

REPUBLIC OF SOUTH AFRICA

**BASIC CONDITIONS OF
EMPLOYMENT
AMENDMENT BILL**

*(As amended by the Portfolio Committee on Labour (National Assembly))
(The English text is the official text of the Bill.)*

(MINISTER OF LABOUR)

[B 30B—2017]

ISBN 978-1-4850-0466-0

No. of copies printed 800

GENERAL EXPLANATORY NOTE:

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

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

BILL

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 5

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;” 10

(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;” 15

- (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: 15
 “**‘national minimum wage’** means the national minimum wage envisaged in section 4 of the National Minimum Wage Act, 2018;”;
- (e) by the insertion after the definition of “trade union representative” of the following definitions: 20
 “**‘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: 25

“(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.”. 30

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. 35

(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: 40

“(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. 45

(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. 50

(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 55

- (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: 5
 “(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: 10
 “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: 15
 “(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: 20
 “(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: 25
 “For the purposes of conducting an investigation in terms of section 52 (1), the **[Director-General] