

National Minimum Wage

Contents

1	General Explanatory Note	3
2	Important definitions.....	3
3	Purpose of the Act	3
4	Application of the Act	4
5	Calculation of Minimum Wage	4
6	Minimum Wage	4
7	Exemptions	5
8	Failure to Comply.....	6
9	Effective Date and Effect on ETI.....	6
10	Sources.....	6

1 General Explanatory Note

Summary of the application of the national minimum wage.

2 Important definitions

Employer	Means any person who is obliged to pay a worker for the work that that worker performs for that person.
Ordinary hours of work	Means the hours permitted in terms of *section 9 of the Basic Conditions of Employment Act or in terms of any agreement in terms of **section 11 or ***section 12 of the Basic Conditions of Employment Act. *Section 9 of the BCEA – Ordinary hours of work **Section 11 of the BCEA – Compressed working week ***Section 12 of the BCEA – Averaging of hours of work
Wage	Means the amount of money paid or payable to a worker in respect of ordinary hours or, if they are shorter, the hours a worker ordinarily works in a day or a week.
Worker	Means any person who works for another and who receives, or is entitled to receive, any payment for that work whether in money or in kind.
Farm worker	Means a worker who is employed mainly or wholly in connection with farming or forestry activities, and includes a domestic worker employed in a home on a farm or forestry environment and a security guard on a farm or other agricultural premises, excluding a security guard employed in the private security industry in terms of the Private Security Industry Regulation Act.
Domestic worker	Means a worker who performs domestic work in a private household and who receives, or is entitled to receive, a wage and includes – <ul style="list-style-type: none"> • a gardener • a person employed by a household as a driver of a motor vehicle, • a person who takes care of the children, the aged, the sick, the frail or the disabled, and • domestic workers employed or supplied by employment services.
Expanded public works programme	Means a programme to provide public or community services through a labour-intensive programme determined by the Minister in terms of section 50 of the Basic Conditions of Employment Act and funded from public resources.

3 Purpose of the Act

To advance economic development and social justice by improving the wage of lowest paid workers, protecting workers from unreasonably low wages, preserving the value of the national minimum wage, promoting collective bargaining and supporting economic policy.

4 Application of the Act

This Act applies to all 'workers' and their 'employers' (please see definitions in section 1), except members of the South African National Defence Force, the National Intelligence Agency, the South African Secret Service and 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/her services).

Every worker is entitled to payment of a wage in an amount no less than the national minimum wage and every employer must pay the wages to its workers that is no less than the national minimum wage.

The national minimum wage takes precedence over any contrary provision in any contract, collective agreement, sectoral determination or law, except a law amending the National Minimum Wage Act.

The national minimum wage must constitute a term of the worker's contract except to the extent that the contract, collective agreement or law provides a wage that is more favourable to the worker.

It is unfair for any employer to unilaterally alter wages, hours of work or other conditions of employment in connection with the implementation of the national minimum wage

5 Calculation of Minimum Wage

The calculation of the minimum wage is the amount payable in money for ordinary hours of work excluding –

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

A worker must be paid the minimum wage for every ordinary hour worked, unless a worker works less than four hours on any day, he/she must be paid for four hours of work on that day, this only apply to workers who earn below the BCEA threshold, currently set at R205 433.30 (this is according to the new section 9A of the Basic Conditions of Employment Act).

If the worker is paid on a basis other than the number of hours worked, the worker may not be paid less than the national minimum wage for the ordinary hours of work.

Any deduction made from the remuneration of a worker, must be in accordance with section 34 of the Basic Conditions of Employment Act.

The Commission must review the national minimum wage annually and make recommendations to the Minister on any adjustment of the national minimum wage.

If any sectoral determination at the date of promulgation of the National Minimum Wage Act, 2018, prescribes wages that are higher than the national minimum wage, the wages in that sectoral determination and the remuneration and associated benefits based on those wages must be increased proportionally to any adjustment of the national minimum wage in terms of the National Minimum Wage Act.

6 Minimum Wage

- Subject to below bullets, the national minimum wage is R20 for each ordinary hour worked,
- farm workers are entitled to a minimum wage of R18 for each ordinary hour worked,
- domestic workers are entitled to a minimum wage of R15 for each ordinary hour worked,
- workers employed on an expanded public works programme are entitled to a minimum wage of R11 for each ordinary hour worked, and

- workers who have concluded learnership agreements contemplated in section 17 of the Skills Development Act, are entitled to the allowances contained in the table below (this includes an apprentice).

NQF Level	Credits already earned by learner	Minimum allowance per week
Levels 1 to 2	0 - 120	R301.01
	121 - 240	R601.99
Level 3	0 - 120	R301.01
	121 - 240	R566.93
	141 - 360	R928.11
Level 4	0 - 120	R301.01
	121 - 240	R602.05
	241 - 360	R928.11
	361 - 480	R1354.51
Level 5 to 8	0 - 120	R301.01
	121 - 240	R652.15
	241 - 360	R975.75
	361 - 480	R1374.61
	481 - 600	R1755.84

“Allowance” means the amount of money paid or payable to a learner in terms of regulation 3 of Sectoral Determination 5: Learnership made under the Basic Conditions of Employment Act, published in Government Notice 519 of 15 June 2001 as amended by Government Notice R.234 of 15 March 2011.

These minimum wages will be reviewed within 18 months of the commencement of the National Minimum Wage Act and will be adjusted within two years of the commencement of the Act.

7 Exemptions

An employer or an employer’s organisation registered in terms of section 96 of the Labour Relations Act or any other law, acting on behalf of a member, must in the prescribed form and manner apply for an exemption from paying the national minimum wage. An exemption granted must specify the period for which it is granted (which may not be longer than one year), must specify the wage that the employer is required to pay workers and may contain any other relevant condition. The Minister must make regulations relating to the form and manner in which exemptions must be made. The Minister of Labour has published a draft regulation (Government Gazette 42124) on 19 December 2018 prescribing the rules, procedures and manner for applying for an exemption.

According to the Regulation (Government Gazette 42124):

The applications must be lodged on the National Minimum Wage Exemption System in the prescribed form:

www.nmw.labour.gov.za

An exemption will only be granted if the delegated authority is satisfied that the employer cannot afford to pay the minimum wage and every representative trade union representing one or more of the affected workers has been meaningfully consulted or, if there is no such trade union, the affected workers have been meaningfully consulted.

An exemption will only be considered if the applicant confirmed compliance with the applicable statutory payments, including but not limited to Unemployment Insurance Fund, Compensation Fund and any applicable Bargaining Council Agreement.

The delegated authority must specify the minimum wage that the employer is required to pay workers, which may not be less than 90% of the national minimum wage.

An employer whom an exemption has been granted must display a copy of the exemption notice conspicuously at the workplace where it can be read by the employee to whom the exemption applies and must give a copy of the exemption notice to the representative trade union representing one or more of those workers, every worker who request a copy and bargaining council.

The delegated authority may withdraw an exemption notice if they are satisfied that the employer has provided false or incorrect information, the employer is not complying with the exemption notice, the employer's financial position has improved to the extent that the employer is able to pay the national minimum wage or there are other justifiable grounds for withdrawing the exemption notice.

For more information, please [click here](#) to view the Draft Regulation.

8 Failure to Comply

According to the new section 76A of the Basic Conditions of Employment Act, a fine may be imposed on an employer who paid an employee less than the national minimum wage, an amount that is the greater of –

- twice the value of the underpayment, or
- twice the employee's monthly wage.

For a second or further non-compliance, a fine that may be imposed on the employer is an amount that is greater of

- thrice the value of the underpayment, or
- thrice the employee's monthly wage.

9 Effective Date and Effect on ETI

The National Minimum Wage Act 2018, the Regulations to the National Minimum Wage Act 2018 and the Basic Conditions of Employment Amendment Act 2018 are effective 1 January 2019.

Please note: The Employment Tax Incentive rules and validations will remain the same until the Employment Tax Incentive Act is amended to accommodate the National Minimum Wage.

10 Sources

- National Minimum Wage Act, 2018
- Basic Conditions of Employment Act as amended by the Basic Conditions of Employment Amendment Act, 2018
- Government Gazette No 42124

DISCLAIMER

Although care has been taken with the preparation of this document, Sage South Africa makes no warranties or representations as to the suitability or quality of the documentation or its fitness for any purpose and the client uses this information entirely at own risk.

COPYRIGHT NOTICE

© Copyright 2019 by Sage South Africa, a division of Sage South Africa (Pty) Ltd hereinafter referred to as "Sage", under the Copyright Law of the Republic of South Africa.

No part of this publication may be reproduced in any form or by any means without the express permission in writing from Sage.