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EMPLOYMENT

The national minimum wage act is now law

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On 23 November 2018, the president of the Republic of South Africa ("**RSA**"), Cyril Ramaphosa, assented to and signed into law the National Minimum Wage Bill bringing into force the National Minimum Wage Act 9 of 2018 ("**the Act**"). The Act provides for a national minimum wage and deals with all issues surrounding the introduction of a national minimum wage, and establishes a National Minimum Wage Commission.

The preamble to the Act states that the Act is as a result of the recognition that the RSA is one of the most unequal societies in the world and that there are huge disparities in income in the national labour market. It further states that it aims to eradicate poverty and inequality and to promote fair and effective competition and stability in the labour market, and is also as a result of the constitutional obligation on the State an employers to promote and fulfil the right to fair labour practices.

The Act prescribes a national minimum wage of R20 per hour worked, with certain exceptions being applicable to farm workers (R18 per hour), domestic workers (R15 per hour), workers employed on an expanded public works programme and workers who have concluded learnerships contemplated in the Skills Development Act 97 of 1998. Employees who earns less than the annual earnings threshold (currently R205 433.30 per annum) and who work for less than four hours on any day must be paid for four hours work on that day.

The Act provides for the exemption from the national minimum wage after successfully applying in the prescribed form and manner. The circumstances that may justify such an exemption, the procedure for applying to be exempt and other practical issues are set out in Regulations promulgated by the Minister of Labour which allow for limited time exemptions (not more than 12 months) and which would only allow a maximum reduction, not below 90%, of the usual minimum wage. The financial data which must be provided in order to demonstrate that the minimum wage is unaffordable is quite extensive and onerous. Exemptions will not be easy to obtain.

Disputes in regard to payment in terms of the NMWA will be adjudicated by the Commission for Conciliation, Mediation and Arbitration ("CCMA"), a pre-existing employment dispute forum.

Employers who pay an employee less than the national minimum wage may be subject to a fine that is either twice the value of the underpayment or twice the employee's monthly wage, whichever is greater.

The extent of the practical implications of the Act will become apparent over time as issues arise and the solutions to such issues will be determined with the help of our courts and other dispute resolution tribunals such as the CCMA and bargaining councils.

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