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## GOVERNMENT NOTICE GOEWERMENTSKENNISGEWING

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### DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT DEPARTEMENT VAN JUSTISIE EN STAATKUNDIGE ONTWIKKELING

No. R. 50

26 January 2012

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

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

#### SCHEDULE

##### Definitions

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

##### Amendment of Classification of Regulations

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

- "38A. Maternity leave
- 38B. Adoption leave

38C. Family responsibility leave".

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

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

#### "Maternity leave

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **Adoption leave**

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

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

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

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

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

#### **Family responsibility leave**

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

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

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

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

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

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

#### **Amendment of Schedule E to Regulations**

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

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

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

**WET OP LANDDROSTE, 1993 (WET NO. 90 VAN 1993)**  
**REGULASIES VIR REGTERLIKE BEAMPTES IN DIE LAER HOWE, 1994:**  
**WYSIGING**

Die Minister van Justisie en Staatkundige Ontwikkeling het kragtens artikel 16 van die Wet op Landdroste, 1993 (Wet No. 90 van 1993), op aanbeveling van die Landdrostekommissie, die regulasies in die Bylae uitgevaardig.

**BYLAE**

**Woordomskrywing**

1. In hierdie regulasies beteken "die Regulasies" die regulasies afgekondig by Goewermentskennisgewing No. R. 361 van 11 Maart 1994, soos gewysig by Goewermentskennisgewings Nos. R. 644 van 1 April 1994, R. 1407 van 11 Augustus 1994, R. 1808 van 17 Oktober 1994, R. 1707 van 27 Oktober 1994, R. 1791 van 17 November 1995, R. 72 van 26 Januarie 1996, R. 331 van 1 Maart 1996, R. 957 van 7 Junie 1996, R. 1178 van 19 Julie 1996, R. 1242 van 2 Augustus 1996, R. 1340 van 12 Augustus 1996, R. 1567 van 27 September 1996, R. 1627 van 1 Oktober 1996, R. 178 van 7 Februarie 1997, R. 421 van 20 Maart 1997, R. 1081 van 8 Augustus 1997, R. 274 van 20 Februarie 1998, R. 997 van 7 Augustus 1998, R. 56 van 15 Januarie 1999, R. 1498 van 17 Desember 1999, R. 1339 van 26 September 2003 en R. 1593 van 31 Oktober 2003.

**Wysiging van Indeling van Regulasies**

2. Die Indeling van die Regulasies word hierby gewysig deur die volgende uitdrukkings na die uitdrukking "38. Verlof" in te voeg:

"38A. Kraamverlof

- 38B. Verlof vir aanneming  
38C. Verlof vir gesinsverantwoordelikheid".

### Invoeging van regulasies 38A, 38B en 38C in Regulasies

3. Die volgende regulasies word hierby na regulasie 38 van die Regulasies ingevoeg:

#### "Kraamverlof

**38A.** (1) 'n Maksimum van vier opeenvolgende kalendermaande kraamverlof met volle besoldiging kan, per bevalling, aan 'n landdros toegestaan word, beginnende te eniger tyd vanaf vier weke voor die verwagte datum van geboorte, of op 'n vroeër datum waarvan die behandelende mediese praktisyn sertifiseer dat dit nodig is vir die landdros se gesondheid of dié van die ongebore kind, ongeag die landdros se huwelikstatus.

(2) Geen landdros mag vir ten minste vier weke na die geboorte normale amptelike pligte hervat nie, tensy die behandelende mediese praktisyn sertifiseer dat sy geskik is om dit te doen.

(3) Die kraamverlof kan voor en na die bevalling gebruik word, maar moet in alle gevalle ononderbroke en aaneenlopend met die bevalling wees.

(4) Ondanks subregulasie (3) kan kraamverlof slegs onderbreek word indien—

- (a) 'n landdros so verkies indien die kind vroeggebore is en gedurende die kraamverlof gehospitaliseer word;
- (b) 'n landdros so verkies indien die kind siek word en vir 'n tydperk langer as 'n maand gedurende die kraamverlof gehospitaliseer word; of
- (c) die landdros gedurende die kraamverlof siek word.

(5) 'n Landdros wat verkies om haar kraamverlof soos in subregulasie (4) bedoel te onderbreek, kan vir die duur van die onderbreking haar—

- (a) jaarlikse verlof;
- (b) onbetaalde verlof in die geval waar die landdros nie genoeg jaarlikse verlof beskikbaar het nie; of
- (c) siekteverlof in die geval van siekte, gebruik.



(6) 'n Landdros wat haar kraamverlof soos in subregulasie (4) bedoel onderbreek het, en versuim om na die verstryking van die vier weke soos in subregulasie (2) bedoel terug te keer werk toe, moet daardie tydperk met jaarlikse verlof, of onbetaalde verlof in die geval waar die landdros nie genoeg jaarlikse verlof beskikbaar het nie, dek.

(7) Kraamverlof kan op aansoek deur 'n landdros verleng word deur die toestaan van—

- (a) jaarlikse verlof;
- (b) onbetaalde verlof vir 'n tydperk van nie langer as ses kalendermaande nie in die geval waar die landdros nie genoeg jaarlikse verlof beskikbaar het nie; of
- (c) siekteverlof as gevolg van 'n mediese komplikasie.

