Regulation Gazette **No. 11201** *Regulasiekoerant*

Vol. 665 20 November November 2020 No. 43920

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GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF EMPLOYMENT AND LABOUR

NO. R. 1243 **20 NOVEMBER 2020**

NATIONAL MINIMUM WAGE ACT, NO 9 OF 2018

INVESTIGATION INTO THE NATIONAL MINIMUM WAGE

INVITATION FOR WRITTEN REPRESENTATION

I, Professor Adriaan van der Walt, Chairperson of the National Minimum Wage Commission, hereby present the Commission's report and recommendations on the annual review of the national minimum wage and hereby invites written representations in respect of the recommendations in accordance with section 6(2) of the National Minimum Wage Act (NMWA).

Interested persons are hereby given an opportunity of making written representations to the National Minimum Wage Commission. Such representations should reach the Directorate: National Minimum Wage Policy and BCEA Administration, Department of Employment and Labour, Private Bag xl 1 7, Pretoria, 0001 or be sent by email to Unathi.Ramabulana@labour.gov.za within 30 days of the publication of this notice.

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Prof A. Van der Walt

CHAIRPERSON: NATIONAL MINI ON: NATIONAL MINIMUM WAGE COMMISSION

Date:20 November 2020

National Minimum Wage Commission proposal for 2021 adjustment

Contents

1. MANDATE AND SUMMARY OF PROPOSALS

In Section 6, the National Minimum Wage Act of 2018[1] requires that the National Minimum Wage Commission "review the national minimum wage annually and make recommendations to the Minister on any adjustment of the national minimum wage." The Act mandates the Commission's review report to the Minister to reflect on altemative views, including those of the public.

The majority of Commissioners recommend that the national minimum wage should be increased by 1,5% above inflation as measured by the consumer price index (CPI). The majority also recommend that the minimum for farmworkers be aligned with the national minimum wage in 2021, and that the minimum for domestic workers be gradually increased to equal the national minimum wage by 2022.

The National Minimum Wage Act constitutes a decision to prioritise a more equitable pay structure that ensures working people do not live in poverty. In itself, that decision implies that costs for some employers will increase, but that they will be offset by the broader benefits to society of more equitable workplaces and remuneration systems. The Act provides for exemptions for employers who truly cannot afford the adjustment.

The remainder of this report:

- Describes the mandate in the Act for the annual adjustment,
- Outlines the evidence, as required in the Act, that led the majority of Commissioners to agree on the proposed increment,
- Presents the majority proposal for the increase for farm and domestic workers, and
- Provides a minority view submitted by three Commissioners.

Annexure A summarises research undertaken for the Commission on the impact and implementation of the national minimum wage.

The Commission hereby invites written representations in respect of the recommendations in accordance with section 6(2) of the Act.

[1] No 9 of 2018.

2. THE ANNUAL ADJUSTMENT IN THE NATIONAL MINIMUM WAGE

The majority of Commissioners propose that the national minimum wage be increased by the rate of inflation plus 1,5%. The inflation rate (measured by CPI) as of September 2020 was 3%, so the adjustment should be on the order of 4,5%. The actual amount, however, will depend on inflation in the month in which the adjustment is effected.

The national minimum wage was originally set at R20 an hour in 2018. In 2019, the Commission had only just been established and was therefore unable to undertake a full annual review. It therefore recommended that the national minimum wage increase at the rate of inflation for the poorest decile of households in the year to March 2020, or 3,8%. The national minimum wage therefore increased from R20,00 to R20,76 an hour from March 2020.

Section 6 of the Act sets criteria for the annual adjustment of the national minimum wage. These criteria are the following.

First, the proposal must promote three-year targets for the national minimum wage, which the Commission is expected to establish; the alleviation of poverty; and a reduction of wage differentials and inequality.

Second, the Commission must consider a range of actual and potential economic impacts from the adjustment, specifically:

- Inflation, the cost of living and the need to retain the value of the national minimum wage;
- Wage levels and collective bargaining outcomes;
- Gross domestic product (GDP);
- Productivity;
- Ability of employers to carry on their businesses successfully;
- The operation of small, medium and micro enterprises and new enterprises; and
- The likely impact on employment or employment creation.

