

Geared towards the new national minimum wage

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In terms of the *National Minimum Wage Act, 2018 (Act 9 of 2018)*, or *NMWA*, the National Minimum Wage Commission annually assesses and reviews the national minimum wage. The commission then submits a recommendation to the minister of employment and labour to adjust the minimum wage for the next period.

The national minimum wage for the 2022/23 period will come into effect on 1 March 2022.

Agricultural sector increases

The agricultural sector's national minimum wage for the 2021/22 period increased by 16,1%, after the sector's exemption to pay only 90% of the national minimum expired, and the minimum wage for farm workers was made equal to the national minimum wage for 2021. Employers in the agricultural sector should take note that domestic workers on a farm are regarded as farm workers and must receive the correct wage.

The commission uses the consumer price index (CPI) plus 1% to determine the proposed increase. The CPI was 5% in September 2021, and the national minimum wage increase is consequently calculated at 6%. This means an increase in the current minimum wage from R21,69 to R22,99 per hour.

The environment in which South African businesses operate can be challenging, with the economy and other external factors leaving business owners with few options when it comes to being

competitive and sustainable. The national minimum wage and associated increases are putting additional pressure on employers, as there is no negotiating the payment of the wage.

Waiver of the minimum wage

However, Section 15 of the *NMWA* stipulates that if employers cannot afford the national minimum wage, they can apply for a waiver online (nmw.labour.gov.za). If a waiver is granted, the employer will still have to pay at least 90% of the national minimum. A waiver is valid for a maximum of twelve months.

As part of the waiver application, the employer must provide a valid reason for the waiver as well as evidence that meaningful consultations took place between employees and representative unions, where applicable.

The regulations further stipulate that such an application will not be granted if the employer fails to meet the affordability elements relating to profitability, liquidity and solvency. Calculations for these tests are included in the schedules to the *NMWA*.

Moreover, a waiver will only be considered if the employer's legal payments are up to date, including the Unemployment Insurance Fund, the Compensation Fund, and any other applicable levies.

As it is an online application, the outcome is available immediately, unless the application is flagged for an audit (which will take place within 30 days from

the application date). The outcome will confirm the commencement date of the waiver, as well as the period for which it is granted, the wages the employer is obligated to pay employees, and any other relevant conditions.

If a waiver is granted, a copy of the waiver certificate needs to be displayed in the workplace and provided to the relevant employees and representative unions, where applicable. In case of an unsuccessful application, the employer will receive a notice stipulating the reasons for refusal.

Non-compliance with the NMWA

A dispute over non-compliance with the *NMWA* can be referred to either the Commission for Conciliation, Mediation and Arbitration (CCMA), or the Department of Employment and Labour. If an employer fails to comply with the *NMWA*, the employer can be fined as follows (whichever amount is the highest): Twice the value of the amount to be paid to the employee as per the prescribed minimum wage, or twice the employee's monthly wage.

Restrictive labour regulations are considered one of the most problematic factors when it comes to doing business in South Africa. Employers need to change their mindset and start to proactively manage the business risk associated with labour legislation compliance. Going forward, employers should be on the right side of legislation in terms of the employment relationship, as well as any possible future disputes relating to minimum wages. 🟡

The LWO Employers Organisation assists employers to comply with labour law, and to use it to their advantage to protect their business. As a registered employers' organisation with the Department of Employment and Labour, the LWO has the right to represent members at the CCMA. Contact the LWO on 086 110 1828 or send an email to info@lwo.co.za.

