

AGREEMENT ON THE INTRODUCTION OF A NATIONAL MINIMUM WAGE

7 FEBRUARY 2017

1. Level of the National Minimum Wage (NMW)

There is agreement that at the implementation date (which should be no later than 1 May 2018) the level of the national minimum wage will be R20/hour.

2. Implementation of the NMW

2.1. Implementation Date

The NMW should be implemented as soon as possible, but that this timeframe is contingent on finalisation of the legislation and setting up the new institution. Implementation is planned for no later than 1 May 2018.

2.2. Legislative process

Government will work with the social partners on the process of ensuring the NMW Act and related legislative amendments is passed by Parliament. All social partners will work to find ways of giving effect to this agreement through all the processes that need to be followed. Government will circulate the relevant work plan, which will be monitored by the Committee of Principals (COP).

3. Medium term aspirational target of the NMW

The NMW Commission to be established will, as part of its mandate, establish a medium term aspirational target for the NMW and take into account appropriate benchmarks and International Labour Organization (ILO) guidelines.

4. Adjustment of the national minimum wage

The NMW Commission will adjust the NMW annually. The first and subsequent adjustment processes by the Commission must be based on the consideration of a number of factors, including cost of living and minimum living levels, the alleviation of poverty, wage differentials and inequality, conditions of employment, the health and safety and welfare of workers, employment levels, inflation, GDP growth, productivity, collective bargaining, the aspirational target, the impact of the adjustment on

employment, in line with the principles in the Basic Conditions of Employment Act (BCEA) and ILO instruments. It is specifically agreed that the adjustment should not lead to the erosion of the value of the NMW taking into account all of the above factors. The Commission will in considering the first and subsequent adjustments need to assess the impact of the introduction of the NMW on employment.

5. Review of the NMW

There will be periodic reviews of the NMW that should take into account the socio-economic impact on employment, working poverty and wage inequality.

6. Hours of work

The Advisory Panel will conduct an assessment of the impact on workers income and job losses of setting the payment for minimum working hours at 4, 5 or 6 hours a day respectively. The Panel will also need to take into account the provisions of the collective and bargaining council agreements and sectoral determinations on minimum hours. The recommendations of the assessment by the Advisory Panel must be presented to the COP as soon as possible to ensure that this matter is resolved before the legislation for the NMW is processed.

7. Unilateral changes to conditions of employment and hours of work

No employer may unilaterally alter downwards conditions of employment and hours of work, including those currently contained in private contracts, sectoral determinations or collective agreements, because of the introduction of the NMW. To do so will constitute non-compliance and/or unfair labour practice.

8. Coverage of the NMW

8.1. SMMEs and start-up businesses

There is agreement that no businesses will be excluded from the national minimum wage. Small businesses and start-ups will need to be assisted to understand the implementation of the NMW. Should it be unaffordable for such businesses to pay wages at the level of NMW they will be provided with the information needed to enable them to apply for exemptions and on how to make use of incentive schemes offered.

8.2. Exemptions from the NMW

The exemption process must be as simple and efficient as possible, particularly for SMMEs. The information and publicity campaign of the NMW must include training and education around exemptions and where businesses can get support. Government must ensure that departments are fully equipped to provide the necessary assistance. Exempted businesses will be required to pay a determined percentage of the NMW. Such exemptions will only be granted for a maximum 12-month period at a time. A motivation will be required for any subsequent exemption applications.

The Department of Labour will ensure that labour inspectors are fully trained and capacitated on the NMW. A 30-day turn around on exemptions will be provided for. A detailed plan will be required with exemptions opening in advance of the implementation of the NMW in order to provide sufficient time.

Government will explore ways in which exemptions could provide access to tax incentives.

8.3. Exclusions

The COP will consider the participation of Expanded Public Works Programme (EPWP) and Community Works Programme (CWP) in the NMW after examination and review by the Nedlac Task Team.

9. Socio-Economic Impact Assessments

Government will conduct a Socio-Economic Impact Assessment (SEIA) as is the practice with all new legislation, considering existing research on the NMW for South Africa and the report of the Advisory Panel on the NMW. Government will brief the social partners on the SEIA so that jointly the parties can look at creative ways to speed it up and ensure it does not delay implementation.

10. Tiering

The social partners have agreed that when the NMW is introduced domestic workers will be paid 75% of the NMW and agricultural workers will be paid 90% of the NMW. It is proposed that these sectors will be brought up to 100% of the NMW level within 2 years pending research by the NMW Commission on this timeframe.

11. Institutional arrangement

Government will present a proposal on the NMW Commission's institutional arrangements (i.e. functions, role, representation, scope, powers, etc.) at the next COP meeting. There shall be three representatives from each constituency, that is, Organised Labour, Organised Business and Community. The COP must still determine the decision making processes of the NMW Commission.

12. Enforcement and compliance

Government will circulate a plan on readiness for enforcement, compliance and processing exemptions. This plan will include details on the publicity and information campaign, which shall include the social partners. Once the law comes into effect, the inspection, enforcement and compliance become effective immediately. Education is an integral part of enforcement.

13. Wage inequality

A Nedlac Management Committee Task Team will be established to discuss this matter, reporting to the COP. The task team will be given a clear time-frame to complete its work. The first step should be to gather research and evidence on which the social partners can engage. Furthermore, the social partners commit to explore, develop and implement solutions on the basis of evidence to address wage inequality.

14. Comprehensive social security

All social partners are committed at the highest political level to the adoption of a comprehensive social security system, including for working age people, through the Nedlac processes. This work will continue under the Nedlac Manco Task Team that is established, which will report to the COP.

15. Mitigating steps to prevent job losses

The fragile sectors having difficulty in complying with the NMW will be considered for assistance within the available means, including incentives. The social partners commit to make every effort to avoid job losses that may arise in the short term from the introduction of the NMW, and further commit to grow employment in the medium to long term through inclusive growth.

16. Relationship of NMW to Sectoral Determinations and Bargaining Councils

It is agreed that all sectoral determinations, collective agreements, bargaining council agreements and individual contracts of employment must comply with the NMW Act at the time of implementation i.e. their minima must be no lower than the NMW floor unless exempted, or excluded by way of a phase-in arrangement. Further that no wages or conditions of workers prescribed by Sectoral Determinations or Bargaining Council Agreements, or private contracts, which are more favourable than the NMW, may be unilaterally decreased after introduction of the NMW.

There is agreement that Government will continue to meet with Bargaining Councils to popularise, align with, and give effect to the NMW. Public engagements with employers and employees, particularly in Sectoral Determination sectors, should be considered as part of the information campaign and in order to bring certainty to all parties. The COP will be kept updated on these engagements.