



▪ MKHABELA HUNTLEY ATTORNEYS INC ▪

EMPLOYMENT LAW REVIEW

INCREASED PROTECTION FOR VULNERABLE WORKERS

FEBRUARY / MARCH 2021

Dear clients

INTRODUCTION

1. The COVID-19 pandemic has severely impacted the South African economy. Our country is still navigating the detrimental consequences caused by the outbreak. Millions of South Africans have lost their jobs and livelihoods, and those still in employment have more mouths to feed. To mitigate the harsh employment consequences of the pandemic, Minister Nxesi (Minister: Employment and Labour) gazetted various legislative amendments which seek to increase the income of low paid workers and provide for additional protections.
2. Cabinet published two separate Notices on 8 February 2021, which increase the national minimum wage (in terms of the National Minimum Wage Act, 2018), and the earnings threshold determination in terms of the BCEA (Basic Conditions of Employment Act, 1997). We discuss these interventions below.

INCREASE IN THE NATIONAL MINIMUM WAGE

3. This Act was signed on 23 November 2018 and came into effect on 1 January 2019. The Act seeks to establish a minimum wage across South Africa. The national minimum wage was first implemented at a level of R20,00 per hour.
4. The Minister has determined the new minimum wage to be R21,69 for every ordinary hour worked. The amount is less for domestic workers for whom the minimum is set at R19,09 an hour, and for workers on an expanded public works programme, the minimum is R11,93 an hour.

	MINIMUM WAGE 2019	MINIMUM WAGE 2020	MINIMUM WAGE 2021
General application	R20,00 an hour	R20,76	R21,69
Farm workers	R18,00	R18,68	R21,69
Domestic workers	R15,00	R15,57	R19,09
Workers on Expanded Public Works Programme	R11,00	R11,42	R11,93

The increase in the minimum wage comes into effect on 1 March 2021.

THE INCREASE IN THE BCEA EARNINGS THRESHOLD

5. Section 6(3) of the BCEA provides that the Minister must, from time to time, make an earning threshold determination which results in additional protections to vulnerable workers. In other words, employees earning below the threshold enjoy statutory protections that employees who earn above the threshold do not.
6. The earnings threshold impacts on the application of provisions of the BCEA and the Labour Relations Act, 1995 (LRA). Since July 2014, this amount has been R205 433.30 per year. Minister Nxesi has increased the amount to R 211 596.30 with effect from 1 March 2021.
7. "Earnings" means an employee's regular annual remuneration before the deduction of income tax, pension fund contributions, medical aid contributions and similar payments.
8. Employees earning below the earnings threshold are protected with respect to permissible maximum ordinary hours of work, overtime, compressed working weeks, meal intervals, daily and weekly rest periods, Sunday pay, pay for night work and pay for work on public holidays.
9. The converse also applies, in other words employees earning more than R211 596.30 per annum are not entitled by law to the protections listed above. However, in practice, employers most often contract with employees who will be earning in excess of the threshold, on terms and conditions that are at least equal to or even more favourable to those contained in the BCEA. For example, an accountant who earns above the threshold is not precluded from negotiating overtime arrangements with his/her employer, or pay for work on a public holiday. (The accountant is not entitled by law to overtime pay or pay for working on a holiday, but by virtue of his / her negotiating power, may conclude such an agreement with his / her employer).
10. The earnings threshold stipulated by the Minister is also relevant to certain provisions in the LRA. In terms of the LRA, employees earning below the threshold may in certain circumstances be deemed to be the employee of a client who contracts with a labour broker. Furthermore, employees below the threshold who are on fixed term contracts for a duration longer than three months may in certain circumstances be viewed as permanent employees.

TERS CONTINUES

11. The President during the State of the Nation Address on 11 February 2021, extended the period over which the Temporary Employer/Employee Relief Scheme (TERS) benefit is payable, to 15 March 2021. Only those sectors that have not been able to operate, including tourism, hospitality and the liquor industry, will benefit from the extension.
12. Further details about who will be eligible for the extension, will be discussed and finalised by the social partners at NEDLAC.

CONTACTS

Kindly note that this Employment Review provides advice of a general nature, and if you require particular assistance, please contact us.

We wish you well during this difficult year.

Kind regards, the **MHA Labour Department**

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