

The National Minimum Wage Bill

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THE National Minimum Wage Bill (the Bill) is expected to come into effect on May 1, 2018 (this date may change). The purpose of the Bill is to improve the wages of the lowest paid workers and to protect them from exploitative payment practices. The minimum wage will apply to all employees as defined in the Basic Conditions of Employment Act, No 75 of 1997. It excludes independent contractors and members of the South African National Defence Force, the National Intelligence Agency and the South African Secret Service. The labour federations were angry that independent contractors were excluded, as this was not agreed to at Nedlac.

Employers or an employer's organisation may apply to the Minister of Labour for an exemption from paying the national minimum wage, however the Bill does not specify on what grounds this application can be made. The Bill provides for an annual review of the national minimum wage by March 31 each year, however this is not guaranteed.

A commission will be established to review the national minimum wage and make necessary recommendations to government. The commission will also be tasked with investigating the impact the national minimum wage has on the economy, collective bargaining and income differentials.

Employers are warned that decreasing any wages that are currently in excess of the national minimum wage will amount to a unilateral change to the terms and conditions of the employee's contract of employment and would be unlawful.

The Bill attempts to minimise the industrial action usually accompanied by minimum wage negotiations, however it only regulates the minimum wage and will not prohibit employees demanding increases over and above the prescribed minimum wage. The Bill has been criticised for failing to take into account that existing sectoral determinations fall away after three years, after which those workers will have to rely on collective bargaining. The unions have proposed that determinations get extended for longer if these bargaining structures fail to materialise.

According to the Bill, employer groups may apply for exemptions as opposed to employers having to apply individually and prove they cannot afford it. The unions claim that this could result in "blanket" sectoral exemptions, which they think should not be allowed. Unions have also argued that the Bill must explicitly state that unemployment insurance and other contributions need to be specifically excluded from the minimum hourly wage. Unions have called for the Bill to take cognisance of inflation when making adjustments to the national minimum wage.

It is clear that further debate and clarification is needed regarding this Bill.

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