

■ EXEMPTION

If minimum wage is too steep for you

MICHAEL BAGRAIM

THE national minimum wage payable from January 1 of R20 per hour has an initial exemption for farm labour of R18 per hour and domestic workers of R15 per hour. The rate for Extended Public Works employees was set at R11 per hour and any increases they have from the government.

If an employer cannot afford the R20 per hour as per the legislation and they do not fall under a wage determination, they would have to try to apply for an exemption from paying the national minimum wage in terms of the National Minimum Wage Act. Its regulations have been published in Government Gazette No 42124.

The application for exemption is made to the delegated authority. It must be made by the employer or a registered employers organisation that may assist the individual members to apply. The application must be lodged in the national minimum wage exemption system in the online format required.

The exemption will only be granted if the 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 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 for exemption. If the authority is satisfied that the company cannot pay the national minimum wage it will grant a period of exemption up to 12 months. However, the application may be selected for an audit.

The exemption can be anything up to 10% of the national minimum wage, ie R2 per hour. The exemption will only be considered if the employer has complied with all the applicable statutory payments including UIF, compensation fund and any applicable bargaining council agreement.

The employer granted an exemption must display a copy of the exemption notice conspicuously at the workplace where it can be read by the employees to whom it 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The exemption notice can be withdrawn if it is found that the employer provided false or incorrect information or that the employer is not complying with the exemption notice.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 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 online at <https://nmw.labour.gov.za>

There is a schedule attached to the exemption regulations explaining what is required. This schedule requires an enormous amount of documentation from 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 on the system and the system will immediately perform tests to determine any audit triggers such as discrepancies and depreciation.

These applications would be applicable to private households and domestic workers.

The exemption procedure is onerous and complicated. There are flow diagrams attached to the regulations for exemptions outlining what will take place when certain triggers are alerted. There is a flow diagram referring to households and NPOs. Numerous details, including the UIF registration number, Compensation Fund Registration number and SA Revenue Service number, need to be supplied in the exemption application.

This material has been copied under a Dalro licence and is

not for resale or retransmission.