The Act empowers the Commission also to consider other relevant factors.

The different dimensions of impact inherently impose some trade-offs, which the Commission has taken into consideration in its proposal. The remainder of this section indicates how the majority of Commissioners agreed on the proposed increment based on the aims and criteria laid out in the Act.

a. Promoting the aims of the Act

i. Three-year targets

The Commission has not yet set three-year targets for the national minimum wage, so this objective was not considered for the 2021 annual adjustment.

ii. The alleviation of poverty

Statistics South Africa has identified three poverty lines, each valued as of April 2020:

- The food poverty line at R585 per person per month, or R2050 for the average-sized household (which has between three and four members). The food poverty line covers only the resources needed for the minimum required daily energy intake.
- The lower-bound poverty line at R840 per person per month, or almost R3000 for the average-sized household. This poverty line encompasses a minimum of non-food essentials in addition to the food poverty line.
- The upper-bound poverty line of R1268 per person per month, or R4438 for the average-sized household. This poverty line includes the cost of non-food items typically consumed by households that are able to afford the basket of foods utilized in setting the food poverty line.

By this measure, the national minimum wage is below the upper-bound poverty line as estimated by Statistics South Africa for the average-sized household, and only 20% above the lower-bound poverty line. For households with four or more members, the national minimum wage would be below the lower-bound poverty line. In 2018, two fifths of the poorest households had four members or more.

These findings suggest that the minimum wage remains below the poverty line for many households, which justifies an increase in real terms.

iii. The reduction of wage differentials and income inequality

Wage differentials in South Africa remain amongst the highest in the world, according amongst others to data published by the International Labour Organisation. A core aim of the Act was to reduce these inequalities by increasing wages for the worst-paid workers.

As Table 1 indicates, the national minimum wage in 2020 equalled the median wage for all employees, including those in domestic work and the informal sector. That is, half of all employees earned less than R20,79. Both median pay and the minimum wage were around a third of the average pay in the formal sector. The average exceeds the minimum so much because of the large inequalities in remuneration.

Table 1. Hourly average and median wage, in current rand, fourth quarter 2020

	Hourly Wage	
	Average	Median
Working Age (15-64)	R52.94	R20.79
Formal Sector	R59.96	R23.09
Farmworkers	R20.99	R16.42
Domestic Workers	R19.81	R15.01

Source: Data kindly provided by Statistics South Africa.

The majority of Commissioners argued that reducing the wage gap requires a real increase in the national minimum wage.

b. Factors to consider in the annual adjustment

i. Inflation, the cost of living, and the need to retain the value of the minimum wage

The Commission agreed that, in order to retain the purchasing power of the national minimum wage, the annual adjustment should be set as an increment above the increase in the cost of living. For these purposes, inflation should be measured by the increase in the Consumer Price Index.

The Commission noted that inflation for low-income households is currently significantly higher than for upper-income group. In September 2020, the inflation rate for the poorest decile was 3,3%, while it was 2,7% for the richest decile. The main reason is the relatively sharp increase in food prices, since food constitutes a higher share of consumption for lower income households.

The fact that the overall inflation rate understates price increases for low-income households means that in order to maintain the value of the national minimum wage in terms of purchasing power, the increment must exceed headline inflation.

ii. Wage levels and collective bargaining outcomes

Table 3 indicates the agreements on wage increases for the major bargaining councils in 2019 and 2020. Increases ranged mostly between 5% and 9%, which is between 1% and 5% above inflation. The national disaster arising from the COVID-19 pandemic limited collective bargaining in 2020, however. It is also likely to significantly affect collective bargaining outcomes, so agreements reached before the first quarter of 2020 may not adequately predict recent collective bargaining trends.

Table 2: Bargaining council wage increases for the period 2019 to 2020

Bar ainin Council		Increment (%)
Building Industry Bargaining Council North and West Boland		08 02 19 to 31 12 2020 6.9%
Building Industry (Cape of Good Hope)	Area A	1 11 2018 -31 10 2019 8.2%
	Area B Area C	(01 11 20 to 31 10 21 CPI percentage minimum increase of 4%)
	Area D	6.7% to 8%
Bargaining Council for the Meat Trade Gauteng		30 6 2020 7%
Bargaining Council for the Food Retail, Restaurant, Catering and Allied Trades		31 7 2019 7% on a basic salary to comply with National Minimum wage and 4.5% for employees earning above the National Minimum Wa e
Bargaining Council for the Restaurant, Catering and Allied Trades		27 01 2018 - 1 5 2022 CPI plus1% or 7% depending on the CPI at the time
Fishing Industry Bargaining Council		30 6 2020 7%
Motor Industry Bargaining Council		31 8 2019 7%
National Bargaining Council for the Hairdressing Indust y of South Africa		31 12 2020 13.41% to 13.42%
National Bargaining Council for the Electrical Industry		31 1 2022 (Wages are increased for period until 2022 with CPI +1%)
Leather Bargaining Council Footwear		30 6 2021 7.5%
Leather General Goods and Handbags		30 6 2021 7.5%
Leather Tanning		30/6/2021 7.5%
Civil Engineering Bargaining Council		31/8/2021 7.5%

Bar ainin Council	**Increment (%)**
National Bargaining Council for the Clothing Manufacturin Indust	31 8 2024 6.9%o
Bargaining Council for the Contract Cleaning Services Industry (Kwazulu-Natal)	Until 30 04 2021 7%o on actual wages 2019 5.5%o on actual wa es 2020
Furniture Bargaining Council	Until 30 04 2020 7%o on actual wages 2019 7%o on actual wa ʼes 2020
Bargaining Council for the Furniture Manufacturing Industry of the Western Cape	Until 30 06 2021 7%o on actual wages 2019 0%o increase 2020
Amanzi Bargaining Council	8%o on actual wages 2019 6.5%o on actual wa es 2020

Table 3: Mining Industry wage increase for period 2019 to 2020

CAT 4 ENTRY LEVEL	Wage Increase
AVERAGE PLATINUM CAT 4 UNDERGROUND	9.60%o
AVERAGE GOLD CATEGORY 4 UNDERGROUND	9.24%o
AVERAGE COAL CATEGORY 4 UNDERGROUND	5.75%o

Table 4: Motor Industry wage increase for period 2019 to 2020

Bargaining Council	**Wage Increase**
AMEO and NUMSA AMEO representing (BMW, Ford, Isuzu, Mercedes-Benz, Nissan, Toyota and Volkswagen)	9%o increase from 1 July 2019

The adjustment of the national minimum wage by 1,5%o above inflation is not out of line with collective bargaining outcomes in 2019 20. Information on trends since the pandemic began was not available at the time of writing.

iii. Gross Domestic Product

The COVID-19 pandemic began to affect growth in the first quarter of 2020, but had a far more severe impact during the Level 5 Lockdown in April. As a result, in the second quarter, the GDP fell by 16%. The available evidence, however, suggests a considerable rebound thereafter, although the economy is not expected to recover fully in 2020 or likely even 2021.

The majority of Commissioners felt that the COVID-19 downturn is a unique circumstance, and the implications for the national minimum wage remain difficult to anticipate. In this case, a modest real increase seems unlikely to aggravate the downturn, and could assist by working in tandem with other measures to stimulate the economy.

iv. Productivity

The COVID-19 downturn made it virtually impossible to estimate labour productivity realistically because of the extraordinary constraints on production.

v. Ability of employers to carry on their businesses successfully

The majority of commissioners recognised that the COVID-19 downturn had a harsh impact on most employers. Employers who are unable to pay the proposed adjustment are urged to utilise the exemption procedures.

Generally, any increase in the national minimum wage will require some adaptation by employers. The aim of the Act is to bring about a structural shift in pay scales to promote greater equality. The majority of commissioners considered that the proposed adjustment would not be unduly difficult for most employers. Initial research on the impact of the introduction of a national minimum wage has found that the policy did not place an undue burden on employers in its first year of implementation.

vi. The operation of small, medium or micro-enterprises and new enterprises

The majority of commissioners consider that some small, medium and micro enterprises and new enterprises may face some challenges as a result of the proposed increase in the minimum wage. These challenges should be mitigated by the exemptions procedure.

vii. The likely impact of the recommended adjustment on employment or the creation of employment.

