

NATIONAL MINIMUM WAGE ACT 9 of 2018



INTRODUCTION

The purpose of the National Minimum Wage Act (NMWA) is to advance economic development and social justice by –

- improving the wages of lowest paid workers;
- protecting workers from unreasonably low wages;
- preserving the value of the national minimum wage;
- promoting collective bargaining;
- supporting economic policy, and;
- reducing wage inequality.

The NMWA applies to all workers and their employers except members of National Defence Force, the National Intelligence Agency and the South African Secret Service.

This means that-

- every worker, except those specifically excluded, is entitled to *at least* the minimum wage;
- every employer may not pay wages that are below the minimum wage;
- the national minimum wage cannot be reduced by contract, collective agreement or law;
- the national minimum wage constitutes a term of the worker's contract except to the extent that the contract provides for a more favourable wage; and
- it is an unfair labour practice for an employer to unilaterally alter hours of work or other conditions of employment in implementing the national minimum wage.

Volunteer workers are not included because they do not receive pay or are not entitled to pay.

The national minimum wage is due to come into force on 1 January 2019.

THE NATIONAL MINIMUM WAGE

The national minimum wage is R20 for each ordinary hour worked, with the following exceptions:

- farm workers (including a domestic worker who works in a home on a farm or forestry environment and a security guard on a farm or other agricultural premises) are entitled to a minimum wage of R18 per hour;
- domestic workers are entitled to a minimum wage of R15 per hour;
- workers employed on an expanded public works programme are entitled to a minimum wage of R11 per hour;
- workers who have concluded learnership agreements contemplated in section 17 of the Skills Development Act are entitled to the allowances contained in Schedule 2 of the NMW Act.

Farm, Forestry and Domestic Sectors will be brought up to 100% of the National Minimum Wage level within two years pending research by the National Minimum Wage Commission on this timeframe.

CALCULATION OF THE NATIONAL MINIMUM WAGE

The national minimum wage is the amount payable for the ordinary hours of work. This means that a worker is entitled to receive the minimum wage for the number of hours that the worker works in a day.

It does not include the payment of allowances (such as transport, tool, food or accommodation allowances), payments in kind including board or accommodation unless specified otherwise is a sectoral determination, tips, bonuses, and gifts.

Provision is made for the Minister of Labour to exclude other forms of payment by regulation.

ANNUAL ADJUSTMENT OF THE NATIONAL MINIMUM WAGE

The national minimum wage will be reviewed annually by the new National Minimum Wage Commission, and if deemed necessary, will be adjusted each year.

EXEMPTIONS FROM THE NATIONAL MINIMUM WAGE

An employer or an employers' organisation registered in terms of section 96 of the Labour Relations Act or any other law may apply on behalf of its

members for an exemption in the prescribed form and manner from paying the national minimum wage.

An exemption granted in terms of this section –

- must specify the period for which it is granted, which may not be longer than one year;
- must specify the wage or the percentage of the national minimum wage that the employer is required to pay workers; and
- may contain any other relevant condition.

Exemption applications may be submitted online.

ESTABLISHMENT OF THE NATIONAL MINIMUM WAGE COMMISSION

The primary function of the National Minimum Wage Commission is to review the national minimum wage and to make recommendations annually for its adjustment. It has ancillary functions such as investigating the impact of the national minimum wage on the economy, collective bargaining and income differentials.

ENFORCEMENT OF THE NATIONAL MINIMUM WAGE

Department of Labour Inspectors may obtain a written undertaking from employers to pay the minimum wage or issue compliance orders for non-enforcement. Both the compliance orders and written undertakings may be made into arbitration awards by the CCMA. Should the award not be complied with, on application, the CCMA may certify the award and it may be enforced as if it were an order of the Labour Court.

Those who earn below the threshold may also refer matters of non-compliance with the NMWA to the CCMA in terms of section 73A of the BCEA.

RELEVANT LEGISLATION

- Basic Conditions of Employment Amendment Act 7 of 2018.
- Labour Relations Act 66 of 1995.
- National Minimum Wage Act 9 of 2018.
- Skills Development Act 97 of 1998.