

INSPECTIONS AND ENFORCEMENT SERVICES

# THE NATIONAL MINIMUM WAGE

## ACT NO 9 OF 2018 (THE ACT)

### PURPOSE OF THE ACT

The purpose of the Act is to advance economic development and social justice by-

- Improving the wages of the lowest paid workers;
- Protecting the workers from unreasonably low wages;
- preserving the value on the national minimum wage;
- promote the collective bargaining; and
- supporting economic policy.

### APPLICATION OF THE ACT

The Act applies to all workers and their employers except members of the South African National Defence Force, the National Intelligence Agency and the South African Secret Service.

The act does not apply to a volunteer, who is a person who performs work for another person and who does not receive or is not entitled to receive, any remuneration for his or her service.

### WHAT IS NATIONAL MINIMUM WAGE

The national minimum wage is the amount stated in schedule 1 of the Act as adjusted annually in terms of section 6 [s4 (1)].

Every worker is entitled to payment of a wage that is not less than the national minimum wage [s4 (4)].

Every employer must pay wages to its workers that is not less than national minimum wage [s4 (5)].

The payment of the national minimum wage cannot be waived and the national minimum wage takes precedence over any contrary provision in any contract, collective agreement, sectorial determination or law, except a law amending this Act [s4 (6)].

The national minimum wage must constitute a term of the worker's contract except to the extent where that the contract, collective agreement or law provides a favourable wage to the employer [s4 (7)].

It is an unfair labour practice for an employer to unilaterally alter wages, hours of work or other conditions of employment in connection with the implementation of the national minimum wage and sections 191, 193, 194 (4) and 195 of the Labour Relations Act applies, unless the context indicates otherwise [s4 (8)].

Sections 32,33 and 34 of the BCEA apply to the payment of the national minimum wage to workers.

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Subject to item 2, the national minimum wage is R23.19 per hour for each ordinary hour worked.

The farm workers are entitled to a minimum wage of R23.19 per hour.

Domestic workers are entitled to a minimum wage of R23.19 per hour.

Workers employed on an expanded public works programme are entitled to a minimum wage of R12.75 per hour.

Workers who have concluded learnership agreements contemplated in section 17 of the Skills Development Act, are entitled to the allowances contained in Schedule 2

### CALCULATION OF A WAGE

The calculation of a wage for the purposes of the Act is the amount payable in money for ordinary hours of work [s5 (1)].

The following payments are excluded in a calculation of a minimum wage-

- any payment to enable a worker to work including any transport, equipment, tool, food or accommodation allowance, unless specified otherwise in a sectorial determination.
- any payment in kind including board and accommodation, unless specified otherwise in a sectorial determination;
- gratuities including bonuses, tips or gifts; and
- any other prescribed category of payment.

Subject to Section 9A of the BCEA, a worker is entitled to receive the national minimum wage for the hours that the worker works on any day [s5 (2)].

A worker who works for less than four hours in any day must be paid for four hours work on that day.

If the worker is paid on the basis other than the number of hours worked, the worker may not be paid less than the national minimum wage for ordinary hours of work [s5(3)].

Any deduction from the wage must be in accordance with section 34 of the BCEA [S5 (4)].

### EXEMPTIONS

Employers or an employers organizations registered in terms of section 96 of the Labour Relations Act or any other law may apply for an exemption from paying the national minimum wage [s15 (1)].

### ENFORCEMENT OF NMWA

There are two enforcement procedures for the enforcement of the NMWA i.e.

- Securing a Written Undertaking ; and
- Issuing of the Compliance Order.

A labour inspector may secure an undertaking by the employer to comply with the provision of the NMWA, i.e. section 4(5).

The Written Undertaking is secured in terms of section 68(1) of the BCEA.

If an employer fails to comply with the Written Undertaking within the time period specified in the undertaking, the Director-General: Labour may request the CCMA to make a Written Undertaking an arbitration award [s68(3)].

It is important to take note that there is no mention of the fine to be imposed on the employer for failure to comply with the Written Undertaking.

Issuing of the Compliance Order.

A labour inspector may issue a Compliance Order if she has a reasonable grounds to believe that the employer has failed to comply with the provisions of the NMWA.

The compliance Order may be issued in terms of section 69(1) of the BCEA.

The provisions of the Compliance Order must comply with section 69(2) of the BCEA.

It is important or interesting to note that the above mentioned section provides that Compliance order must set out the fine that may be imposed on the employer in terms of section 76A and schedule 2 of the BCEA.

failure by the employer to comply with the compliance order may result in the Compliance Order being made an arbitration award through application by the Director-General at the CCMA [s73(1)].

### FINES

A fine may be imposed on an employer who paid an employee less than the national minimum wage [s76A (1) BCEA].

The payment of fine is applicable after the employer has failed to comply with the Compliance order issued by the inspector.

The decision whether the employer shall be liable for a fine or not lies with the Commissioner.

The employer is liable for a fine only in an instance where the employer has failed to comply with the compliance order [s69(2) (c) and (f)].

A fine may be imposed on an employer who paid an employee less than the national minimum wage [s76A (1) BCEA].

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The decision whether the employer shall be liable for a fine or not lies with the Commissioner.

The employer is liable for a fine only in an instance where the employer has failed to comply with the compliance order [s69(2) (c) and (f)].

Fine for failure to comply with the NMW is payable in terms of section 76A of the BCEA and failure to comply with provisions of the BCEA is payable in terms of the Schedule 2 of the BCEA [s69 (2)(c) and (f)].

i.e. an employer who fails to pay severance pay in terms of section 41 of the BCEA will be liable for a fine in accordance with schedule 2 of the BCEA; and

An employer who pay less than the national minimum wage in terms of section 4(5) of the NMWA will be liable for a fine in terms of section 76A.

### APPLICATION to the CCMA

The Statutory Services is tasked (by the DoE&L) with referring matters and appearing at the CCMA on behalf of the Director-General for the enforcement of the Compliance Order and the Written Undertaking.

In order for the statutory services to fulfil the above mentioned task, they must be so designated in terms of section 63(1) (b) of the BCEA and/or be delegated in terms of section 85 (1) of the BCEA. In the absence of the aforementioned, the ss does not have authority to make an application to the CCMA.

It is very interesting to note that the the labour inspectors appointed are authorised to refer a dispute and appear on behalf of the GD at the CCMA [s64].

In light of the aforementioned it is important for the SS to be issued with delegation letters to refer and represent the Director-General at the CCMA to avoid unnecessary delays that may be occasioned by employers raising points in limine to this effect.

