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THE PRESIDENCY

No. 1302 27 November 2018

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

Act No 7 of 2018: Basic Conditions of Employment Amendment Act, 2018

DIE PRESIDENSIE

No. 1302 27 November 2018

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

Wet No. 7 van 2018: Wysigingswet op Basiese Diensvoorwaardes, 2018

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[ ] Words in bold type in square brackets indicate omissions from existing enactments.

__________ Words underlined with a solid line indicate insertions in existing enactments.

(English text signed by the President)
(Assented to 23 November 2018)

ACT

To amend the Basic Conditions of Employment Act, 1997, so as to substitute and insert certain definitions; to provide for daily wage payments applicable to certain employees; to repeal certain provisions dealing with sectoral determinations and to disestablish the Employment Conditions Commission; to extend the jurisdiction of the Commission for Conciliation, Mediation and Arbitration; to extend the provisions for monitoring and enforcement by the labour inspector; to include enforcement of the provisions of the National Minimum Wage Act, 2018, the Unemployment Insurance Act, 2001 and the Unemployment Insurance Contributions Act, 2002; to provide for claims for underpayment; to provide for transitional arrangements; to regulate sectoral determinations currently in force; to strengthen collective bargaining in respect of the sectors regulated by those sectoral determinations; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 75 of 1997, as amended by section 1 of Act 11 of 2002, section 25 of Act 52 of 2003, section 53 of Act 11 of 2013 and section 1 of Act 20 of 2013

1. Section 1 of the Basic Conditions of Employment Act, 1997 (hereinafter referred to as the ''principal Act''), is hereby amended—

(a) by the substitution for the definition of ''basic conditions of employment'' of the following definition:

'' **'basic conditions of employment'** means a provision of this Act or sectoral determination that stipulates a minimum term or condition of employment, and includes the national minimum wage;'';

(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;'';

ALGEMENE VERDUIDELIKENDE NOTA:

[ ]	Woorde in vet druk in vierkantige hakies, dui skrappings uit bestaande verordeninge aan.
______	Woorde met 'n volstreep daaronder, dui invoegings in bestaande verordeninge aan.

(Engelse teks deur die President geteken)
(Goedgekeur op 23 November 2018)

WET

Tot wysiging van die Wet op Basiese Diensvoorwaardes, 1997, ten einde sekere woordomskrywings te vervang en in te voeg; voorsiening te maak vir dagloonbetalings aan sekere werknemers; sekere bepalings wat oor sektorale vasstellings handel, te herroep en die Kommissie vir Diensvoorwaardes af te stig; die regsbevoegdheid van die Kommissie vir Versoening, Bemiddeling en Arbitrasie uit te brei; die bepalings vir monitering en afdwinging deur die arbeidsinspekteur uit te brei om afdwinging van die bepalings van die "National Minimum Wage Act", 2018, die "Unemployment Insurance Act", 2001, en die "Unemployment Insurance Contributions Act", 2002, in te sluit; voorsiening te maak vir eise vir onderbetaling; voorsiening te maak vir oorgangsmaatreëls; om sektorale vasstellings wat tans van krag is, te hersien; kollektiewe bedinging te versterk ten opsigte van die sektore deur daardie sektorale vasstellings gereël; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

DAAR WORD BEPAAL deur die Parlement van die Republiek van Suid-Afrika, soos volg:—

Wysiging van artikel 1 van Wet 75 van 1997, soos gewysig deur artikel 1 van Wet 11 van 2002, artikel 25 van Wet 52 van 2003, artikel 53 van Wet 11 van 2013 en artikel 1 van Wet 20 van 2013

1. Artikel 1 van die Wet op Basiese Diensvoorwaardes, 1997 (hierna die ''Hoofwet'' genoem), word hierby gewysig—

(a) deur die omskrywing van ''basiese diensvoorwaarde'' deur die volgende omskrywing te vervang:

'' **'basiese diensvoorwaarde'** 'n bepaling van hierdie Wet of 'n sektorale vasstelling wat 'n minimum beding of voorwaarde van diens stel, en ook die nasionale minimum loon;'';

(b) deur die omskrywing van ''dienswet'' deur die volgende omskrywing te vervang:

'' **'dienswet'** ook hierdie Wet, enige ander Wet waarvan die administrasie aan die Minister opgedra is, en enige van die volgende Wette:

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(c) by the substitution for the definition of ''employment law'' of the following definition:

'' **'employment law'** includes this Act, any other Act the administration of which has been assigned to the Minister, and any of the following Acts:

(a) the Unemployment Insurance Act, **[1966 (Act No. 30 of 1966)]** 2001 (Act No. 63 of 2001);

(b) the **[Skills Development Act, 1998 (Act No. 97 of 1998)]** Employment Services Act, 2014 (Act No. 14 of 2014);

(c) the Employment Equity Act, 1998 (Act No. 55 of 1998);

(d) the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993);

(e) the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993); and

(f) the National Minimum Wage Act, 2018;'';

(d) by the insertion after the definition of ''month'' of the following definition:

'' **'national minimum wage'** means the national minimum wage envisaged in section 4 of the National Minimum Wage Act, 2018;''; and

(e) by the insertion after the definition of ''trade union representative'' of the following definitions:

'' **'Unemployment Insurance Act'** means the Unemployment Insurance Act, 2001 (Act No. 63 of 2001);

'Unemployment Insurance Contributions Act' means the Unemployment Insurance Contributions Act, 2002 (Act No. 4 of 2002);''.

Amendment of section 3 of Act 75 of 1997

2. Section 3 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

''(3) This Act, except section 41, section 62A and chapters 3, 4, 5 and 6, **[does]** do not apply to persons employed on vessels at sea in respect of which the Merchant Shipping Act, 1951 (Act No. 57 of 1951), applies, except to the extent provided for in a sectoral determination and the National Minimum Wage Act, 2018, read with section 62A.''.

Insertion of section 9A in Act 75 of 1997

3. The following section is hereby inserted in the principal Act after section 9:

''**Daily wage payment**

9A. (1) An employee or a worker as defined in section 1 of the National Minimum Wage Act, 2018, who works for less than four hours on any day must be paid for four hours work on that day.

(2) This section applies to employees or workers who earn less than the earnings threshold set by the Minister in terms of section 6(3).''.

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.

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(a) Die **[Werkloosheidversekeringswet, 1966 (Wet No. 30 van 1966)]** 'Unemployment Insurance Act', 2001 (Wet No. 63 van 2001);
(b) die **[Skills Development Act, 1998 (Wet No. 97 van 1998)]** 'Employment Services Act', 2014 (Wet No. 14 van 2014);
(c) die Employment Equity Act, 1998 (Wet No. 55 van 1998);
(d) die Wet op Beroepsgesondheid en Veiligheid, 1993 (Wet No. 85 van 1993);
(e) die Wet op Vergoeding vir Beroepsbeserings en -siektes, 1993 (Wet No. 130 van 1993); en
(f) die 'National Minimum Wage Act', 2018;'';

(c) deur die omskrywing van ''Kommissie'' deur die volgende omskrywing te vervang:

'' **'Kommissie'** die Kommissie vir **[Diensvoorwaardes]** die Nasionale Minimum Loon by artikel **[59(1)]** 8 van die 'National Minimum Wage Act', 2018, ingestel;'';

(d) deur die volgende omskrywing na die omskrywing van ''nakomingsbevel'' in te voeg:

'' **'nasionale minimum loon'** die nasionale minimum loon in artikel 4 van die 'National Minimum Wage Act', 2018, in die vooruitsig gestel;''; en

(e) deur die volgende omskrywings na die omskrywing van ''tydelike werkverskaffingsdiens'' in te voeg:

'' **'Unemployment Insurance Act'** die 'Unemployment Insurance Act', 2001 (Wet No. 63 van 2001);
'Unemployment Insurance Contributions Act' die 'Unemployment Insurance Contributions Act', 2002 (Wet No. 4 van 2002);''.

Wysiging van artikel 3 van Wet 75 van 1997

2. Artikel 3 van die Hoofwet word hierby gewysig deur subartikel (3) deur die volgende subartikel te vervang:

''(3) Hierdie Wet, behalwe artikel 41, artikel 62A en hoofstukke 3, 4, 5 en 6, is nie van toepassing nie op persone in diens op skepe ter see ten opsigte van wie die Handelskeepvaartwet, 1951 (Wet No. 57 van 1951), van toepassing is, behalwe in soverre daar in 'n sektorale vasstelling en die 'National Minimum Wage Act', 2018, gelees met artikel 62A, daarvoor voorsiening gemaak word.''.

Invoeging van artikel 9A in Wet 75 van 1997

3. Die volgende artikel word hierby na artikel 9 in die Hoofwet ingevoeg:

''**Betaling van dagloon**

9A. (1) 'n Werknemer of 'n werker soos in artikel 1 van die 'National Minimum Wage Act', 2018, omskryf wat op enige dag minder as vier ure werk, moet vir vier ure se werk op daardie dag betaal word.

(2) Hierdie artikel is van toepassing op werknemers of werkers wat minder verdien as die inkomstedrempel ingevolge artikel 6(3) deur die Minister vasgestel.''.

Wysiging van artikel 51 van Wet 75 van 1997

4. Artikel 51 van die Hoofwet word hierby gewysig deur die volgende subartikels by te voeg:

''(3) Indien enige sektorale vasstelling op die datum van uitvaardiging van die 'National Minimum Wage Act', 2018, lone voorskryf wat hoër is as die nasionale minimum loon, moet die lone in daardie sektorale vasstelling en die vergoeding en gepaardgaande voordele op daardie lone gegrond, in verhouding tot enige aanpassing van die nasionale minimum lone ingevolge die 'National Minimum Wage Act', 2018, verhoog word.

(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 Act, 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.''.

Repeal of Chapter 9 of Act 75 of 1997

8. Chapter 9 of the principal Act is hereby repealed.

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(4) Ondanks die bepalings van enige sektorale vasstelling, moet 'n werkgewer 'n toelaag aan 'n leerder betaal soos voorgeskryf in Bylae 2 van die 'National Minimum Wage Act', 2018, soos van tyd tot tyd aangepas, vanaf die datum waarop die 'National Minimum Wage Act', 2018, van krag word.

(5) By die toepassing van subartikel (4) beteken—

(a) **'leerder'** 'n 'learner' soos in Bylae 2 van die 'National Minimum Wage Act', 2018, omskryf; en

(b) **'toelaag'** 'n 'allowance' soos in Bylae 2 van die 'National Minimum Wage Act', 2018, omskryf.".

