

EMPLOYMENT

The national minimum wage bill 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 purpose of the Act in terms of section 2 is to advance economic development and social justice by improving the wages of lowest paid workers, to protect workers from unreasonably low wages, to preserve the value of the national minimum wage, to promote collective bargaining and to support economic policy.

The Act prescribes a national minimum wage of R20 per hour worked, with certain exceptions being applicable to farm workers, domestic workers, workers employed on an expanded public works programme and workers who have concluded learnerships contemplated in the Skills Development Act 97 of 1998. The definition of “basic condition of employment” in terms of the Basic Conditions of Employment Act 75 of 1997 (“**BCEA**”) has been amended to include the national minimum wage.

Section 15 of the Act provides for the possibility of employers or employers organisations being exempt from paying 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 still to be determined by the Minister of Labour.

The introduction of a national minimum wage will inevitably be accompanied by implementation and other practical issues. One such issue is the provision in the Act which states that section 4(6), which prevents the possibility of waiving the payment of the minimum wage and provides for the national minimum wage to take precedence over any other provision in a contract or agreement, takes retrospective effect from 1 May 2017.

A law that applies with retrospective effect is one that takes effect, from a point in time prior to when it was passed. This is an unusual provision as laws, once promulgated, seldom apply with retrospective effect.

The practical implication of the national minimum wage applying with retrospective effect is that any employee who has been receiving remuneration of less than R20 per hour, may claim the balance between what they were being paid and the national minimum wage, for the period from 1 May 2017 until 27 November 2018. In the event of the employer disputing this claim, it is specified by the amendments to the BCEA (section 64(dB) and 73A) that the body which will have jurisdiction to determine the dispute is the CCMA.

Furthermore, the introduction of section 76A of the BCEA provides for the imposition of a fine on an employer who paid an employee less than the national minimum wage, in an amount that is either twice the value of the underpayment or twice the

employee's monthly wage, whichever is greater.

Another interesting development as a result of the Act is that the BCEA has also been amended to include section 9A which states that an employee or a worker who earns less than the earnings threshold and who works for less than four hours on any day must be paid for four hours work on that day.

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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