyond female employees and biological mothers only, what would be your organisation's biggest concerns (if any)?")}

{if(S1Q200.NAOK == 4, "", "*Please remember to provide your organisation's point of view and not your own individual point of view*")}

1 [ ]
2 [ ]
3 [ ]

Discrimination and Risk (Pregnancy, maternity, parents and breastfeeding)

{if(S1Q200.NAOK == 4, "Are there views or practices in your private household that are against hiring, retaining and/or promoting female employees?", "Are there views or practices in your organisation that are against hiring, retaining and/or promoting female employees?")} *

- ○ Yes
- ○ No

You answered "yes" to the question above. Please can you briefly describe some of these views or practices.

Only answer this question if the following conditions are met:
Answer was 'Yes' at question '80 [S4Q100]' ({if(S1Q200.NAOK == 4, "Are there views or practices in your private household that are against hiring, retaining and/or promoting female employees?", "Are there views or practices in your organisation that are against hiring, retaining and/or promoting female employees?")})

Are you aware of any practices (formal or informal) that are aimed at not hiring women of childbearing age? *

- ○ Yes
- ○ No

You answered "yes" to the question above. Please can you briefly describe some of these practices (formal or informal) that are aimed at not hiring women of childbearing age.

Only answer this question if the following conditions are met:
Answer was 'Yes' at question '82 [S4Q200]' (Are you aware of any practices (formal or informal) that are aimed at not hiring women of childbearing age?)

{if(S1Q200.NAOK == 4, "Have you identified and recorded all potential risks to pregnant and breastfeeding employees in your private household?", "Has your organisation identified and recorded all potential risks to pregnant and breastfeeding employees in your workplace?")}
*****

- ○ Yes
- ○ Some
- ○ No

{if(S1Q200.NAOK == 4, "Have you reviewed and updated the potential risks (referred to above) to pregnant and breastfeeding employees in your private household?", "Has your organisation reviewed and updated the potential risks (referred to above) to pregnant and breastfeeding employees in your workplace?")} *

Only answer this question if the following conditions are met:
Answer was 'Yes' *or* 'Some' at question '84 [S4Q300]' ({if(S1Q200.NAOK == 4, "Have you identified and recorded all potential risks to pregnant and breastfeeding employees in your private household?", "Has your organisation identified and recorded all potential risks to pregnant and breastfeeding employees in your workplace?")})

- ○ Yes
- ○ Some
- ○ No

Has your organisation created a list of safe employment positions that pregnant or breast-feeding women can be transferred to if needed? *

Only answer this question if the following conditions are met:
Answer was 'Formal sector (Non-agricultural)' *or* 'Informal sector (Non-agricultural)' *or* 'Agriculture' *or* 'Public Sector' at question '6 [S1Q200]' (In which sector is your organisation?)

- ○ Yes
- ○ No

{if(S1Q200.NAOK == 4, "Have you informed your domestic worker(s) about hazards and risks to pregnant and breastfeeding employees?", "Has your organisation informed employees about hazards and risks to pregnant and breastfeeding employees?")} *

- ○ Yes
- ○ No

{if(S1Q200.NAOK == 4, "How do you inform your domestic worker(s) about hazards and risks to pregnant and breastfeeding employees? (select any that apply)", "How does your organisation inform employees about hazards and risks to pregnant and breastfeeding employees? (select any that apply)")} *

Only answer this question if the following conditions are met:
Answer was 'Yes' at question '87 [S4Q500]' ({if(S1Q200.NAOK == 4, "Have you informed your domestic worker(s) about hazards and risks to pregnant and breastfeeding employees?", "Has your organisation informed employees about hazards and risks to pregnant and breastfeeding employees?")})

- ☐ Pregnant employees are informed when they announce/communicate their pregnancy
- ☐ Pregnancy and breastfeeding hazards and risk are continually communicated through safety and risk communication platforms
- ☐ Pregnancy and breastfeeding hazards and risks are communicated during induction
- ☐ Pregnancy and breastfeeding hazards and risks communicated within the policy
- ☐ Other (please describe): _____

