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NEWSLETTER

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HUMAN RESOURCES

The National Minimum Wage Bill, 2017

- **What does the publication of the National Minimum Wage mean for Employers -**

Preamble:

RECOGNISING that the Republic of South Africa is one of the most unequal societies in the world and that there are huge disparities in income in the national labour market;

NOTING the need to eradicate poverty and inequality;

ACKNOWLEDGING the need to promote fair and effective competition in the labour market and labour market stability;

NOTING the constitutional obligation on the State and employers to promote and fulfil the

right to fair labour practices.

What is the purpose of this Act?

To improve low paid employees' wages, to protect these employees from unjustly low wages, to protect the value of the national minimum wage, to promote collective bargaining and support economic policy and to support economic policy.

Who is affected by this Act?

All workers and their employers are affected by this Act, except for members of the South African National Defence Force, the National Intelligence Agency and the South African Secret Service.

What does the National Minimum Wage mean?

It means that employers have to pay their workers in accordance with Schedule 1 of the Act (which comes into effect on 1 May 2018) as adjusted annually in terms of Section 6.

Employers cannot pay their workers less than

the national minimum wage and this national minimum wage cannot be waived by either party. It takes precedence over any other agreement or contract and must constitute a term of the worker's contract.

Employers are cautioned not to unilaterally change wages, hours or other conditions of employment in respect of the implementation of the national minimum wage as this will amount to unfair labour practice.

How is this national minimum wage calculated?

It is the amount payable to workers in money for ordinary hours worked, excluding the following:

- payment made to enable a worker to work (incl. Any transport, equipment, tool, food or accommodation allowance);
- payment made in kind (board or accommodation);
- any gratuities (bonuses, tips or gifts); and
- any other prescribed category of payment.

All worker's are entitled to the national minimum wage for the hours he/she works on any day and if a worker is not paid on a hourly basis, the employer must pay the worker no less than the minimum wage for the ordinary hours of work.

Can Employers apply for an Exemption from paying the national minimum wage?

The answer is Yes! In terms of Chapter 4, Clause 15, employers may, in the prescribed form and manner, apply for an exemption from paying the national minimum wage.

Should you require more information or require assistance in this regard, you can contact Invictus.

What is the national minimum wage in terms of Schedule 1?

It is proposed that this Schedule comes into effect on **1 May 2018** and all employers will be required to comply with it.

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

- Farm workers = a minimum of R18 per hour;
- Domestic workers = a minimum of R15 per hour;
- Workers employed on an expanded public works programme = a minimum of R11 per hour;
- Workers who have concluded learnership agreements contemplated in section 17 of the Skills Development Act, 1998 = are entitled to allowances contained in Schedule 2.

The learnership allowances (as contained in Schedule 2) are as follows:

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
	241 - 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

Annual threshold earnings

- Currently remains the same -

The current threshold in terms of annual earnings has not changed for 2017. The Minister has not promulgated a new amount and therefore the annual threshold remains at R205 433 per annum (R17 119.41 per month). The threshold means gross earnings before deductions like income tax, UIF, pension by the employee but excludes the contributions the employer makes towards the employee's salary on a monthly basis.

What this means is that in terms of the Basic Conditions of Employment Act (BCEA), certain sections do not apply to employees that are earning above the threshold. These sections include:

- Section 9 (Hours of work)
- Section 10 (Overtime)
- Section 11 (Compressed working week)
- Section 12 (averaging hours of work)
- Section 14 (meal intervals)
- Section 15 (daily and weekly rest period)
- Section 16 (payment on Sunday)
- Section 17(2) (night work)
- Section 18 (3) (payment for public holidays)

In the event that the employee has earned more than the threshold in the previous or current year, but the employee still received overtime or any of the benefits mentioned in section 9 to 18 above, one has to caution the employer that the employer cannot just implement the threshold limitations without consulting with the employee about these benefits received.

The terms and conditions as per the employee's contract of employment will still be valid until such time where the employer and employee mutually agree that changes can or may be made to the original terms and conditions.

If the employer just implements the threshold without discussing it with the employee, the employee can refer a case for unilateral changes to his/her working terms and conditions and the employer can be forced to reinstate and back pay the benefits to the same as before the implementation.

INDUSTRIAL RELATIONS

Blockading of Striking Employees

-Would it justify a dismissal-

Seeing that South Africa is heading into strike season, with various strikes across South Africa popping up, Employers are left with various difficult questions and sometimes complex situations.

Although Employees embarking on any protected strike may not be dismissed for the strike or its participation, they may face disciplinary action for any misconduct during such a strike.

Blockading an entrance could be seen as intimidation as they would be enforcing their strike onto other Employees and/or Clients, who would not be able to come to work and/or do business, and are therefore involuntary Participants in a strike. Furthermore, if there are express strike and/or picketing rules that have been set down, consideration will have to be given to such rules.

In this case, action could be taken for any misconduct during a strike, yet the question is whether or not a dismissal is a justifiable sanction. This will depend on the merits of each matter and the severity of an Employee's actions during the strike. The Employer is reminded that he would have to prove the Employee's actions on a balance of probabilities.

Intimidation

-Not always empty
statements-

Employees sometimes think that they can get away with making threats or intimidating their colleagues and superiors in a distinct moment of rage or anger, but that is hardly ever the case. The courts have accepted intimidation as a valid ground to terminate an

employment contract.

For a dismissal to be fair, on the grounds of intimidation, the threats had to be uttered seriously and there has to be proof that the employee actually uttered the threats to his or her colleague or superior. This principle also applies to shop stewards during negotiations.

The Labour Appeal Court in *Adcock Ingram Critical Care v CCMA*¹ ruled that the dismissal of a shop steward who made a statement during negotiations of a lengthy and violent strike, “*you can treat this as a threat, there will be more blood on your hands*”, was fair and overruled the Commissioner’s and the Labour Court’s finding that the dismissal was unfair. The Commissioner and the court *a quo* took the view of ‘anything goes’, but the Labour Appeal Court disagreed with this finding.

The Labour Appeal Court emphasized that collective bargaining still takes place in the workplace and forms part of the employment relationship. Although negotiations may reach boiling points and the process may lead to slanging matches, employees and employers still have to treat each other with mutual respect.

Shop stewards still remain employees during the collective bargaining process, therefore the employment relationship still has to be taken into account.

The court also ruled that words do not have to be directed at specific persons to constitute intimidation. The court ruled that words are intimidatory if they are calculated to ‘terrify’, ‘overawe’ or ‘cow’.

When intimidation results in retaliation and the employees concerned engage in a fight on company premises, the consequences could be dire for both employees. Before an employer simply dismisses both employees, proper investigation should be done to determine whether one of the employees did not act in self-defense. Assaulting and fighting is generally accepted as a valid ground for dismissal subject to considerations.

Employers should not tolerate any form of intimidation or violence on company premises since the employment relationship is based on trust and respect.

¹ (2001) 22 ILJ 1799 (LAC).