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No. 42060

THE PRESIDENCY

No. 1303 27 November 2018

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

Act No. 9 of 2018: National Minimum Wage Act, 2018

VHUPRESIDENDE

No. 1303 27 November 2018

Zwi khou qivhadziwa henefha uri mupresidende o tendelana na uyu mulayo une wa khou andadziwa hu u itela ndivhadzo kha tshitshavha:—

Nom 9 ya 2018: Mulayo wa Muholo wa Fhasisa wa Lushaka, 2018

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(English text signed by the President)
(Assented to 23 November 2018)

ACT

To provide for a national minimum wage; to establish the National Minimum Wage Commission; to provide for the composition and functions of the National Minimum Wage Commission; to provide for the review and annual adjustment of the national minimum wage; to provide for exemption from paying the national minimum wage; and to provide for matters connected therewith.

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,

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

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CHAPTER 1

INTERPRETATION, PURPOSE AND APPLICATION

Definitions

1. In this Act, unless the context indicates otherwise—
- “**Basic Conditions of Employment Act**” means the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997); 5
- “**Cabinet**” means the cabinet referred to in section 91 of the Constitution of the Republic of South Africa, 1996;
- “**Commission**” means the National Minimum Wage Commission established in terms of section 8; 10
- “**employer**” means any person who is obliged to pay a worker for the work that that worker performs for that person;
- “**Labour Relations Act**” means the Labour Relations Act, 1995 (Act No. 66 of 1995);
- “**Minister**” means the Minister of Labour; 15
- “**national minimum wage**” means the national minimum wage determined in Schedule 1 and adjusted annually in terms of section 6;
- “**NEDLAC**” means the National Economic Development and Labour Council established in terms of section 2 of the National Economic Development and Labour Council Act, 1994 (Act No. 35 of 1994); 20
- “**ordinary hours of work**” means the hours of work 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 12 of the Basic Conditions of Employment Act;
- “**organised business**” means organised business as defined in the National Economic Development and Labour Council Act, 1994 (Act No. 35 of 1994); 25
- “**organised community**” means those non-governmental organisations contemplated in the National Economic Development and Labour Council Act, 1994 (Act No. 35 of 1994);
- “**organised labour**” means organised labour as defined in the National Economic Development and Labour Council Act; 30
- “**prescribed**” means prescribed by regulation under this Act;
- “**this Act**” includes the regulations made under this Act;
- “**wage**” means the amount of money paid or payable to a worker in respect of ordinary hours of work or, if they are shorter, the hours a worker ordinarily works in a day or a week; and 35
- “**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.

Purpose of Act

2. The purpose of this Act is to advance economic development and social justice by— 40
- (a) improving the wages of lowest paid workers;
- (b) protecting workers from unreasonably low wages;
- (c) preserving the value of the national minimum wage;
- (d) promoting collective bargaining; and
- (e) supporting economic policy. 45

Application of Act

3. (1) This Act applies to all workers and their employers except members of the South African National Defence Force, the National Intelligence Agency and the South African Secret Service.

(2) This Act does not apply to 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 or her services.

CHAPTER 2

NATIONAL MINIMUM WAGE

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National minimum wage

4. (1) Subject to subsections (2) and (3), the national minimum wage is the amount stated in Schedule 1 as adjusted annually in terms of section 6.

(2) (a) The Commission must, within 18 months of the commencement of this Act, conduct a review of the national minimum wage contemplated in item 2(a) and (b) of Schedule 1— 10

- (i) in accordance with the process contemplated in section 6; and
- (ii) taking into account the goals contemplated in section 7(a) and the factors listed in section 7(b),

make recommendations to the Minister on the adjustment of the national minimum wage contemplated in item 2(a) and (b) of Schedule 1, which recommendations must, subject to the findings of the review contemplated in this paragraph, reflect an adjustment that is equivalent to the national minimum wage contemplated in item 1 of Schedule 1, or as close to that amount as the Commission's findings allow. 15

(b) The Minister must, within two years of the commencement of this Act, and taking the recommendations of the Commission into account, determine an adjustment of the national minimum wage contemplated in item 2(a) and (b) of Schedule 1 in accordance with the process contemplated in section 6. 20

(3) The national minimum wage in respect of workers in the extended public works programme as contemplated in item 2(c) of Schedule 1 must be increased proportionately to any adjustment of the national minimum wage as contemplated in section 6. 25

(4) Every worker is entitled to payment of a wage in an amount no less than the national minimum wage.

(5) Every employer must pay wages to its workers that is no less than the national minimum wage. 30

(6) The payment of a national minimum wage cannot be waived and the national minimum wage takes precedence over any contrary provision in any contract, collective agreement, sectoral determination or law, except a law amending this Act.

(7) 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. 35

(8) It is an unfair labour practice for an employer to unilaterally alter wages, hours of work or other conditions of employment in connection with the implementation of the national minimum wage and sections 191, 193, 194(4) and 195 of the Labour Relations Act apply, unless the context indicates otherwise. 40

(9) Sections 32, 33 and 34 of the Basic Conditions of Employment Act apply to the payment of the national minimum wage to workers.