{if(S1Q200.NAOK == 4, "Do you have a stay-in-touch programme to connect with your employee(s) during their maternity or family responsibility leave?", "Does your organisation have a stay-in-touch programme to connect with employees during their maternity or family responsibility leave?")} *

- ○ Yes
- ○ No

You answered "yes" to the question above. Please can you briefly describe your "*stay-in-touch*" programme

Only answer this question if the following conditions are met:
Answer was 'Yes' at question '89 [S4Q600]' ({if(S1Q200.NAOK == 4, "Do you have a stay-in-touch programme to connect with your employee(s) during their maternity or family responsibility leave?", "Does your organisation have a stay-in-touch programme to connect with employees during their maternity or family responsibility leave?")})

{if(S1Q200.NAOK == 4, "To what extent do you support employees returning to the workplace after maternity/paternity/surrogacy/adoption/parental leave?", "To what extent does your organisation support employees returning to the workplace after maternity/paternity/surrogacy/adoption/parental leave?")} *

not at all supported	supported to a small extent	supported somewhat	supported to a large extent	supported above and beyond
○	○	○	○	○

{if(S1Q200.NAOK == 4, "Do you have a formal re-entry programme for employee(s) returning to work after maternity/paternity/surrogacy/adoption/parental leave?", "Does your organisation have a formal re-entry programme for employees returning to work after maternity/paternity/surrogacy/adoption/parental leave?")} *

- ○ Yes
- ○ No

You answered "yes" to the question above. Please can you briefly describe your "*re-entry*" programme (i.e. duration, topics covered, etc.)

Only answer this question if the following conditions are met:
Answer was 'Yes' at question '92 [S4Q800]' ({if(S1Q200.NAOK == 4, "Do you have a formal re-entry programme for employee(s) returning to work after maternity/paternity/surrogacy/adoption/parental leave?", "Does your organisation have a formal re-entry programme for employees returning to work after maternity/paternity/surrogacy/adoption/parental leave?")})

Would you be open to being contacted to discuss your "*re-entry*" programme in further detail? *

Only answer this question if the following conditions are met:
Answer was 'Yes' at question '92 [S4Q800]' ({if(S1Q200.NAOK == 4, "Do you have a formal re-entry programme for employee(s) returning to work after maternity/paternity/surrogacy/adoption/parental leave?", "Does your organisation have a formal re-entry programme for employees returning to work after maternity/paternity/surrogacy/adoption/parental leave?")})

- ○ Yes
- ○ No

{if(S1Q200.NAOK == 4, "Do you offer any of the following benefits to employees returning to work after maternity/paternity/surrogacy/adoption/parental leave? (select any that apply)", "Does your organisation offer any of the following benefits to employees returning to work after maternity/paternity/surrogacy/adoption/parental leave? (select any that apply)")} *

- ☐ Reduced working hours
- ☐ Flexible work schedules (flexi time)
- ☐ Flexible work location (work from home options or telecommuting)
- ☐ In-house child-care (on-site day care)
- ☐ Other workplace support (please describe):

{if(S1Q200.NAOK == 4, "Does your policy / agreement with your domestic worker(s) provide for breaks for employees who are breastfeeding or expressing milk during the working day?", "Does your organisation's policy provide for breaks for employees who are breastfeeding or expressing milk during the working day?")} *

- ○ Yes
- ○ No

How many breaks are provided, how long is the duration of the break, and for how long after the child is born are breaks provided?

*

Only answer this question if the following conditions are met:
Answer was 'Yes' at question '96 [S4Q1000]' ({if(S1Q200.NAOK == 4, "Does your policy / agreement with your domestic worker(s) provide for breaks for employees who are breastfeeding or expressing milk during the working day?", "Does your organisation's policy provide for breaks for employees who are breastfeeding or expressing milk during the working day?")})

use 4 weeks as an approximation for a month

how many breaks are provided (per day)	
how many minutes (per break)	
for how many weeks after the child is born	

{if(S1Q200.NAOK == 4, "Do you provide facilities at your private household for employees who are breastfeeding or expressing milk, to do so during the working day?", "Does your organisation provide facilities for employees who are breastfeeding or expressing milk, to do so during the working day?")} *

- ○ Yes
- ○ No

Submit

Do you have any other comments related to maternity or other parental/family leave?

