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Important questions answered about the National Minimum Wage



The President of SA signed the new national minimum wage statute into law effective from 1 January 2019 and businesses will have to ensure that their employment policies and procedures are sound.

Employers who fail to comply with the relevant legislation risk being caught up in unnecessary legal action and disputes as some employees and unions might see this as an opportunity to exploit the situation.

The purpose of this article is to provide you with a clear, objective and unbiased legal framework for some of the pertinent elements of the new National Minimum Wage Act (NMWA).

What is the new National Minimum Wage (NMW)?

- In terms of Section 4, the new National Minimum Wage will be the amount referred to in Schedule 1, **adjusted annually**.
- Every worker is entitled to a wage of an amount **not less** than the new National Minimum Wage.
- The new National Minimum Wage may not be waived and **takes precedent** over any contrary provision in any Contract, Collective Agreement or Law, except a Law amending this Act.
- The new National Minimum Wage **must be** a term of the employee's contract, except to the extent that the Contract, Collective Agreement or Law provides for a wage that is more favourable to the worker.
- It will be deemed an unfair labour practice if an Employer **unilaterally alters** wages, hours of work or other conditions of employment relating to the implementation of the National Minimum Wage Act.

What is the main objective of the National Minimum Wage Act (NMWA)?

The main objective of National Minimum Wage Act is to provide for a national minimum wage to advance economic development and social justice by improving the wages of the lowest paid workers, protecting workers from unreasonably low wages, promoting collective bargaining and supporting economic policy.

How is the new national minimum wage calculated?

A wage for purposes of the National Minimum Wage Act (NMWA) is the amount paid in money for ordinary hours worked and is calculated as follows:

- Any payments that enable an employee to work, including any transport, equipment, tool, food or accommodation allowance;
- Payment in kind, including board or accommodation;
- Gratuities, including bonuses, tips or gifts; and
- Any other prescribed category of payment.

If an employee is paid on a basis **other than the number of hours worked**, he/she may not be paid less than the NMW for ordinary hours worked.

The new National Minimum Wage is R20,00 for each ordinary hour worked; however, the following categories of employees have been excluded:

- Farm workers – R18,00 per hour;
- Domestic workers – R15,00 per hour;
- Workers employed in the extended works programme – R11,00 per hour; and
- Workers who have completed a learnership are entitled to the allowances referred to in Schedule 2 of this Act.

Exemptions from the new National Minimum Wage

In terms of Section 15 of the National Minimum Wage Act, an Employer or a registered Employers' Organisation **acting on behalf of its members** may apply for an exemption from paying the new National Minimum Wage. The draft regulations have been published on 20th June 2018 in regard to the exemption application process.

These regulations will contain:

- the procedure for obtaining an exemption;
- the details to be submitted with an exemption application;
- the obligation of Employers to consult with Employees or their Trade Unions;
- the criteria for evaluating an exemption;
- the period within which an exemption application must be submitted;
- the period during which a decision must be made regarding the exemption; and
- any other matter pertaining to the granting and declining of an exemption.

How will the new National Minimum Wage be enforced?

Recent amendments to Sections 69 and 73 of the Basic Conditions of Employment Act (BCEA) deal with enforcement of the new National Minimum Wage. The Director-General of the Department of Labour has been empowered to refer non-compliant employers to the **CCMA directly, as opposed to the Labour Court**. The CCMA may, as per the nature of the referral, render an arbitration award which can be made an Order of the Labour Court in respect of non-compliance with the NMWA.

Through our comprehensive *Labour Pro* product and services, we guide and assist businesses in a practical and supportive way with regard to the required processes and procedures to ensure labour legislation compliance and to minimise the risk to which the business is exposed when employing staff. Our experienced labour relations consultants deal comprehensively on the client's behalf with the relevant labour legislation and most common pitfalls that businesses encounter.

About the Author: Jared Francis joined SERR Synergy in October 2016, and currently holds the title of KZN Labour Manager. He is an admitted attorney who has practised in KZN and Gauteng. He holds an LLB degree, a Post-Graduate Diploma in Industrial Relations and a Post-Graduate Certificate in Forensic Investigation from the University of KwaZulu-Natal. He also holds Post-Graduate Certificates in Advanced Labour Law, Corporate Law, Advanced Human Resource Management and Health and Safety from UNISA and has more than 10 years' experience in the legal and industrial relations fields respectively.

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