

# Exemptions from the national minimum wage

*Applications will be considered if the employer has complied with applicable statutory payments, including UIF, compensation fund and bargaining council agreement*

THE national minimum wage, which is payable from January 1 this year in the sum of R20 an hour a person, has an initial exemption for farm labour in the sum of R18 an hour and domestic workers in the sum of R15 an hour.

Furthermore, extended public works employees were set at R11 an hour and any increases they have from the government.

If an employer cannot afford the R20 an hour as per the legislation and he or she does not fall under a wage determination, he or she would have to try to apply for an exemption from the payment of the national minimum wage in terms of the regulations attached to the National Minimum Wage Act. These regulations have been published and are done in terms of Government Gazette No 42124.

The application for exemption is made to the delegated authority and must be made by the employer, or a registered employers organisation may assist the individual members to apply.

The application must be lodged in the national minimum wage exemption system in the format required by the system online.

The exemption will only be granted if the delegated authority is satisfied that the employer cannot pay the minimum wage and that every representative trade union has been meaningfully consulted.

If there is no trade union, then the workers themselves have to be meaningfully consulted.

The employer must provide the bargaining council, union or, if there is no such union, the affected workers with a copy of the application to be lodged in terms of the exemption system. If the delegated authority is satisfied that the company cannot pay the national minimum wage, they will grant a period of exemption up to 12 months.

The application, however, may be selected for an audit. It should be known that the exemption can be anything up to 10% of the national minimum wage, that is R2 an hour.

Above this, the exemption will only be considered if the employer has complied with all the applicable statutory payments, including the Unemployment Insurance Fund, the compensation fund and any applicable bargaining council agreement.

The employer, in respect of whom an exemption has been granted, must display a copy of the exemption notice conspicuously at the workplace where it can be read by the employees to whom the exemption applies.

The employer must also give a copy to the registered trade unions and



THE National Minimum Wage Act stipulates that the minimum wage for farmworkers is R18 an hour. If employers want to apply for an exemption, they have to follow a stringent process. | REUTERS African News Agency (ANA)

every worker who requests a copy.

It must be remembered that the exemption notice can be withdrawn if it is found that the employer provided false or incorrect information, or it is not complying with the exemption notice.

If the employer's financial position has improved to the extent that the employer is now able to pay the national minimum wage, then this should be reported and the exemption will be withdrawn.

If there are other justifiable grounds for withdrawing the exemption notice, this will be done. Any affected person may apply for the withdrawal of the exemption notice by lodging an application on the national minimum wage exemption system in the form required.

The delegated authority will consult with the employer and the trade union or the affected workers before any exemption notice is withdrawn.

The national minimum wage exemption system is publicly accessible on line at <https://nmw.labour.gov.za>. The authority will keep all the exemption applications and supporting documentation.

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There is a schedule attached to the exemption regulations explaining what is required.

This schedule is extensive and requires an enormous amount of documentation and input from the applicant employers.

The employer would have to show that due to insufficient profitability and assets he or she does require an exemption.

The required financial information will be captured and placed on the system and the system will immediately perform tests to determine

the presence of any of the following audit triggers, such as discrepancies and depreciation.

It must be remembered that these applications would be applicable to private households as well as for exemptions for domestic workers.

A financial analysis will not always be conducted. It will be done only if the computer system triggers an audit necessity.

The exemption procedure is unfortunately onerous and complicated.

There are flow diagrams attached to the regulations for exemptions that outline what will take place when certain triggers are alerted.

There is a flow diagram referring to households and financial decision process. Likewise, there is one for non-profit organisations.

There are numerous details that need to be supplied in the application for exemption, including the UIF registration number, Compensation Fund Registration number and SA Revenue Service number.

The physical and postal address, and contact person must be included. These details are contained in Schedule 2 of the exemption regulations.