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Eligibility, notifications, resumption of work, expiry and extensions. “An employee who takes pre-adoptive leave is entitled to the same rights as to the resumption of work as an employee who takes maternity leave under Section 29 (3) of the Employment Act 2007.”

## PRE-ADOPTIVE LEAVE UNDER THE EMPLOYMENT (AMENDMENT) ACT

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*Disclaimer: This Article does not form part of a Legal Opinion and is purely informative.*

### INTRODUCTION

The concept of pre-adoptive leave was introduced into Kenyan law through a legislative amendment to Section 29 of the Employment Act, 2007, which came into effect on the 15<sup>th</sup> of April 2021. The Employment (Amendment) Act 2021 introduces the ‘exit certificate’ which is defined as ‘a written authority given by a registered adoption society to a prospective adoptive parent to take the child from the custody of the adoptive society.’

The provisions of the Children Act (No. 8 of 2001) permit adoption of children resident within Kenya (Section 157). An adoption order can only be made provided that the child in question has been in the continuous care and control of the applicant within Kenya for a period of three (3) consecutive months prior to filing the application.



## ELIGIBILITY FOR PRE-ADOPTIVE LEAVE

In light of the provisions of Section 157 of the Children Act where a child is to be placed in continuous care and control of an applicant who is an employee as defined under the Employment Act 2007, such employee is entitled to one month's pre-adoptive leave with full pay from the date of the placement of the child.

## NOTIFICATION REQUIREMENT

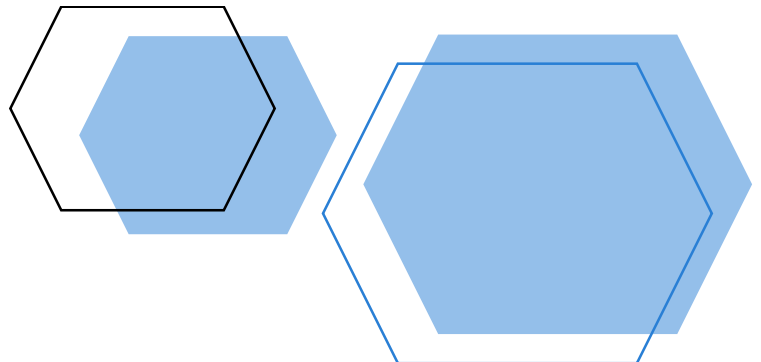
The Amendment further imposes an obligation on the employee to give fourteen (14) days' written notification to the employer of the intention of the adoption society to place the child in the custody of the employee. The notice is to be supported by documentation evidencing the intention of the adoption society to place the child in the employee's custody, in addition to the custody arrangement between the employee and the adoption society and an exit certificate.