Only answer this question if the following conditions are met:
Answer was NOT 'I do not agree to participate in the survey' at question '2 [Consent]' ()

Please select any of the following if applicable

Only answer this question if the following conditions are met:
Answer was NOT 'I do not agree to participate in the survey' at question '2 [Consent]' ()

We'd like to make you aware that even if we do contact you for further information, the results of this research will be aggregated and not reflect any individual comments. None of your responses will be attributed to your specific organisation.

- ☐ I am open to being contacted to discuss my organisation's adoption/surrogacy or primary caregiver policy
- ☐ I am open to being contacted to discuss my organisation's re-entry programme in further detail
- ☐ I would like to be invited to an informative results session
- ☐ I would like to receive a summary results report

Thank you for agreeing to be contacted, kindly provide us with your email address and/or contact number below

Only answer this question if the following conditions are met:
Answer was NOT 'I do not agree to participate in the survey' at question '2 [Consent]' () *and* Answer was 'I would like to receive a summary results report' *or* 'I would like to be invited to an informative results session' *or* 'I am open to being contacted to discuss my organisation's re-entry programme in further detail' *or* 'I am open to being contacted to discuss my organisation's adoption/surrogacy or primary caregiver policy' at question '100 [S5Q200]' (Please select any of the following if applicable)

Email address	
Contact number	

{S0ExitResponse.NAOK}

{if(S0Exit.NAOK=="Exit", "Please click on the SUBMIT button below to exit this survey.", "Please click on the SUBMIT button below when you are ready to submit your answers.")}

You will automatically be redirected to the UIF's Maternity Leave website should you need any additional information around maternity benefits.

{if(S0Exit.NAOK=="Exit", "Thank you for your time.", "Thank you for taking the time to complete this survey.")}

If you would like to opt out of further communications about this research project, please click here to unsubscribe : opt out

Submit your survey.
Thank you for completing this survey.

Appendix F Provincial, industry and occupation breakdown (employees)

By province

	TOTAL CLAIMS	2018	2017	2016	2015	2014	TOTAL UNIQUE ID NUMBERS	TOTAL UNIQUE EMAIL ADDRESSES
TOTAL	**413 861**	**21 751**	**107 378**	**100 754**	**102 659**	**81 319**	**374 242**	**20 410**
EASTERN CAPE	**23 542**	1 287	6 358	5 568	5 901	4 428	**21 665**	**654**
FREE STATE	**14 192**	629	3 472	3 321	3 622	3 148	**12 881**	**337**
GAUTENG	**135 643**	7 938	36 357	32 551	32 125	26 672	**122 859**	**11 923**
KWAZULU NATAL	**67 895**	3 540	16 778	16 541	17 674	13 362	**62 915**	**2 130**
LIMPOPO	**15 710**	718	4 238	3 909	3 679	3 166	**13 491**	**325**
MPUMALANGA	**48 100**	2 021	12 048	12 047	12 255	9 729	**41 828**	**1 579**
NORTH WEST	**7 971**	423	2 021	1 949	1 946	1 632	**7 252**	**195**
NORTHERN CAPE	**8 710**	363	2 242	2 179	2 254	1 672	**7 415**	**166**
WESTERN CAPE	**92 064**	4 831	23 859	22 678	23 196	17 500	**83 902**	**3 091**
UNKNOWN	**34**	1	5	11	7	10	**34**	**10**