As with the GDP, the initial lockdown to control the pandemic led to furloughs on a mass scale, although the COVID-19 Temporary Employer/Employee Relief Scheme (TERS) limited actual retrenchments. Around three million employees, or a third of formal private-sector workers, benefited from TERS payments, indicating that they were unable to work, at least during Level 5 and Level 4 of the lockdown.

In these circumstances, it is difficult to evaluate the impact of an increase in the national minimum wage on employment. Research undertaken for the Commission indicates that the introduction of the minimum wage did not lead to job losses in the first year of implementation. Looking back at South Africa's experiences of implementing sectoral minimum wages, we are reminded that

> "Overall, the literature suggests that the impact of sectoral minimum wages has been positive for almost every sector that has been assessed. The new laws resulted in higher average wages for covered workers, with no substantial negative impacts on employment, and no large changes in hours of work that may have offset the increased rates of hourly pay."[2]

As noted above, if employers feel that the increase would inevitably lead to job losses, they can apply for an exemption.

3. EQUALISATION OF THE MINIMUM WAGE FOR FARM AND DOMESTIC WORKERS

Ideally, a national minimum wage should be applicable to all employees. In order to avoid excessive disruption, however, the Act established lower minimums for farm and domestic workers, with a process of gradual equalisation to the national minimum wage over time. It requires the Minister, within two years, to determine the adjustment of the national minimum wage of farm works and domestic workers. Section 6 of the Act mandates the Commission to make recommendations to the Minister of Employment and Labour on this topic. The review report must reflect any alternative views, including those of the public, in respect of a possible adjustment to the minimum wages of farm workers and domestic workers.

The National Minimum Wage Advisory Panel appointed by then Deputy President Cyril Ramaphosa expressed concerns about an immediate imposition of a national minimum wage on the low-wage sectors of agriculture and domestic work, which have limited scope to improve productivity so as to accommodate higher wages. The Panel accordingly recommended a period of tiering for those two sectors, with gradual equalization over a few years. This intent is captured in the Act, notably in section 4(2).

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[2] See Bhorat, Kanbur and Stanwix (2017) and Piek & von Vintel (2020) for a more detailed review of this literature.

The Act requires the Commission to gradually align the minimum wage for farm and domestic workers to the national minimum wage. Item 2(a) and (b) of Schedule 1 provides that farm workers are entitled to a minimum wage of R18 per hour and domestic workers to a minimum wage of R15 per hour. The minimum wages of farm workers and domestic workers increased in March 2020 to R18.68 and R15.57 respectively.

The Commission has taken into account the impacts of the current economic situation as well as the aims of the Act in making proposals on the minimum wage for agriculture and domestic work.

The agricultural sector was not as severely affected as other sectors by the pandemic lockdown because the food value chain constituted an essential sector. The minimum wage of farm workers is presently 90% of the national minimum wage. The recommendation of the Commission is that the minimum wages of farm workers be equalized with the national minimum wage with effect from the date of the overall adjustment in 2021.

The minimum wage of domestic workers presently is 75% of the national minimum wage. Judging by findings in the Quarterly Labour Force Survey, domestic workers were comparatively severely impacted by the initial levels of lockdown. From mid-2020, however, they no longer faced legal restrictions on returning to work. The Commission accordingly recommends that the minimum wage of domestic workers be increased to 88% of the national minimum wage in 2021 and to 100% in 2022.

The majority proposal for the adjustment of the minimum wage for domestic workers and farmworkers would amount to an increase of about R450 per month for a domestic worker and about R350 per month for a farmworker.

Dr. Neva Makgetla (Independent expert)
Prof. Imraan Valodia (Independent expert)
Dr. Sarah Mosoetsa (Independent expert)
Mr. Solly Phetoe (Labour)
Mr. Edward Thobejane(Labour)
Mr. Trenton Elsley (Labour)
Ms. Isobel Frye (Community)
Ms. Conti Matlakala (Community)
Mr. Tumelo Zwane (Community)

4. MINORITY RECOMMENDATIONS

The three business representatives on the Commission provided the following recommendations, which diverge from the majority.