Wysiging van artikel 52 van Wet 75 van 1997

5. Artikel 52 van die Hoofwet word hierby gewysig—

(a) deur subartikel (1) deur die volgende subartikel te vervang:

"(1) Alvorens 'n sektorale vasstelling gedoen word, moet die Minister die **[Direkteur-generaal]** Kommissie gelas om diensvoorwaardes in die betrokke sektor en gebied te ondersoek.";

(b) deur in subartikel (2) die woorde wat paragraaf *(a)* voorafgaan deur die volgende woorde te vervang:

"Die **[Minister]** Kommissie moet, uit eie beweging of op lasgewing van die Minister, soos in subartikel (1) beoog, die opdrag vir die ondersoek bepaal, wat moet insluit—";

(c) deur subartikel (3) deur die volgende subartikel te vervang:

"(3) Die **[Minister]** Kommissie moet 'n kennisgewing in die *Staatskoerant* publiseer wat die opdrag van die ondersoek uiteensit en wat **[lede van]** die publiek uitnooi om skriftelike vertoë voor te lê"; en

(d) deur in subartikel (4) paragraaf *(a)* deur die volgende paragraaf te vervang:

"*(a)* óf die **[Direkteur-generaal]** Kommissie gelas om 'n ondersoek in te stel, óf".

Wysiging van artikel 53 van Wet 75 van 1997

6. Artikel 53 van die Hoofwet word hierby gewysig—

(a) deur subartikel (1) deur die woorde wat paragraaf *(a)* voorafgaan deur die volgende woorde te vervang:

"Vir die doeleindes van die instel van 'n ondersoek ingevolge artikel 52(1) kan die **[Direkteur-generaal]** Kommissie—"; en

(b) deur subartikel (2) deur die volgende subartikel te vervang:

"(2) 'n Persoon mag nie weier om enige tersaaklike vraag deur die **[Direkteur-generaal]** Kommissie, wat hy of sy regtens verplig is om te beantwoord, te beantwoord nie.".

Wysiging van artikel 54 van Wet 75 van 1997

7. Artikel 54 van die Hoofwet word hierby gewysig deur subartikels (1) en (2) onderskeidelik deur die volgende subartikels te vervang:

"(1) By die afhandeling van 'n ondersoek, en na oorweging van enige vertoë deur lede van die publiek gerig, moet die **[Direkteur-generaal]** Kommissie 'n verslag opstel.

(2) 'n Afskrif van die verslag moet ter inligting aan die **[Kommissie]** Direkteur-generaal en vir oorweging aan die Minister voorgelê word **[vir oorweging]**.".

Herroeping van Hoofstuk 9 van Wet 75 van 1997

8. Hoofstuk 9 van die Hoofwet word hierby herroep.

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Insertion of section 62A in Act 75 of 1997

9. The following section is hereby inserted in the principal Act before section 63 under Part A of Chapter 10:

''**Definitions**

62A. For the purpose of Chapter 10, an employee includes a worker as defined in section 1 of the National Minimum Wage Act, 2018.''.

Amendment of section 64 of Act 75 of 1997

10. Section 64 of the principal Act is hereby amended by the deletion in subsection (1) of the word ''and'' at the end of paragraph *(d)* and the insertion in that subsection of the following paragraphs after paragraph *(d)*:

''*(d*A*)* referring disputes to the CCMA concerning failure to comply with this Act, the National Minimum Wage Act, 2018, the Unemployment Insurance Act and the Unemployment Insurance Contributions Act;

*(d*B*)* appearing on behalf of the Director-General in any proceedings in the CCMA or Labour Court concerning a failure to comply with the legislation referred to in paragraph *(d*A*)*; and''.

Amendment of section 65 of Act 75 of 1997, as amended by section 17 of Act 37 of 2008

11. Section 65 of the principal Act is hereby amended—

(a) by the deletion of paragraph *(b)* of subsection (1); and

(b) by the substitution in subsection (1) for paragraph *(c)* of the following paragraph:

''*(c)* any place at which any person provides or purports to provide any employment services as defined in terms of the **[Skills Development Act, 1998 (Act No. 97 of 1998)]** Employment Services Act, 2014 (Act No. 4 of 2014);''.

Amendment of section 68 of Act 75 of 1997, as amended by section 13 of Act 11 of 2002 and section 9 of Act 20 of 2013

12. Section 68 of the principal Act is hereby amended—

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

''(1) A labour inspector who has reasonable grounds to believe that an employer has not complied with any provision of this Act, the National Minimum Wage Act, 2018, the Unemployment Insurance Act or the Unemployment Insurance Contributions Act may endeavour to secure a written undertaking by the employer to comply with the provision.'';

(b) by the substitution in subsection (2) for paragraph *(a)* of the following paragraph:

''*(a)* may seek to obtain agreement between the employer and employee as to any amount owed to the employee in terms of this Act or the National Minimum Wage Act, 2018;''; and

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

''(3) If an employer fails to comply with a written undertaking given by the employer in terms of this section, the Director-General may **[apply to]** request the **[Labour Court for an order in terms of section 73 directing the employer to comply with the undertaking]** CCMA to make the undertaking an arbitration award.''.