Calculation of wage

5. (1) Despite any contract or law to the contrary, the calculation of a wage for the purposes of this Act is the amount payable in money for ordinary hours of work excluding— 45

- (a) any payment made to enable a worker to work including any transport, equipment, tool, food or accommodation allowance, unless specified otherwise in a sectorial determination;

- (b) any payment in kind including board or accommodation, unless specified otherwise in a sectoral determination;
- (c) gratuities including bonuses, tips or gifts; and
- (d) any other prescribed category of payment.

(2) Subject to section 9A of the Basic Conditions of Employment Act, a worker is entitled to receive the national minimum wage for the number of hours that the worker works on any day. 5

(3) Subject to subsection (2), 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. 10

(4) Any deduction made from the remuneration of a worker must be in accordance with section 34 of the Basic Conditions of Employment Act, provided that a deduction made in terms of section 34(1)(a) of the Basic Conditions of Employment Act does not exceed one quarter of a worker's remuneration. 15

Annual review

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6. (1) The Commission must review the national minimum wage annually and make recommendations to the Minister on any adjustment of the national minimum wage, which minimum wage must commence on a date fixed by the President by proclamation in the *Gazette*.

(2) The review report to the Minister must reflect any alternative views, including those of the public, in respect of any recommendations made in terms of subsection (1). 20

(3) The Commission must forward the report on its review and its recommendations for the next year to the Minister on a date fixed by the President by proclamation in the *Gazette*.

(4) If the Minister does not agree with, or requires clarity in respect of, the report and recommendations, the Minister may, in the prescribed manner, refer the report and recommendations back to the Commission to clarify or reconsider its recommendations. 25

(5) The Minister must, by a date fixed by the President by proclamation in the *Gazette*, determine the adjustment to the national minimum wage, and by notice in the *Gazette*, amend the national minimum wage contained in Schedules 1 and 2. 30

(6) The Minister must, within seven days of the publication of the amended Schedules in the *Gazette*, table the amended Schedules 1 and 2 in Parliament and publish the final report of the Commission in a prescribed manner.

Conduct of annual review

7. For the purposes of conducting an annual review and recommending adjustments, the Commission must— 35

(a) promote—

- (i) the medium term targets referred to in section 11(d);
- (ii) the alleviation of poverty; and
- (iii) the reduction of wage differentials and inequality; and 40

(b) consider—

- (i) inflation, the cost of living and the need to retain the value of the minimum wage;
- (ii) wage levels and collective bargaining outcomes;
- (iii) gross domestic product; 45
- (iv) productivity;
- (v) ability of employers to carry on their businesses successfully;
- (vi) the operation of small, medium or micro-enterprises and new enterprises;
- (vii) the likely impact of the recommended adjustment on employment or the creation of employment; and 50
- (viii) any other relevant factor.

CHAPTER 3

NATIONAL MINIMUM WAGE COMMISSION

Establishment of Commission

8. The National Minimum Wage Commission is hereby established.

Composition of Commission

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9. (1) The Commission comprises of the following members:

- (a) A chairperson appointed by the Minister;
- (b) three members nominated by organised business;
- (c) three members nominated by organised community;
- (d) three members nominated by organised labour; and
- (e) three independent experts, who are knowledgeable about the labour market and conditions of employment, appointed by the Minister.

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(2) The members of the Commission must be citizens or permanent residents of the Republic.

Appointment and termination of appointment of members of Commission

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10. (1) The Minister, after consultation with NEDLAC, appoints—

- (a) the chairperson and the three independent experts; and
- (b) the members nominated by organised business, organised community and organised labour.

(2) The term of office for the members of the Commission is for a maximum period of five years but members may be re-appointed.

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(3) The members of the Commission are appointed on a part-time basis and on terms and conditions prescribed by the Minister in consultation with the Minister of Finance.

(4) Termination of appointment may be effected in the following manner:

- (a) The member's death;
- (b) the resignation of a member giving three months' notice to the Minister; and
- (c) subject to due process of law, the removal of a member from office by the Minister for the following reasons:
 - (i) Serious misconduct;
 - (ii) permanent incapacity;
 - (iii) failure to attend three successive meetings without a reasonable explanation; or
 - (iv) engaging in any activity that undermines the integrity of the Commission.

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(5) The chairperson and members of the Commission—

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- (a) must act impartially when performing any function of the Commission;
- (b) may not engage in any activity that may undermine the integrity of the Commission; and
- (c) must recuse themselves from advising the Minister on any matter in respect of which they have a direct or indirect financial interest or any other conflict of interest.

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(6) The Commission must appoint a member to act as chairperson whenever the chairperson is absent from the Republic or from duty, or for any reason is temporarily unable to function as chairperson.