Our view as the Business representatives on the Commission, is premised on the need to avoid or minimise negative impacts on jobs in the sectors, especially at a time when the economy is struggling under the weight of multiple factors like Covid19, sovereign credit downgrades and poor growth outlook for the near term. Employers of domestic workers are mostly employees themselves in other sectors. With most sectors already reducing or maintaining salaries, and retrenchments expected to peak, it is reasonable to expect that employers of domestic workers are going to struggle to either absorb huge wage increases or even keep their employees. In respect of the agricultural sector, research has shown that big shocks in movement of legislated wages cause extensive job losses. This is clearly evident from research done around a large increase in the agriculture sector based on the sectoral determination following the protests in De Dooms. The agri census reports shows how much employment has slowed in this sector and can be seen in this link http://www.statssa.gov.za/?s=agriculture

We support the need to increase wages in these two sectors, but in a sustainable way. However, to give an additional increase beyond the annual increase in January 2021 would be very problematic for both these sectors.

We are supportive of a phase-in approach but believe the phase-in for both sectors should be over four years. We believe this would allow the increase over the next two years to be more sustainable for both these sectors. To induce shocks of double-digit wage increases in these sectors, which are large employers, is likely to result in massive job losses and/or increased non-compliance, both of which scenarios should be avoided where possible.

To reiterate, we cannot support a proposal that we know will lead to dramatic job losses, specifically in these two sectors that are being significantly affected by the Covid-19 pandemic. We are therefore supportive of a phase-in over a four-year period for both the farm and domestic worker sectors. This is the only reasonable proposal to avoid the negative impacts of massive wage increases.

We did stress to other commissioners that, regardless of the sector or constituency they represent or have an affinity with, we all bear a collective responsibility to act in ways that do not add to the country's burgeoning unemployment problem. A double-digit increase for the domestic sector in the year 2021, as proposed by the existing phase-in model, would have a catastrophic effect on jobs and employment levels.

On the proposal of the majority of the commissioners on a projected increase of the minimum wage of 4.5%, farm workers would get a 16.1% increase and domestic workers a 20.65% in each of the two years proposed. We cannot support this as, even without research, no sector can absorb such increases. Indeed, when the phase-in provisions were first inserted into the NMW Act a few years ago, no one could have predicted the current set of difficult economic circumstances. To ignore the current reality in a quest to achieve the intended equalisation is akin to prioritising form over substance, which will not serve our economy well.

Furthermore, the NMW came into effect on 1 January 2019. The initial date of implementation was meant to be 1 May 2018, but the NMWA was only assented to on 23 November 2018. In 2020, an increase was recommended with implementation on 1 March 2020.

It is paramount that a regular, dependable cycle is established to ensure that employers know what is expected, well in advance. We have three possible dates for implementation, namely 1 January (the 2019 implementation date), 1 March (the 2020 implementation date) and 1 May (the original date). The consistent approach would be 1 March as implemented in 2020.

As far as the increase itself is concerned, we were guided by the Act:

Firstly, the NMWC must promote:

1. the medium term targets referred to in section 11(d)

We submitted that this would be impossible in the current economic reality, especially as we have no measure of ascertaining the pace of economic recovery.

2. the alleviation of poverty

We submitted that any increase in this environment will contribute to some relief of poverty.

3. the reduction of wage differentials and inequality

An increase in 2021 will be helpful in this regard, while no increase will widen the gap.

Secondly, the NMWC had to consider:

1. Inflation, the cost of living and the need to retain the value of the minimum wage

We submitted that CPI will likely be 2.5% - 3% at January

2. Wage levels and collective bargaining outcomes

We submitted that many are agreeing to a zero for the period due to the economic effect of COVID-19.

3. Gross domestic product

Currently negative 15% to 20%.

4. Productivity

No reliable measurement in place aside from the Productivity SA annual productivity report, which shows an increase of labour input without a correlated growth in output.

5. Ability of employers to carry on their businesses successfully

This was a problem pre-Covid19 and virtually impossible post-Covid19. Businesses will need all the help they can get, including by way of reduced labour costs, as they struggle to remain viable and sustain employment.

6. The operation of small, medium or micro-enterprises and new enterprises

This was a problem pre-Covid19 and virtually impossible post-Covid19.

7. The likely impact of the recommended adjustment on employment or the creation of employment

Smaller increases have smaller impacts, especially considering the proposed equalisation and the effect it will likely have on agriculture and domestic workers. Conversely, bigger increases are likely to lead to job losses or less job creation, as was the case in agriculture after the 2013 increase.