Amendment of section 69 of Act 75 of 1997, as amended by section 14 of Act 11 of 2002 and section 10 of Act 20 of 2013

13. Section 69 of the principal Act is hereby amended—

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

''(1) A labour inspector who has reasonable grounds to believe that an employer has not complied with a provision of this Act, the National

Invoeging van artikel 62A in Wet 75 van 1997

9. Die volgende artikel word hierby voor artikel 63 onder Deel A van Hoofstuk 10 in die Hoofwet ingevoeg:

"**Woordomskrywing**

62A. By die toepassing van Hoofstuk 10 is 'n werknemer ook 'n 'employee' soos in artikel 1 van die 'National Minimum Wage Act', 2018, omskryf.".

Wysiging van artikel 64 van Wet 75 van 1997

10. Artikel 64 van die Hoofwet word hierby gewysig deur in subartikel (1) die woord "en" aan die einde van paragraaf *(d)* te skrap en die volgende paragrawe na paragraaf *(d)* in daardie subartikel in te voeg:

"*(d*A*)* geskille oor versuim om aan hierdie Wet, die 'National Minimum Wage Act,' 2018, die 'Unemployment Insurance Act', en die 'Unemployment Insurance Contributions Act', te voldoen, na die KVBA te verwys;

*(d*B*)* namens die Direkteur-generaal voor die KVBA of Arbeidshof te verskyn in enige verrigtinge aangaande 'n versuim om aan die wetgewing in paragraaf *(d*A*)* bedoel, te voldoen; en".

Wysiging van artikel 65 van Wet 75 van 1997, soos gewysig deur artikel 17 van Wet 37 van 2008

11. Artikel 65 van die Hoofwet word hierby gewysig—

(a) deur paragraaf *(b)* van subartikel (1) te skrap; en

(b) deur in subartikel (1) paragraaf *(c)* deur die volgende paragraaf te vervang:

"*(c)* **[enige private werkverskaffingskantoor geregistreer kragtens die]** enige plek waar iemand enige werksverskaffingsdienste voorsien of na bewering voorsien, soos omskryf in die **['Skills Development Act, 1998' (Wet No. 97 van 1998)]** 'Employment Services Act', 2014 (Wet No. 4 van 2014), betree.".

Wysiging van artikel 68 van Wet 75 van 1997, soos gewysig deur artikel 13 van Wet 11 van 2002 en artikel 9 van Wet 20 van 2013

12. Artikel 68 van die Hoofwet word hierby gewysig—

(a) deur subartikel (1) deur die volgende subartikel te vervang:

"(1) 'n Arbeidsinspekteur wat redelike gronde het om te glo dat 'n werkgewer 'n bepaling van hierdie Wet, die 'National Minimum Wage Act', 2018, die 'Unemployment Insurance Act' of die 'Unemployment Insurance Contributions Act' nie nagekom het nie, kan poog om 'n skriftelike onderneming deur die werkgewer te verkry om die bepaling na te kom.";

(b) deur in subartikel (2) paragraaf *(a)* deur die volgende paragraaf te vervang:

"*(a)* kan probeer om 'n ooreenkoms tussen die werkgewer en die werknemer te bewerkstellig oor enige bedrag wat ingevolge hierdie Wet of die 'National Minimum Wage Act', 2018, aan die werknemer verskuldig is;"; en

(c) deur subartikel (3) deur die volgende subartikel te vervang:

"(3) Indien 'n werkgewer versuim om te voldoen aan 'n skriftelike onderneming wat die werkgewer ingevolge hierdie artikel gegee het, kan die Direkteur-generaal **[by die Arbeidshof aansoek doen om 'n bevel ingevolge artikel 73 wat die werkgewer gelas om aan die onderneming te voldoen]** versoek dat die KVBA die onderneming 'n arbitrasietoekenning maak.".

Wysiging van artikel 69 van Wet 75 van 1997, soos gewysig deur artikel 14 van Wet 11 van 2002 en artikel 10 van Wet 20 van 2013

13. Artikel 69 van die Hoofwet word hierby gewysig—

(a) deur subartikel (1) deur die volgende subartikel te vervang:

"(1) 'n Arbeidsinspekteur wat redelike gronde het om te glo dat 'n werkgewer 'n bepaling van hierdie Wet, die 'National Minimum Wage

Minimum Wage Act, 2018, the Unemployment Insurance Act or the Unemployment Insurance Contributions Act may issue a compliance order.'';

(b) by the substitution in subsection (2) for paragraphs *(b)* and *(c)* of the following paragraphs, respectively:

''*(b)* **[any]** the provision of this Act and any other Act referred to in subsection (1) that the employer has not complied with, and details of the conduct constituting non-compliance;

(c) any amount that the employer is required to pay to an employee, or in the case of a failure to pay the national minimum wage, the amount that the employer is required to pay to an employee in terms of section 76A;'';

(c) by the deletion of subsection (2A);

(d) by the substitution for subsection (5) of the following subsection:

''(5) An employer must comply with the compliance order within the time period stated in the order, unless the employer refers a dispute concerning the compliance order to the CCMA within that period.''; and

(e) by the addition of the following subsection:

''(6) A dispute referred to the CCMA by the employer in terms of subsection (5) must be dealt with in terms of section 73.''.