Functions of Commission

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11. The functions of the Commission are to—

- (a) review the national minimum wage and recommend adjustments;
- (b) investigate and report annually to the Minister on the impact of the national minimum wage on the economy, collective bargaining and the reduction in income differentials and make such information available to the public;

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- (c) investigate income differentials and recommend benchmarks for proportionate income differentials;
- (d) set medium term targets for the national minimum wage within three years of the commencement of this Act; and
- (e) advise the Minister on measures to reduce income differentials or any other matter on which the Minister requests the Commission's advice; 5
- (f) advise the Minister on sectoral determinations;
- (g) advise the Minister on any matter concerning basic conditions of employment; and
- (h) perform any such function as may be required of the Commission in terms of any other employment law." 10

Conduct of meetings of Commission

12. The Commission must determine its own rules on the conduct of meetings, provided that those rules—

- (a) require the Chairperson to act impartially; and 15
- (b) provide that the chairperson has no deliberative vote or casting vote.

Secretariat of Commission

13. Subject to the laws governing the public service, the Minister must provide the Commission with a secretariat and the necessary resources to perform the following functions: 20

- (a) The administration of the Commission;
- (b) the conduct and procurement of research for the Commission; and
- (c) the monitoring and evaluation of the impact of the national minimum wage on the economy and the reduction of income differentials.

Funds of Commission 25

14. The funds of the Commission consist of money defrayed from the budget vote of the Department.

CHAPTER 4

GENERAL

Exemptions 30

15. (1) An employer or an employers' organisation registered in terms of section 96 of the Labour Relations Act, or any other law, acting on behalf of a member, may, in the prescribed form and manner, apply for an exemption from paying the national minimum wage.

(2) An exemption granted in terms of this section— 35

- (a) must specify the period for which it is granted, which may not be longer than one year;
- (b) must specify the wage that the employer is required to pay workers; and
- (c) may contain any other relevant condition.

(3) The Minister may delegate or assign powers or duties arising out of the application of this section, excluding the power to make regulations, in accordance with the provisions of section 85 of the Basic Conditions of Employment Act. 40

Regulations

16. (1) The Minister must, after consulting NEDLAC and where appropriate after consulting the Commission, make regulations relating to— 45

- (a) the form and manner in which exemptions must be made in terms of section 15(1), which include the—
- (i) procedure for applying for an exemption;
 - (ii) information to be submitted with an exemption application;
 - (iii) obligations on employers to consult with employees or trade unions concerning an exemption application; 5
 - (iv) criteria that must be applied when evaluating exemption applications;
 - (v) period within which an application must be made; and
 - (vi) period within which a decision on an exemption application must be made; and 10
- (b) the publication of data on exemptions.
- (2) The Minister may make regulations which the Minister considers necessary or expedient to be prescribed in order to achieve the primary objects of this Act.
- (3) The Minister must publish the draft of any regulations that the Minister proposes to publish in terms of this Act in the *Gazette* and allow interested parties at least 21 days to comment in writing on the draft regulations. 15
- (4) If the Minister alters the draft regulations based on the comments received from interested parties, it shall not be necessary to publish those alterations before making the final regulations.
- (5) The Minister must table the regulations in Parliament. 20

Short title and commencement

17. (1) This Act is called the National Minimum Wage Act, 2018.
- (2) Subject to subsections (3) and (4), the Act comes into operation on a date to be fixed by the President by proclamation in the *Gazette*.
- (3) Schedule 1 comes into effect on a date fixed by the President by proclamation in the *Gazette*. 25
- (4) Section 4(6) takes retrospective effect from 1 May 2017.

SCHEDULE 1**NATIONAL MINIMUM WAGE****(Section 6(6))**

1. Subject to item 2, the national minimum wage is R20 for each ordinary hour worked.

2. Despite item 1—

- (a) farm workers are entitled to a minimum wage of R18 per hour from a date fixed by the President by proclamation in the *Gazette*;
- (b) domestic workers are entitled to a minimum wage of R15 per hour from a date fixed by the President by proclamation in the *Gazette*;
- (c) workers employed on an expanded public works programme are entitled to a minimum wage of R11 per hour from a date fixed by the President by proclamation in the *Gazette*; and
- (d) workers who have concluded learnership agreements contemplated in section 17 of the Skills Development Act, 1998 (Act No. 97 of 1998), are entitled to the allowances contained in Schedule 2.

3. For the purposes of item 2—

“**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, 2001 (Act No. 56 of 2001);

“**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—

- (a) a gardener;
- (b) a person employed by a household as a driver of a motor vehicle;
- (c) a person who takes care of children, the aged, the sick, the frail or the disabled; and
- (d) domestic workers employed or supplied by employment services; and

“**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.

SCHEDULE 2

LEARNERSHIP ALLOWANCES

(Section 6(6))

1. For the purposes of this Schedule—

“**allowance**” means the amount of money paid or payable to a learner in terms of regulation 3 of the 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;

“**credit**” means a credit earned as defined in the Regulations made under the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995), Government Notice R.452, published in Government *Gazette* 18787 of 28 March 1998;

“**learner**”—

(a) means a learner who has concluded a learnership agreement in terms of section 17 of Skills Development Act, 1998 (Act No. 97 of 1998); and

(b) includes an apprentice;

“**NQF level**” means a level on the national qualifications framework contemplated in the National Qualifications Framework Act, 2008 (Act No. 67 of 2008).

2. The learnership allowances 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
Levels 5 to 8	0-120	R301.01
	121-240	R652.15
	241-360	R975.75
	361-480	R1374.61
	481-600	R1755.84