



Legal update

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momentum

Legislation - Labour matters

This update summarises the legislation changes introduced by the Labour Laws Amendment Act and the National Minimum Wage Act.

1. Labour Relations Amendment Act

The Labour Laws Amendment Act 10 of 2018 was published in Government Gazette No 42062 on 27 November 2018. The Act will come into effect on a date to be published. The Act amended certain sections of the Basic Conditions of Employment Act and the Unemployment Insurance Act.

The changes for leave are:

- An employee who is a parent of a child and who is not entitled to maternity leave is entitled to 10 consecutive days' parental leave when that employee's child is born or when an adoption order is granted.
- An employee who is an adoptive parent of a child who is younger than 2 years is entitled to adoption leave of at least 10 weeks consecutively or 10 consecutive days' parental leave. If there are two adoptive parents, one of the adoptive parents may apply for adoption leave and the other for parental leave.
- An employee who is a commissioning parent in a surrogate motherhood agreement is entitled to commissioning parental leave of at least 10 weeks consecutively or 10 consecutive days' parental leave. If there are two commissioning parents, one of the employees may apply for commissioning parental leave and the other for parental leave.

Parents who take parental leave, adoption leave or commissioning parent leave will be entitled to unemployment insurance benefits as set out in the Unemployment Insurance Act.

2. National Minimum Wage Act¹

The National Minimum Wage Act 9 of 2018 (the Act) which was published in Government Gazette No.42060 on 27 November 2018 came into effect on 1 January 2019 and applies to all employees and their employers, except members of the South African National Defence Force, the National Intelligence Agency and the

¹ A significant number error has been noted in the Act. The labour committee will introduce an Amendment Bill to correct the error which cross-referenced to an incorrect section. The pending amendment does not suspend the new minimum wage law and employers must continue paying the new wages while the Amendment Bill is being considered by Parliament.

South African Secret Service. The Act provides for a national minimum wage of R20 for each ordinary hour worked. While this provision applies from the effective date, section 4(6), which applies retrospectively from 1 May 2017, provides that payment of the national minimum wage cannot be waived and it takes precedence over any contrary provision in any contract, collective agreement, sectoral determination or law.

Section 4(7) of the Act also provides that it is an unfair labour practice for an employer to unilaterally alter wages, hours of work or other conditions of employment in connection with the implementation of the national minimum wage. This effectively means that an employee who was paid less than the national minimum wage can claim the difference between what he was paid and the national minimum wage for the period between 1 May 2017 and 27 November 2018. If the employer disputes the claim, he can refer the dispute to the CCMA. An employer who pays an employee more than the national minimum wage can't reduce the employee's wages to the national minimum wage.

Section 76 of the Basic Conditions of Employment Act 75 of 1997 (BCEA), provides that an employer may be fined for paying an employee less than the national minimum wage. Such fine may be an amount that is either twice the value of the underpayment or twice the employee's monthly wage, whichever is greater. An employer can, be fined for paying an employee less than the national minimum wage for the period between 1 May 2017 and 27 November 2018.

Section 9A of the BCEA states that an employee, who earns less than the earnings threshold of R205 433.30 per annum and works for less than four hours a day must be paid for four hours work on that day.

The minimum wage excludes: (i) any payment made to enable a worker to work including any transport, equipment, tool, food or accommodation allowance, unless specified otherwise in a sectoral determination; (ii) any payment in kind including board or accommodation, unless specified otherwise in a sectoral determination; (iii) gratuities including bonuses, tips or gifts; and (iv) any other prescribed category of payment.

For the following employees, the minimum wage is as set out:

- Farmworkers – R18 per hour.
- Domestic workers – R15 per hour.
- Workers employed on an expanded public works programme – R11.
- Workers who have entered into learnership agreements in terms of the Skills Development Act – learnership allowances provided for in Schedule 2 of the Act.

The minimum wage will be reviewed annually by the National Minimum Wage Commission which may make recommendations to adjust the national minimum wage.

An employer or employer's organisation may apply for exemption from paying the minimum wage. If the exemption is granted it must specify the following: the period for which it is granted (which may not be longer than one year), the wage that the employer is required to pay employees, and any other relevant condition.

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