Substitution of section 70 of Act 75 of 1997, as amended by section 15 of Act 11 of 2002 and section 11 of Act 20 of 2013

14. The following section is hereby substituted for section 70 of the principal Act:

''**Limitations**

70. A labour inspector may not issue a compliance order in respect of any amount payable to an employee as a result of a failure to comply with a provision of this Act or the National Minimum Wage Act, 2018, if—

[*(a)* the employee is covered by a collective agreement that provides for resolution by arbitration of disputes concerning amounts owing in terms of this Act;]

(b) the employee **[is employed in a category of employees mentioned in section 6(1)*(a)* or in respect of which a notice has been issued]** earns in excess of the threshold prescribed by the Minister in terms of section 6(3);

(c) any proceedings have been instituted for the recovery of that amount in the CCMA or a court, unless those proceedings have been withdrawn; or

(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.''.

Substitution of section 73 of Act 75 of 1997, as amended by section 16 of Act 11 of 2002, and substituted by section 13 of Act 20 of 2013

15. The following section is hereby substituted for section 73 of the principal Act:

''**Order may be made [order of Labour Court] an arbitration award**

73. (1) The Director-General may apply to the **[Labour Court on the date specified in the compliance order in terms of section 69 (2A) *(b)* or, with further notice to the employer, on a subsequent date]** CCMA for a compliance order to be made an **[order of the Labour Court]** arbitration award if the employer has not complied with the order.

Act', 2018, die 'Unemployment Insurance Act' of die 'Unemployment Insurance Contributions Act' nie nagekom het nie, kan 'n nakomingsbevel uitreik.'';

(b) deur in subartikel (2) paragrawe *(b)* en *(c)* onderskeidelik deur die volgende paragrawe te vervang:

''*(b)* **['n]** die bepaling van hierdie Wet en enige ander Wet in subartikel (1) bedoel waaraan die werkgewer nie voldoen het nie, en besonderhede van die optrede wat nie-nakoming uitmaak, uiteensit;

(c) enige bedrag wat die werkgewer verplig is om aan die werknemer te betaal, of in die geval van 'n versuim om die nasionale minimum loon te betaal, die bedrag wat die werknemer ingevolge artikel 76A aan 'n werknemer moet betaal, uiteensit;'';

(c) deur subartikel (2A) te skrap;

(d) deur subartikel (5) deur die volgende subartikel te vervang:

''(5) 'n Werkgewer moet binne die tydperk in die bevel vermeld aan die nakomingsbevel voldoen, tensy die werkgewer in daardie tydperk 'n geskil oor die nakomingsbevel na die KVBA verwys.''; en

(e) deur die volgende subartikel by te voeg:

''(6) 'n Geskil ingevolge subartikel (5) deur die werkgewer na die KVBA verwys, moet ingevolge artikel 73 hanteer word.''.

Vervanging van artikel 70 van Wet 75 van 1997, soos gewysig deur artikel 15 van Wet 11 van 2002 en artikel 11 van Wet 20 van 2013

14. Artikel 70 van die Hoofwet word hierby deur die volgende artikel vervang:

''**Beperkings**

70. 'n Arbeidsinspekteur mag nie 'n nakomingsbevel ten opsigte van 'n bedrag wat aan 'n werknemer as gevolg van 'n versuim om aan 'n bepaling van hierdie Wet of die 'National Minimum Wage Act', 2018, te voldoen, betaalbaar is, uitreik nie indien—

[*(a)* die werknemer deur 'n kollektiewe ooreenkoms gedek word wat voorsiening maak vir beslegting deur arbitrasie van geskille betreffende bedrae wat ingevolge hierdie Wet verskuldig is;]

(b) die werknemer **[in diens is in 'n kategorie werknemers wat in artikel 6(1)*(a)* vermeld is of ten opsigte waarvan 'n kennisgewing]** meer as die drempel ingevolge artikel 6(3) **[uitgereik is]** deur die Minister voorgeskryf, verdien;

(c) enige verrigtinge vir die verhaling van daardie bedrag in die KVBA of 'n hof ingestel is, tensy daardie verrigtinge teruggetrek is; of

(d) daardie bedrag deur die werkgewer aan die werknemer verskuldig **[is]** gemaak vir langer as **[12]** 36 maande vanaf die datum waarop 'n klagte deur of namens die werknemer by 'n arbeidsinspekteur ingedien is of, indien geen klagte ingedien is nie, die datum waarop 'n arbeidsinspekteur eers probeer het om 'n skriftelike onderneming deur die werkgewer ingevolge artikel 68 te verkry of 'n nakomingsbevel ingevolge artikel 69 uitgereik het.''.

Vervanging van artikel 73 van Wet 75 van 1997, soos gewysig deur artikel 16 van Wet 11 van 2002, en vervang deur artikel 13 van Wet 20 van 2013

15. Artikel 73 van die Hoofwet word hierby deur die volgende artikel vervang:

''**Bevel kan [bevel van Arbeidshof] arbitrasietoekenning gemaak word**

73. (1) Die Direkteur-generaal kan **[op die datum in die nakomingsbevel vermeld ingevolge artikel 69(2A)*(b)* of, met verdere kennisgewing aan die werkgewer, op 'n daaropvolgende datum]** by die **[Arbeidshof]** KVBA aansoek doen dat 'n nakomingsbevel 'n **[bevel van die Arbeidshof]** arbitrasietoekenning gemaak word indien die werkgewer nie die bevel nagekom het nie.

(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).''.

