

Minimum wage bill cops union flak

● *Shock expressed at narrow definition of workers as 'employees' as it was not agreed at Nedlac*

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The National Minimum Wage Bill was approved by the Cabinet on November 1 2017 and is expected to come into effect on May 1, but this date may change.

The purpose of the bill is to improve the wages of the lowest-paid workers and to protect them from exploitative payment practices. The minimum wage will apply to all employees as defined in the Basic Conditions of Employment Act, No 75 of 1997. It excludes independent contractors and members of the South African National Defence Force, the National Intelligence Agency and the South African Secret Service.

The use of the narrow definition of workers as "employees" in the bill has shocked labour federations as it was not agreed at the

National Economic Development and Labour Council.

A wider definition, including independent contractors, was expected.

The bill prescribes a national minimum wage for the following categories of workers:

- Farm workers: R18 per hour;
- Domestic workers: R15 per hour;
- Workers in the public works programme: R11 per hour.

For all other workers, the national minimum wage is R20 for each ordinary hour worked, whether the remuneration is paid weekly or monthly.

The minimum wage may not be waived by contract or collective agreement.

The calculation of wages specifically refers to "hours of work", and any additional benefits, allowances, accommodation, gifts or ex-gratia payments are excluded from

the wage calculation. Employers or an employer's organisation may apply to the labour minister for an exemption from paying the national minimum wage, however the bill does not specify on what ground this application can be made.

The bill provides for an annual review of the national minimum wage by March 31 each year, however this is not guaranteed.

A commission will be established that will review the national minimum wage and make recommendations to the government.

The commission will also be tasked with investigating the impact the national minimum wage has on the economy, collective bargaining and income differentials.

Schedule 2 of the bill provides regulated allowances for pupils with learnership agreements concluded in terms of the Skills Development Act, 1998. The mini-



um learnership allowance per week ranges from R301.01 to R1,755.84, depending on the NQF level of the learnership.

Employers are warned that decreasing any wages that are currently in excess of the national minimum wage will amount to a unilateral change to the terms and conditions of the employee's contract of employment and would be unlawful.

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It appears that the intention may have been to try to minimise the industrial action usually accompanied by the minimum wage negotiations. The bill however only regulates the minimum wage and will not prohibit employees demanding increases over and above the prescribed minimum wage.

The bill has been criticised for failing to take into account that existing sectoral determinations fall away after three years whereafter those workers will have to rely on collective bargaining.

Whether this will achieve the aim of reducing industrial action remains to be seen.

The unions have proposed that determinations get extended for longer if these bargaining structures fail to

materialise. Other criticism includes that employee groups may apply for exemptions as opposed to employers having to apply individually and prove they cannot afford it.

The unions claim that this could result in "blanket" sectoral exemptions, which they think should not be allowed.

Unions have also argued that the bill must explicitly state that unemployment insurance and other contributions should be specifically excluded from the minimum hourly wage. Unions have also called for the bill to consider inflation when making adjustments to the national minimum wage.

It is clear that further debate and clarification is needed regarding this bill.