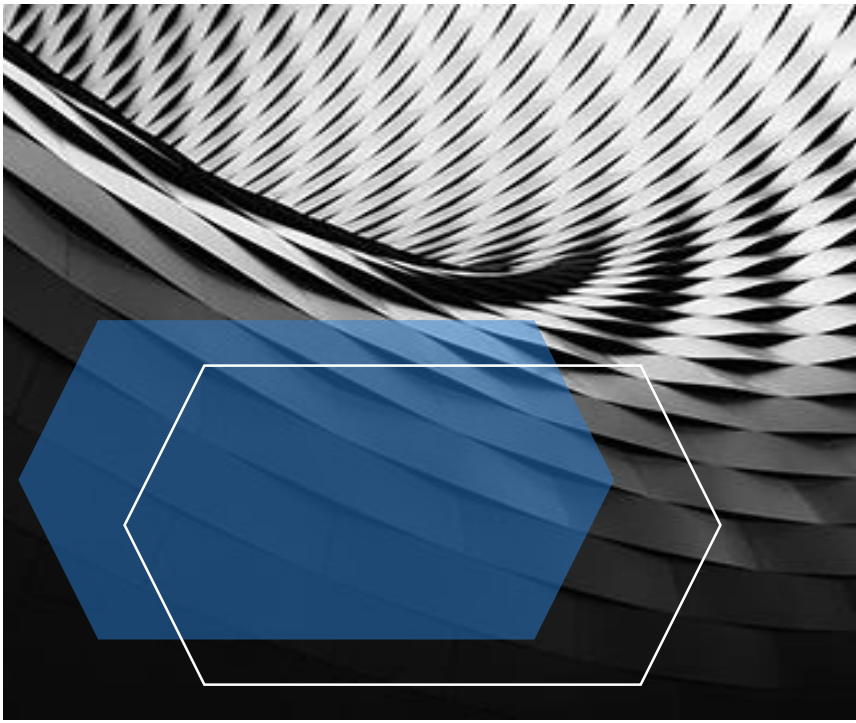
## RESUMPTION OF WORK DUTIES

An employee who takes pre-adoptive leave is entitled to the same rights as to the resumption of work as an employee who takes maternity leave under Section 29 (3) of the Employment Act 2007. This means that such employee may resume the job or position they held prior to taking leave or to a suitable job on terms or conditions no less favourable than those applicable had the employee not taken pre-adoptive leave.

## EXTENSIONS AND EXPIRY OF PRE-ADOPTIVE LEAVE

As is the case with maternity leave, pre-adoptive leave may be similarly extended. Where the extension is granted with the employer's consent or immediately before its expiry, the pre-adoptive leave expires on the last day of such extended leave. Additionally, an employee eligible for pre-adoptive leave does not forfeit their annual leave entitlement.





## CONCLUSION

In sum, the passing of the Employment (Amendment) Act 2021 is representative of international best practices in regards to adoption. Notably, given that an adoption order under the Children Act may be made either by a sole applicant or jointly by two spouses (Section 158), this means that spouses are entitled to pre-adoptive leave from their respective employers.

## YOUR EMPLOYMENT AND LABOUR TEAM



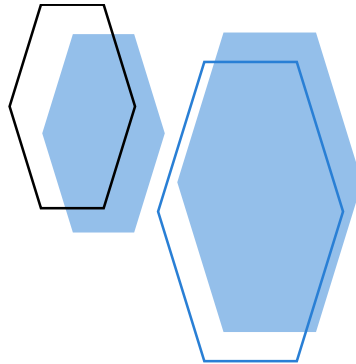
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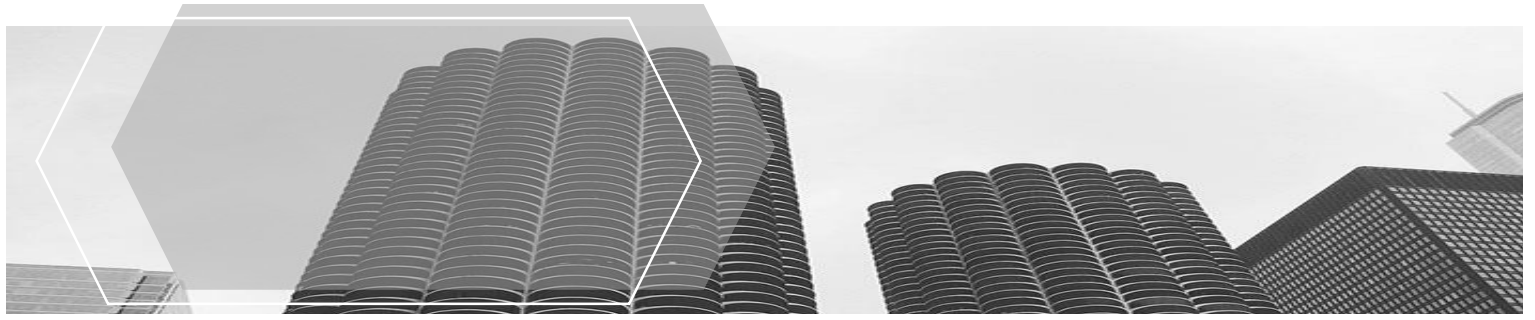


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