Insertion of section 73A in Act 75 of 1997

16. The following section is hereby inserted in the principal Act after section 73:

''**Claims for failure to pay any amount**

73A. (1) Despite section 77, any employee or worker as defined in section 1 of the National Minimum Wage Act, 2018, may refer a dispute to the CCMA concerning the failure to pay any amount owing to that employee or worker in terms of this Act, the National Minimum Wage Act, 2018, a contract of employment, a sectoral determination or a collective agreement.

(2) Subsection (1) does not apply to employees or workers earning in excess of the threshold prescribed by the Minister in terms of section 6(3).

(3) An employee or worker, other than the employee or worker referred to in subsection (1), may institute a claim concerning the failure to pay any amount contemplated in subsection (1) in either the Labour Court, the High Court or, subject to their jurisdiction, the Magistrates' Court or the small claims court.

(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).''.

Amendment of section 74 of Act 75 of 1997, as amended by section 17 of Act 11 of 2002 and section 14 of Act 20 of 2013

17. Section 74 of the principal Act is hereby amended by the substitution for subsections (1), (2) and (3) of the following subsections, respectively:

''(1) A dispute concerning a contravention of this Act or the National Minimum Wage Act, 2018, may be instituted jointly with proceedings instituted by an employee under Part C of this Chapter.

(2) If an employee institutes proceedings for unfair dismissal, the Labour Court or the arbitrator hearing the matter may also determine any claim for an amount that is owing to that employee in terms of this Act **[if the claim has not prescribed]** or the National Minimum Wage Act, 2018.

(3) A dispute concerning any amount that is owing to an employee as a result of a contravention of this Act or the National Minimum Wage Act, 2018, may be initiated jointly with a dispute instituted by that employee over the entitlement to severance pay in terms of section 41(6).''.

Substitution of section 75 of Act 75 of 1997, as substituted by section 18 of Act 11 of 2002

18. The following section is hereby substituted for section 75 of the principal Act:

''**Payment of interest**

75. An employer must pay interest on any amount due and payable in terms of this Act or the National Minimum Wage Act, 2018, at the rate of interest prescribed in terms of section 1 of the Prescribed Rate of Interest Act, 1975 (Act No. 55 of 1975), to any person to whom a payment should have been made.''.

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(2) Die KVBA kan 'n arbitrasietoekenning ingevolge subartikel (1) uitreik waarin die werkgewer verplig word om aan die nakomingsbevel te voldoen, indien die KVBA oortuig is—

(a) dat die voldoeningsbevel aan die werkgewer beteken is; en

(b) dat die werkgewer nie 'n geskil ingevolge artikel 69(5) verwys het nie.".

Invoeging van artikel 73A in Wet 75 van 1997

16. Die volgende artikel word hierby na artikel 73 in die Hoofwet ingevoeg:

"**Eise vir versuim om enige bedrag te betaal**

73A. (1) Ondanks artikel 77, kan 'n werknemer of werker soos omskryf in artikel 1 van die 'National Minimum Wage Act', 2018, 'n geskil na die KVBA verwys oor 'n versuim om enige bedrag aan daardie werknemer of werker verskuldig ingevolge hierdie Wet, die 'National Minimum Wage Act', 2018, 'n dienskontrak, 'n sektorale vasstelling of 'n kollektiewe ooreenkoms aan daardie werknemer of werker verskuldig, te betaal.

(2) Subartikel (1) is nie van toepassing op werknemers of werkers wat meer as die drempel ingevolge artikel 6(3) deur die Minister voorgeskryf, verdien nie.

(3) 'n Werknemer of werker, behalwe die werknemer of werker in subartikel (1) beoog, kan 'n eis oor die versuim om enige bedrag beoog in subartikel (1), te betaal, in die Arbeidshof, die Hooggeregshof of, behoudens hul jurisdiksie, die Landdroshof of die hof vir klein eise, instel.

(4) Die KVBA moet 'n Kommissaris ingevolge artikel 135 van die Wet op Arbeidsverhoudinge aanstel om te probeer om enige geskil wat ingevolge artikel (1) na die KVBA verwys word, deur versoening te besleg.

(5) Die KVBA moet die arbitrasie van 'n geskil in subartikel (1) begin onmiddellik nadat gesertifiseer is dat die geskil steeds ingevolge artikel 135(5) onbesleg is.".

Wysiging van artikel 74 van Wet 75 van 1997, soos gewysig deur artikel 17 van Wet 11 van 2002 en artikel 14 van Wet 20 van 2013

17. Artikel 74 van die Hoofwet word hierby gewysig deur subartikels (1), (2) en (3) onderskeidelik deur die volgende subartikels te vervang:

"(1) 'n Geskil in verband met 'n oortreding van hierdie Wet of die 'National Minimum Wage Act', 2018, kan gesamentlik met verrigtinge wat deur 'n werknemer kragtens Deel C van hierdie Hoofstuk ingestel is, ingestel word.

(2) Indien 'n werknemer verrigtinge weens onbillike ontslag instel, kan die Arbeidshof of die arbiter wat die aangeleentheid aanhoor, ook enige eis aanhoor vir 'n bedrag wat ingevolge hierdie Wet of die 'National Minimum Wage Act', 2018, aan daardie werknemer verskuldig is, **[indien die eis nie verjaar het nie]**.

