

REPUBLIC OF SOUTH AFRICA

**PORTFOLIO COMMITTEE AMENDMENTS
TO
BASIC CONDITIONS OF
EMPLOYMENT AMENDMENT
BILL**



(As agreed to by the Portfolio Committee on Labour (National Assembly))

[B 30A—2017]

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AGREED AMENDMENTS

BASIC CONDITIONS OF EMPLOYMENT AMENDMENT BILL [B 30—2017]

CLAUSE 1

1. On page 2, after line 12, to insert the following:
 - (b) by the substitution for the definition of “Commission” of the following definition:

“ ‘Commission’ means the [Employment Conditions Commission] National Minimum Wage Commission established by section [59 (1)] 8 of the National Minimum Wage Act, 2018;”
2. On page 3, in line 6, to omit “or”, and to substitute “and”.
3. On page 3, in lines 7 and 10, to omit “2017”, and to substitute “2018”.

CLAUSE 2

1. On page 3, in line 20, after “41,” to insert “section 62A and chapters 3, 4, 5 and 6,”.
2. On page 3, in line 20, to omit “does”, and to substitute “**[does]** do”.
3. On page 3, in line 22, to omit “**[a sectoral determination]**” and to substitute “a sectoral determination and”.
4. On page 3, in line 23, to omit “2017”, and to substitute “2018”.

CLAUSE 3

1. On page 3, in line 27, after “employee”, to insert “or a worker as defined in section 1 of the National Minimum Wage Act, 2018,”.
2. On page 3, in line 29, after “employees”, to insert “or workers”.

NEW CLAUSES

1. That the following be the new clauses:

Amendment of section 51 of Act 75 of 1997

4. Section 51 of the principal Act is hereby amended by the addition of the following subsections:

“(3) If any sectoral determination at the date of the promulgation of the National Minimum Wage Act, 2018, prescribes wages that are higher than the national minimum wage, the wages in that sectoral determination and the remuneration and associated benefits based on those wages must be increased proportionally to any adjustment of the national minimum wage in terms of the National Minimum Wage Act, 2018.

(4) Notwithstanding the provisions of any sectoral determination, an employer must pay a learner an allowance as prescribed in Schedule 2 of the National Minimum Wage Act, 2018, as is adjusted from time to time, from the date that the National Minimum Wage Act, 2018, comes into force.

(5) For the purpose of subsection (4)—

- (a) ‘**learner**’ means a learner as defined in Schedule 2 of the National Minimum Wage Act, 2018; and
- (b) ‘**allowance**’ means an allowance as defined in Schedule 2 of the National Minimum Wage, 2018.”.

Amendment of section 52 of Act 75 of 1997

5. Section 52 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:

“(1) Before making a sectoral determination, the Minister must direct the **[Director-General] Commission** to investigate conditions of employment in the sector and area concerned.”;

- (b) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

“The **[Minister must]** Commission must, on its own accord or on the direction of the Minister, as contemplated in subsection (1), determine terms of reference for the investigation, which must include—”;

- (c) by the substitution for subsection (3) of the following subsection:

“(3) The **[Minister]** Commission must publish a notice in the Gazette setting out the terms of reference of the investigation and inviting written representations by **[members of]** the public.”; and

- (d) by the substitution in subsection (4) for paragraph (a) of the following paragraph:

“(a) direct the **[Director-General]** Commission to conduct an investigation; or”.

Amendment of section 53 of Act 75 of 1997

6. Section 53 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“For the purposes of conducting an investigation in terms of section 52 (1), the **[Director-General]** Commission may—”; and

- (b) by the substitution for subsection (2) of the following subsection:

“(2) A person may not refuse to answer any relevant question by the **[Director-General]** Commission that he or she is legally obliged to answer.”.

Amendment of section 54 of Act 75 of 1997

7. Section 54 of the principal Act is hereby amended by the substitution for subsections (1) and (2) of the following subsections, respectively:

“(1) On completion of an investigation, and after considering any representations made by members of the public, the **[Director-General]** Commission must prepare a report.

(2) A copy of the report must be submitted to the **[Commission for its]** Director-General for his or her information and the Minister for consideration.”.

CLAUSE 4

1. On page 3, in line 31, to omit “**Chapters 8 and**”, and to substitute “**Chapter**”.
2. On page 3, in line 32, to omit “Chapters 8 and 9 of the principal Act are hereby repealed.”, and to substitute “Chapter 9 of the principal Act is hereby repealed.”.

CLAUSE 5

1. On page 3, in line 38, to omit “2017” and to substitute “2018”.

CLAUSE 6

1. On page 3, in line 44, to omit “2017” and to substitute “2018”.

CLAUSE 8

1. On page 4, in lines 17 and 24, to omit “2017” and to substitute “2018”.
2. On page 4, from line 27, to omit “apply to” and substitute “[**apply to** request]”.

