

Exemptions from the national minimum wage

LABOUR WATCH

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THE national minimum wage payable from January 1 of R20 an hour per person has an initial exemption for farm labour of R18 an hour and R15 an hour for domestic workers. The rate for extended public works employees is R11 an hour and any increases that they have from government.

If an employer cannot afford the R20 per hour and they do not fall under a wage determination, they would have to try and apply for exemptions 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 an 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 online in the national minimum wage exemption system and in the format required by their system.

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 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 per hour. Over and above this, the exemption will only be considered if the employer has complied with all the applicable statutory payments including the UIF, 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 at the workplace where it can be read by the employees to whom the exemption applies.

The employer must also give a copy of the exemption notice to the registered trade unions and every worker who requests a copy.

The exemption notice can be withdrawn if it is found that the employer provided false or incorrect information or that the employer is not complying with the exemption notice.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 at <https://nmw.labour.gov.za>

The authority will keep all the exemption applications and supporting documentation.

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, they do require an exemption.

The required financial information will be captured and placed on the system and the program 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 and will only be done if the computer program triggers an audit necessity.

The exemption procedure is unfortunately onerous and complicated.

There are flow diagrams attached to the regulations for exemptions and these diagrams 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 address and postal address and the contact person must be included.

All these details are contained in Schedule 2 of the exemption regulations.