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EMPLOYMENT

The National Minimum Wage: a further update

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On 8 February 2017, Cyril Ramaphosa, the Deputy President of South Africa, disclosed preliminary details regarding the implementation of a national minimum wage ("NMW"). This came after social partners, representatives from government, business, the community sector and two of the three labour federations represented at NEDLAC signed agreements on 7 February 2017 which provide for, among others, the imposition of the NMW ("NMW Agreement").

During the State of the Nation address on 9 February 2017, Jacob Zuma, the President of South Africa stated that:

> *Unity in action was also demonstrated again this week with the conclusion of the agreement on the National Minimum Wage and on measures to stabilise labour relations. This follows a call I had made in the State of the Nation Address on 14 June 2014. We congratulate the Deputy President and the team at NEDLAC for this milestone and wish them well for work that still needs to be done.*

The NMW Agreement provides, among others, the following regarding the NMW:

IMPLEMENTATION

The NMW will be implemented by no later than 1 May 2018 and will be set at R20 per hour.

Despite the above-mentioned implementation date, it is agreed that the NMW should be implemented as soon as possible. The implementation date may, therefore be prior to 1 May 2018. This will depend on factors such as the finalisation of legislation to give effect to the NMW ("NMW Act").

NMW COMMISSION

A NMW Commission ("Commission") will be established and will be tasked with activities such as:

- Establishing medium term aspirational targets for the NMW, taking into account appropriate benchmarks and the International Labour Organisations ("ILO") principles;
- Making adjustments to the NMW. The first and subsequent adjustments will be based on a number of factors including cost of living and minimum living levels, the alleviation of poverty, wage differentials and inequality, conditions of employment, the health and safety and welfare of workers, employment levels, inflation, GDP growth, productivity, collective bargaining, the aspirational target, the impact of the adjustment of employment, in line with the principles of the Basic Conditions of Employment and the ILO.

HOURS OF WORK

An advisory panel ("Panel") will conduct an assessment of the impact of the NMW on workers' income. It will also assess the possible job losses resulting from setting the payment of the minimum working hours at 4, 5 or 6 hours a day respectively.

The Panel will also take into account the provisions of the collective and bargaining council agreements and sectoral determinations on minimum hours.

It is clear that not only will a NMW be imposed but also certain minimum working hours. This will be aimed at ensuring that the NMW is not undermined by simply reducing working hours while expecting the same or similar output from employees. It is, as yet, unclear how this will impact, if at all, upon part-time employment arrangements.

THE NMW, CONDITIONS OF EMPLOYMENT, BARGAINING COUNCILS AND SECTORAL AGREEMENTS

No employer may unilaterally alter conditions of employment and hours of work, including those currently contained in private contracts, sectoral determinations or collective agreements because of the introduction of the NMW.

All sectoral determinations, collective agreements, bargaining council agreements and individual contracts of employment must comply with the NMW Act at the time of implementation (i.e. their minima must be no lower than the NMW floor unless exempted, or excluded by way of a phase-in agreement).

In addition, no wages or conditions of workers prescribed by sectoral determinations or bargaining council agreements or private contracts, which are more favourable than the NMW, may be unilaterally decreased after the introduction of the NMW.

COVERAGE AND EXEMPTIONS

No businesses may be excluded from the NMW. However, an exemption process will be provided for businesses, particularly SME's, who are unable to afford the NMW.

Exemptions will be effective for 12 months, after which the affected business will have to re-apply for an exemption. A motivation will be required for any subsequent exemptions. Businesses who receive an exemption will be expected to pay a determined percentage of the NMW. There will be a 30 day turn-around time on exemption applications.

TIERING AND FRAGILE SECTORS

When the NMW is introduced, domestic workers will be paid 75% of the NMW and agricultural workers will be paid 90% of the NMW. It is proposed that these sectors will be brought up to 100% of the NMW level within 2 years of its implementation, pending research by the Commission on this timeframe.

In fragile sectors, where difficulties are experienced with complying with the NMW, assistance may be granted, including incentives. In addition, any sectors wanting to apply for a phase-in to the NMW need to provide compelling evidence as to why this is necessary and timeously apply to the Committee of Principles ("COP").

As a consequence, more sectors, apart from the agricultural and domestic sector, may be subject to a phase-in period.

ENFORCEMENT AND COMPLIANCE

Once the NWA Act is effective, and the NMW is implemented, the inspection, enforcement and obligation to comply with same will become effective immediately.

We shall keep you updated on additional details regarding the national minimum wage as and when they become available. Should you require any further information regarding this and how it may impact upon you please do not hesitate to contact us.

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