(3) 'n Geskil betreffende 'n bedrag wat aan 'n werknemer verskuldig is as gevolg van enige oortreding van hierdie Wet of die 'National Minimum Wage Act', 2018, kan gesamentlik met 'n geskil wat deur daardie werknemer ingestel is oor die geregtigdheid op 'n skeidingsloon ingevolge artikel 41(6), ingestel word.".

Vervanging van artikel 75 van Wet 75 van 1997, soos vervang deur artikel 18 van Wet 11 van 2002

18. Artikel 75 van die Hoofwet word hierby deur die volgende artikel vervang:

"**Betaling van rente**

75. 'n Werkgewer moet rente aan enige persoon aan wie 'n betaling gedoen moes gewees bet, betaal teen die rentekoers voorgeskryf ingevolge artikel 1 van die Wet op die Voorgeskrewe Rentekoers, 1975 (Wet No. 55 van 1975), op enige bedrag wat ingevolge hierdie Wet of die 'National Minimum Wage Act', 2018, verskuldig en betaalbaar is.".

Substitution of section 76 of Act 75 of 1997

19. The following section is hereby substituted for section 76 of the principal Act:

‘‘**Proof of compliance**

76. [(1)] In any proceedings concerning a contravention of this Act, the National Minimum Wage Act, 2018, or any sectoral determination, it is for an employer—

(a) to prove that a record maintained by or for that employer is valid and accurate; or

(b) who has failed to keep any record required by this Act or the National Minimum Wage Act, 2018, that is relevant to those proceedings, to prove compliance with any provision of this Act.’’.

Insertion of section 76A in Act 75 of 1997

20. The following section is hereby inserted in the principal Act after section 76:

‘‘**Fine for not complying with national minimum wage**

76A. (1) Subject to section 76, a fine that may be imposed on an employer who paid an employee less than the national minimum wage, is an amount that is the greater of—

(a) twice the value of the underpayment; or

(b) twice the employee's monthly wage.

(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.’’.

Amendment of section 77A of Act 75 of 1997, as inserted by section 19 of Act 11 of 2002

21. Section 77A of the principal Act is hereby amended by the deletion of paragraphs *(a)* and *(c)*.

Amendment of section 78 of Act 75 of 1997

22. The following section is hereby substituted for section 78 of the principal Act:

‘‘**Rights of Employees**

78. (1) Every employee has the right to—

(a) make a complaint to a trade union representative, a trade union official or a labour inspector concerning any alleged failure or refusal by an employer to comply with this Act or the National Minimum Wage Act, 2018;

(b) discuss his or her conditions of employment with his or her fellow employees, his or her employer or any other person;

(c) refuse to comply with an instruction that is contrary to this Act, the National Minimum Wage Act, 2018, or any sectoral determination;

(d) refuse to agree to any term or condition of employment that is contrary to this Act, the National Minimum Wage Act, 2018, or any sectoral determination;

Vervanging van artikel 76 van Wet 75 van 1997

19. Artikel 76 van die Hoofwet word hierby deur die volgende artikel vervang:

"**Bewys van nakoming**

76. **[(1)]** In enige verrigtinge betreffende 'n oortreding van hierdie Wet, die 'National Minimum Wage Act', 2018, of enige sektorale vasstelling, moet 'n werkgewer—

(a) bewys dat 'n aantekening wat deur of namens daardie werkgewer bygehou is, geldig en korrek is; of
(b) wat versuim het om 'n aantekening wat deur hierdie Wet of die 'National Minimum Wage Act', 2018, vereis word en wat by daardie verrigtinge tersaaklik is, by te hou, nakoming van enige bepaling van hierdie Wet bewys.".

Invoeging van artikel 76A in Wet 75 van 1997

20. Die volgende artikel word hierby na artikel 76 in die Hoofwet ingevoeg:

"**Boete vir nienakoming van nasionale minimum loon**

76A. (1) Behoudens artikel 76, is 'n boete wat aan 'n werkgewer opgelê kan word wat 'n werknemer minder as die nasionale minimum loon betaal het, die bedrag wat die grootste is van—

(a) twee keer die waarde van die onderbetaling; of
(b) twee keer die werknemer se maandelikse loon.

(2) Vir tweede of verdere nienakomings, is 'n boete wat aan die werkgewer opgelê kan word, 'n bedrag wat die grootste is van—

(a) drie keer die waarde van die onderbetaling; of
(b) drie keer die werknemer se maandelikse loon.

(3) Die Minister kan riglyne uitreik oor die bepaling van hetsy 'n nienakoming 'n tweede of verdere nienakoming is, soos in subartikel (2) beoog.

(4) Die Departement moet op sy amptelike webwerf, op 'n kwartaallikse basis, 'n lys byhou en publiseer van alle werkgewers aan wie nakomingsbevele uitgereik is.".