(8) Siekteverlof kan toegestaan word vir afwesigheid van werk as gevolg van miskraam, doodgeboorte of beëindiging van swangerskap op mediese gronde, voor die derde trimester van swangerskap en voor die tydperk van kraamverlof 'n aanvang neem.

(9) Indien die miskraam, doodgeboorte of beëindiging van swangerskap op mediese gronde gedurende die derde trimester van swangerskap of nadat die tydperk van kraamverlof 'n aanvang geneem het, plaasvind, is die landdros geregtig op ses opeenvolgende weke kraamverlof wat 'n aanvang sal neem na die miskraam, doodgeboorte of beëindiging van swangerskap op mediese gronde, waarna siekteverlof as gevolg van 'n mediese komplikasie toegestaan kan word.

(10) Indien die miskraam, doodgeboorte of beëindiging van swangerskap op mediese gronde plaasvind nadat die tydperk van kraamverlof 'n aanvang geneem het, word die tydperk voor die miskraam, doodgeboorte of beëindiging van swangerskap op mediese gronde as kraamverlof geag.

### **Verlof vir aanneming**

**38B.** (1) 'n Landdros wat 'n kind regtens aanneem wat op datum van aanneming nie ouer as 24 maande is nie, kwalifiseer vir verlof vir aanneming tot 'n maksimum van 84 kalenderdae, beginnende vanaf die datum waarop die aangenome kind verblyf by die aannemende ouer neem.

(2) Verlof vir aanneming kan op aansoek deur 'n landdros verleng word deur die toestaan van—

- (a) jaarlikse verlof; of

(b) onbetaalde verlof vir 'n tydperk van nie langer as ses kalendermaande nie in die geval waar die landdros nie genoeg jaarlikse verlof beskikbaar het nie.

(3) Indien die ega of lewensmaat geregistreer ingevolge regulasie 54B van 'n landdros in subregulasie (1) bedoel ook 'n landdros is, is daardie ega of lewensmaat geregtig op die verlof vir gesinsverantwoordelikheid in regulasie 38C(1)(b) bedoel.

### **Verlof vir gesinsverantwoordelikheid**

**38C.** (1) Aan 'n landdros kan nie meer as drie werksdae verlof vir gesinsverantwoordelikheid per jaarlikse verlofsiklus toegestaan word nie, indien—

- (a) die landdros se ega of lewensmaat geregistreer ingevolge regulasie 54B geboorte skenk;
- (b) die landdros se ega of lewensmaat geregistreer ingevolge regulasie 54B 'n kind wat op die datum van aanneming nie ouer as 24 maande is nie, aanneem; of
- (c) die landdros se kind, met inbegrip van 'n aangenome kind, ega of lewensmaat geregistreer ingevolge regulasie 54B, siek is.

(2) Aan 'n landdros kan nie meer as vyf werksdae verlof vir gesinsverantwoordelikheid per jaarlikse verlofsiklus toegestaan word nie, indien die landdros se kind, met inbegrip van 'n aangenome kind, kleinkind, ega of lewensmaat geregistreer ingevolge regulasie 54B, ouer, aangenome ouer, grootouer of skoonouer, sterf.

(3) Die aantal dae verlof vir gesinsverantwoordelikheid soos in subregulasies (1) en (2) bedoel, geneem, mag nie vyf dae in 'n jaarlikse verlofsiklus oorskry nie, tensy spesiale omstandighede verdere verlof na goeddunke van die Minister of 'n persoon deur hom of haar aangewys, regverdig.

(4) 'n Landdros wat al sy of haar verlof vir gesinsverantwoordelikheid geneem het, kan, onderhewig aan die goedkeuring van die Minister of 'n persoon deur hom of haar aangewys, aansoek doen om—

- (a) beskikbare jaarlikse verlof; of
- (b) onbetaalde verlof vir 'n tydperk van nie langer as ses kalendermaande nie, in die geval waar die landdros nie genoeg jaarlikse verlof beskikbaar het nie, te gebruik."

**Wysiging van Bylae E tot Regulasies**

4. Bylae E tot die Regulasies word hierby gewysig deur paragraaf 13 deur die volgende paragraaf te vervang:

"13. 'n Landdros kan slegs toelaat dat die verrigtinge in sy of haar hof gebeeldsend, uitgesaai of vir die hierdie doeleindes op band opgeneem word, of dat daar in sy of haar hof tydens 'n hofsitting, tydens 'n hofreses of onmiddellik voor of na die hofsitting foto's geneem word of televisiekameras of soortgelyke apparaat gebruik word, op die voorwaardes wat hy of sy goeddink—

- (a) nadat argument deur die aansoeker en enige ander party betrokke by die verrigtinge wat wens om die aansoek teen te staan, aangehoor is;
  - (b) na deeglike oorweging van—
    - (i) die regte van al die partye, met inbegrip van hulle regsverteenvoerders, getuies en hofpersoneel betrokke by die verrigtinge; en
    - (ii) die belange van die regspleging; en
  - (c) indien hy of sy tevrede is dat dit in die openbare belang is om so te doen."
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