8. Any other relevant factors

We must consider the Covid19 (pre and post) effect on employment. Any increase, in our opinion, will have an effect on job retention and creation.

Given this background, we would not be in a position to recommend an increase beyond inflation as at 6 weeks before the date of implementation."

We are extremely concerned that other constituents are of the opinion that equalisation must be made immediately and recommending increases of CPI plus 1.5%.

Ms. Jahni de Villiers
Mr. Jonathan Goldberg
Mr. Kaizer Moyane

ANNEXURE A. RESEARCH FINDINGS

1. AIMS AND METHODOLOGY

The Commission is expected to undertake on-going monitoring of the implementation and impacts of the national minimum wage. The aim is to support evidence-based decision making, and in particular to continually improve implementation while minimising unnecessary costs and maximising the benefits. The research reports will be published on the website of the Department of Employment and Labour at www.labour.gov.za.

The Commission contracted the Development Policy Research Unit (DPRU) at the University of Cape Town and the Centre for Social Development in Africa (CSDA) at the University of Johannesburg to undertake a combination of quantitative and qualitative research regarding the impact of the introduction of the national minimum wage.

The DPRU assessment provided a statistical analysis of data from the Quarterly Labour force Survey (QLFS). It focused on three variables, namely wages, hours of work and employment, to evaluate:

- Changes in the share of workers earning less than the national minimum wage, in the median wage, and in the wage levels for lower-paid deciles.
- Changes in employment especially for lower-paid workers, by industry, type of employer and wage decile.
- Changes in hours of work and other non-wage benefits (paid leave, sick leave etc.).

The recession that lasted through the second half of 2019 and the first quarter of 2020, compounded by the much sharper economic contraction due to the pandemic, significantly complicated the analysis. The challenge was to separate out the effects of the recession, which led to a decline in employment in some low-wage sectors (notably construction) from the effects of the minimum wage. To address this challenge, the DPRU undertook a difference-in-difference approach that sought to isolate the effects of the minimum wage from other economic factors. Specifically, it compared the outcomes of covered workers (those earning below the NMW in the pre-NMW period) to workers who are not covered such as the workers that earn wages higher up the income distribution, controlling for sectoral and demographic characteristics.

The qualitative research on the other hand aimed to provide more nuanced and differentiated insights into the process of implementation and the impact on farm and domestic workers and employers. The CSDA undertook group interviews with employees as well as individual interviews with employers and some researchers and other experts. Due to the lockdown, some of the interviews were conducted digitally.

The main questions for the research related to:

- The extent of workers' and employers' knowledge about the national minimum wage.
- Whether the introduction of the national minimum wage affected pay, benefits and the wage-setting process.
- The nature and impact of inspection processes.
- The dispute-settlement mechanisms resorted to by employers and employees in the relevant sectors.

Both the qualitative and the quantitative research provide a wealth of insights, which are available in the papers on the Department of Employment and Labour website. The key findings were the following.

- The introduction of the national minimum wage led to a statistically significant increase but smaller than expected improvement in wages for the workers it covers. The quantitative analysis also found that it did not affect the level of employment.
- The qualitative research suggested broad compliance with the new minimum wage in agriculture, with slightly lower levels in domestic work.

- Both employers and domestic workers had limited knowledge of the minimum wage requirements. In contrast, in agriculture most employers and employees indicated that they knew about the regulations.
- Employees considered that the minimum wage for farm and domestic workers was too low. Several argued that it was unfair that the minimum wage in their sectors was lower than the national minimum wage.
- A number of employees said they did not know about or did not see any impact from the minimum wage.
- Employers generally expressed support for a living wage for domestic workers, but several expressed concerns about affordability. In agriculture, a number of employers argued that increases in the minimum wage since 2012 were excessive and had a negative impact on the viability of their businesses.
- None of the domestic workers reported having been visited by a labour inspector from the Department of Employment and Labour. Similarly, few farm workers recalled labour inspectors visiting their workplaces.
- Labour inspectors reported a lack of capacity to monitor compliance. The challenges are particularly steep for domestic works since the normal procedures for accessing workplaces are not designed for private residences.