Wysiging van artikel 77A van Wet 75 van 1997, soos ingevoeg deur artikel 19 van Wet 11 van 2002

21. Artikel 77A van die Hoofwet word hierby gewysig deur paragrawe *(a)* en *(c)* te skrap.

Wysiging van artikel 78 van Wet 75 van 1997

22. Artikel 78 van die Hoofwet word hierby deur die volgende artikel vervang:

"**Regte van werknemers**

78. (1) Elke werknemer het die reg om—

(a) by 'n vakbondverteenwoordiger, 'n vakbondbeampte of 'n arbeidsinspekteur 'n klagte te lê betreffende enige beweerde versuim of weiering deur 'n werkgewer om hierdie Wet of die 'National Minimum Wage Act', 2018, na te kom;
(b) sy of haar diensvoorwaardes met sy of haar medewerknemers, sy of haar werkgewer of enige ander persoon te bespreek;
(c) te weier om 'n opdrag wat in stryd met hierdie Wet, die 'National Minimum Wage Act', 2018, of 'n sektorale vasstelling is, na te kom;
(d) te weier om in te stem tot enige beding of voorwaarde van diens wat in stryd met hierdie Wet, die 'National Minimum Wage Act', 2018, of 'n sektorale vasstelling is;

(e) inspect any record kept in terms of this Act or the National Minimum Wage Act, 2018, that relates to the employment of that employee;
(f) participate in proceedings in terms of this Act;
(g) request a trade union representative or a labour inspector to inspect any record kept in terms of this Act and that relates to the employment of that employee.

(2) Every trade union representative has the right, at the request of an employee, to inspect any record kept in terms of this Act or the National Minimum Wage Act, 2018, that relates to the employment of that employee.''.

Substitution of section 80 of Act 75 of 1997

23. The following section is hereby substituted for section 80 of the principal Act:

''**Procedure for disputes**

80. (1) If there is a dispute about the interpretation or application of this Part, any party to the dispute may refer the dispute in writing to **[—**
(a) **a council, if the parties to the dispute fall within the registered scope of that council; or**
***(b)*]** the CCMA**[, if no council has jurisdiction]**.

(2) The party who refers a dispute must satisfy **[the council or]** the CCMA that a copy of the referral has been served on all the other parties to the dispute.

(3) The **[council or the]** CCMA must attempt to resolve a dispute through conciliation.

(4) If a dispute remains unresolved, any party to the dispute may refer it to the **[Labour Court for adjudication]** CCMA for arbitration.

(5) In respect of a dispute in terms of this Part, the relevant provisions of Part C of Chapter VII of the Labour Relations Act, 1995, apply with the changes required by the context.

(6) For the purposes of this section, a party to a dispute includes a labour inspector.''.

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.

Short title and commencement

25. This Act is called the Basic Conditions of Employment Amendment Act, 2018, and takes effect on a date immediately after the National Minimum Wage Act, 2018, has taken effect.

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(e) enige rekord wat ingevolge hierdie Wet of die 'National Minimum Wage Act', 2018, gehou word en wat met die diens van daardie werknemer verband hou, te ondersoek;

(f) aan verrigtinge ingevolge hierdie Wet deel te neem;

(g) 'n vakbondverteenwoordiger of 'n arbeidsinspekteur te versoek om enige rekord wat ingevolge hierdie Wet gehou word en wat met die diens van daardie werknemer verband hou te ondersoek.

(2) Elke vakbondverteenwoordiger het die reg om, op versoek van 'n werknemer, enige rekord wat ingevolge hierdie Wet of die 'National Minimum Wage Act', 2018, gehou word en wat met die diens van daardie werknemer verband hou, te ondersoek.''.

Vervanging van artikel 80 van Wet 75 van 1997

23. Artikel 80 van die Hoofwet word hierby deur die volgende artikel vervang:

''**Prosedure vir geskille**

80. (1) Indien daar 'n geskil betreffende die uitleg of toepassing van hierdie Deel bestaan, kan enige party by die geskil die geskil skriftelik verwys na **[—**

(a) **'n raad, indien die partye by die geskil binne die geregistreerde bestek van daardie raad val; of**

***(b)*]** die KVBA**[, indien daar nie 'n raad is wat jurisdiksie het nie]**.

(2) Die party wat 'n geskil verwys, moet **[die raad of]** die KVBA oortuig dat 'n afskrif van die verwysing aan al die ander partye by die geskil beteken is.

(3) Die **[raad of die]** KVBA moet poog om 'n geskil deur middel van versoening te besleg.

(4) Indien 'n geskil onbesleg bly, kan enige party by die geskil dit na die **[Arbeidshof vir beregting]** KVBA verwys vir arbitrasie.

(5) Die tersaaklike bepalings van Deel C van Hoofstuk VII van die Wet op Arbeidsverhoudinge, 1995, is met die veranderinge wat in die konteks nodig is, van toepassing ten opsigte van 'n geskil ingevolge hierdie Deel.

(6) By die toepassing van hierdie artikel sluit 'n party tot 'n geskil 'n arbeidsinspekteur in.''.

Oorgangsmaatreëls

24. (1) Met ingang van die datum van stigting van die Nasionale Kommissie vir Minimum Lone gestig by artikel 8 van die ''National Minimum Wage Act'', 2018—

(a) word die Kommissie vir Diensvoorwaardes by artikel 59 van die Hoofwet gestig, hierby afgestig;

(b) die werksaamhede van die Kommissie vir Diensvoorwaardes word hierby na die Nasionale Kommissie vir Minimum Lone oorgedra; en

(c) verstryk die ampstermyn van die lede van die Kommissie vir Diensvoorwaardes.

Kort titel en inwerkingtreding

25. Hierdie Wet heet die Wysigingswet op Basiese Diensvoorwaardes, 2018, en word van krag op 'n datum onmiddellik nadat die ''National Minimum Wage Act'', 2018, in werking getree het.

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