

Short Notes on:

## **EXEMPTION TO THE MINIMUM WAGE RULE**

### ***Introduction***

A large part of South Africa's workforce has seen the effect of the recently updated national minimum wage. The update came as per the national legislation requiring the Minister of Labour to review the national minimum wage within 2 (two) years of its enactment. As such, the recent update raised interest in whether employers can in any way be exempted from paying this minimum wage.

### ***The Wage Rate***

The National Minimum Wage Act 9 of 2018 (hereinafter referred to as 'the Act') was needed to address the vast disparities in income within the country. As a result, a national minimum wage was enforceable from the time it was assented to. Accordingly, Schedule 1 of the Act as read with Section 6(6) of the Act stipulated the following minimum pay per hour for workers:

- The national minimum wage is R20 for each ordinary hour worked;
- Farmworkers are entitled to a minimum wage of R18 per hour;
- Domestic workers are entitled to a minimum wage of R15 per hour;
- Workers employed on an expanded public works programme are entitled to a minimum wage of R11 per hour.

This position was then updated by the Minister of Employment and Labour effective from 1 March 2021 to the following:

- The national minimum wage is R21.69 for each ordinary hour worked;
- Farmworkers are entitled to a minimum wage of R21.69 per hour;
- Domestic workers are entitled to a minimum wage of R19.09 per hour;
- Workers employed on an expanded public works programme are entitled to a minimum wage of R19.09 per hour

## **Exemption Application and Process**

Suppose an employer feels they cannot meet their employees' remuneration based on the above standard. In that case, the act further makes provision for an exemption process that can be utilised.

As per Section 15 of the Act read with the enacted Regulations, an employer or an employer's union, acting on their member's behalf, may apply for such exemption. However, such an application will not be successful unless the employer shows a good reason for why the relief should be granted and that every employee or every employees' union was meaningfully consulted with.

The Regulations further provide that the application will not be granted if the employer passes the affordability elements relating to profitability, liquidity and solvency. The calculations for these tests are further included as part of the schedules to the act. The employer would also need to be in compliance with all statutory payments in terms of but not limited to any compensation fund, bargaining council agreement or unemployment insurance fund.

Should the employer be successful, the exemption will be granted for a period of no longer than 1 (one) year.<sup>1</sup> Furthermore, the exemption will allow an employer to remunerate their workers at a rate less than the required amount, but not less than 90% (ninety percent) of the national minimum wage.

## **Conclusion**

Once the application is granted, a notice confirming such will be published by the National Wage Exemption System. Employers are then legally obligated to display a copy of such exemption in the workplace where all those affected by the exemption can read it. Therefore, it is always advised to seek out this notice before accepting that your employer has received confirmation of their exemption. Similarly, it would not be advisable to put up any such documentation in the workplace unless you, as the employer, has properly complied with the exemption process which has been properly granted.

Contact SchoemanLaw Inc for all your labour needs

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<sup>1</sup> Section 15(2)a of the Act