CLAUSE 9

1. On page 4, in line 37, to omit “2017” and to substitute “2018”

CLAUSE 10

1. On page 5, in line 7, to omit “2017” and to substitute “2018”.
2. On page 5, in line 14, to omit “or”.
3. On page 5, in line 17, to omit “[; or]”, and to substitute “; or”.
4. On page 5, from line 18, to omit “**(d) that amount has been made payable by the employer to the employee for longer than 12 months before the date on which a complaint was made to a labour inspector by or on behalf of the employee or, if no complaint was made, the date on which a labour inspector first endeavoured to secure a written undertaking by the employer in terms of section 68 or issued a compliance order in terms of section 69]**”, and to substitute the following:

“(d) that amount has been made payable by the employer to the employee for longer than **[12]** 36 months before the date on which a complaint was made to a labour inspector by or on behalf of the employee or, if no complaint was made, the date on which a labour inspector first endeavoured to secure a written undertaking by the employer in terms of section 68 or issued a compliance order in terms of section 69”.

CLAUSE 11

1. On page 5, in line 28, to omit “**an arbitration award**” and to substitute “an arbitration award”.

2. On page 5, from line 34, to omit

“(2) After considering any representations made to it, the **[Labour Court] CCMA** may issue an **[order]** arbitration award in terms of subsection (1) requiring—

- (a) the employer to comply with the provisions of **[this Act]** an employment law;
- (b) subject to section **[70 (d)] 76A**, the payment of any amount owing to an employee; **[or]**
- (c) the payment of a fine calculated in terms of Schedule 2 to this Act; or
- (d) the payment of the amount that the employer is required to pay in terms of the Unemployment Insurance Contributions Act, including interest and penalties calculated in terms of section 12 and 13 of that Act.”,

and to substitute the following:

“(2) The CCMA may issue an arbitration award in terms of subsection (1) requiring the employer to comply with the compliance order, if it is satisfied that—

- (a) the compliance order was served on the employer; and
- (b) the employer has not referred a dispute in terms of section 69(5).”.

CLAUSE 12

1. On page 5, in line 49, to omit “person” and to substitute “employee or worker as defined in section 1 of the National Minimum Wage Act, 2018”.
2. On page 5, in line 51, to omit “2017”, and to substitute “2018”.
3. On page 6, in line 1, after “employees”, to insert “or workers”.
4. On page 6, in line 3, after “employee”, to insert “or worker”.
5. On page 6, after line 6, to insert the following:

“(4) The CCMA must appoint a Commissioner in terms of section 135 of the Labour Relations Act, to attempt to resolve by conciliation any dispute that is referred to the CCMA in terms of subsection (1).

(5) The CCMA must commence the arbitration of a dispute contemplated in subsection (1) immediately after certifying that the dispute remains unresolved in terms of section 135(5).”.

CLAUSE 13

1. On page 6, in lines 12, 17 and 19, to omit “2017”, and to substitute “2018”.

CLAUSE 14

1. On page 6, in line 27, to omit “2017”, and to substitute “2018”.

CLAUSE 15

1. On page 6, in lines 35 and 40, to omit “2017”, and to substitute “2018”.

CLAUSE 16

1. On page 6, in line 45, after “**76A**”, to insert “(1)”.
2. On page 6, after line 49, to insert the following:

“(2) For second or further non-compliances, a fine that may be imposed on the employer is an amount that is greater of—

(a) thrice the value of the underpayment; or

(b) thrice the employee’s monthly wage.

(3) The Minister may issue guidelines on the determination of whether a non-compliance is a second or further non-compliance, as envisaged in subsection (2).

(4) The Department must maintain and publish on its official website, on a quarterly basis, a list of all employers who were issued with compliance orders.”.

CLAUSE 18

1. On page 7, in lines 12, 16, 18, 21 and 28, to omit “2017”, and to substitute “2018”.

CLAUSE 20

1. Clause rejected.

NEW CLAUSE

1. That the following be a new clause:

Transitional provisions

- 24.** With effect from the date of the establishment of the National Minimum Wage Commission established by section 8 of the National Minimum Wage Act, 2018—
- (a) the Employment Conditions Commission established by section 59 of the principal Act, is hereby disestablished;
 - (b) the functions of the Employment Conditions Commission are hereby transferred to the National Minimum Wage Commission; and
 - (c) the term of office of the members of the Employment Conditions Commission lapses.

CLAUSE 21

1. On page 8, in lines 23 and 24, to omit “2017”, and to substitute “2018”.

LONG TITLE

1. On page 2, in third line, to omit “repeal the”, and to substitute, “amend certain”.
2. On page 2, in third line, after “and”, to insert “to disestablish”.
3. On page 2, in the 7th line, to omit “2017”, and to substitute, “2018”.





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