By industry

	TOTAL CLAIMS	2018	2017	2016	2015	2014	TOTAL UNIQUE ID NUMBERS	TOTAL UNIQUE EMAIL ADDRESSES
TOTAL	**413 861**	**21 751**	**107 378**	**100 754**	**102 659**	**81 319**	**374 242**	**20 410**
AGRICULTURE	**16 481**	879	4 322	3 971	4 040	3 269	**15 027**	**369**
COMMUNITY AND SOCIAL SERVICES	**165 848**	8 892	43 645	40 798	40 484	32 029	**150 080**	**9 930**
CONSTRUCTION	**8 163**	378	2 031	1 918	2 124	1 712	**7 277**	**490**
FINANCE AND OTHER BUSINESS SERVICES	**19 526**	964	5 100	4 840	4 746	3 876	**17 468**	**1 925**
MANUFACTURING	**49 006**	2 513	12 385	11 703	12 599	9 806	**44 397**	**1 925**
MINING	**4 372**	161	1 145	1 062	1 139	865	**3 751**	**196**
OTHER	**3 681**	180	944	971	870	716	**3 328**	**131**
PRIVATE HOUSEHOLDS	**6 093**	232	1 332	1 388	1 604	1 537	**5 574**	**97**
TRADE	**122 749**	6 582	32 034	29 771	30 508	23 854	**111 271**	**4 657**
TRANSPORT	**17 942**	970	4 440	4 332	4 545	3 655	**16 069**	**690**
UTILITIES	**0**	0	0	0	0	0	**0**	**0**

By occupation

	TOTAL CLAIMS	2018	2017	2016	2015	2014	TOTAL UNIQUE ID NUMBERS	TOTAL UNIQUE EMAIL ADDRESSES
TOTAL	**413 861**	**21 751**	**107 378**	**100 754**	**102 659**	**81 319**	**374 242**	**20 410**
CLERK	**32 216**	1 541	8 057	7 893	8 615	6 110	**28 378**	**5 340**
CRAFT AND RELATED TRADE	**5 859**	287	1 415	1 447	1 547	1 163	**5 227**	**138**
DOMESTIC WORKER	**4 360**	180	993	1 003	1 154	1 030	**3 921**	**78**
ELEMENTARY	**9 371**	421	2 338	2 168	2 348	2 096	**8 461**	**61**
MANAGER	**7 913**	383	1 925	1 989	2 069	1 547	**6 871**	**1 761**
OTHER	**311 599**	16 745	80 764	75 599	76 360	62 131	**283 708**	**7 997**
PLANT AND MACHINE OPERATOR	**138**	5	34	39	37	23	**123**	**1**
PROFESSIONAL	**11 139**	691	3 390	2 642	2 667	1 749	**9 549**	**3 457**
SALES AND SERVICES	**29 889**	1 449	8 139	7 601	7 487	5 213	**26 814**	**1 317**
TECHNICIAN	**1 377**	49	323	373	375	257	**1 190**	**260**

Appendix G Industry breakdown (employers)

By industry

	TOTAL UIF db CLAIMS POPULATION	EMPLOYERS in UIF database	EMPLOYERS in EY databases	TOTAL EMPLOYERS	OPT OUT RESPONSES	INCOMPLETE RESPONSES	COMPLETE RESPONSES	SAMPLE 95% CI	SAMPLE 90% CI
TOTAL	**413 861**	**84 899**	**642**	**85 541**	**54**	**1 056**	**402**		
AGRICULTURE	16 481	4 532	18	**4 550**			38	78	55
COMMUNITY AND SOCIAL SERVICES	165 848	39 516	44	**39 560**			18	382	270
CONSTRUCTION	8 163	2 299	29	**2 328**			11	41	29
FINANCE AND OTHER BUSINESS SERVICES	19 526	2 274	138	**2 412**			67	43	30
MANUFACTURING	49 006	9 914	122	**10 036**			40	160	113
MINING	4 372	390	73	**463**			6	9	6
OTHER	3 681	268	118	**386**			162	7	5
PRIVATE HOUSEHOLDS	6 093	5 490	0	**5 490**			27	93	66
TRADE	122 749	18 471	76	**18 547**			23	261	184
TRANSPORT	17 942	1 745	18	**1 763**			8	32	22
UTILITIES	0	0	6	**6**			2	1	1

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