

MENSTRUAL LEAVE: YAY OR NAY?



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A curious and controversial development in the global legal system has been the introduction of what is termed as **"menstrual leave"**. Menstrual leave is a form of leave which allows women to take time off from work for a day or two due to illnesses and symptoms arising from their menstrual cycle. These illnesses and/or symptoms usually include debilitating abdominal pain, severe diarrhoea, headaches, nausea and/or excessive bleeding. The rationale for menstrual leave is that (1) it is a monthly occurrence riddled with discomfort and pain so expecting an employee to consult a doctor

for purposes of getting sick leave every month is quite unreasonable, (2) it is not productive to have an employee who sits in the office under such circumstances just to mark themselves **"present"** (3) improves the general well-being of the employee thus resulting in employee retention, amongst others.

Although the concept has been making the news only recently with Zambia becoming the first African country in 2017 to introduce the one-day leave policy which does not require a medical certificate, it has actually been around since the 19th century. Other countries which have introduced menstrual leave in their employment legislation include Spain, Japan, Indonesia, Taiwan and South Korea. Notwithstanding that only a few countries have adopted this law, private companies have taken the initiative by introducing the policy, for example, WMN attorneys in South Africa recently announced the introduction of the policy in their work place.



The question then becomes, 'What is the controversy about?' It has been argued that the menstrual leave policy is discriminatory in or more of the following ways: (1) It affords a benefit to the female which is not available to the male, (2) even amongst women, it affords a benefit to women who suffer from severe symptoms which benefit is not available to women who do not suffer from the same or they have reached menopause, (3) it may discourage the hiring of women, (4) it is an infringement of privacy: a' la "the boss is on her period", (5) others have argued that sick leave should be taken instead.

Can we expect such changes in Botswana? My thoughts are that females are still receiving half salaries during maternity leave, so we still have a long way to go in so far as appreciating the natural and biological hardships of women in the workplace.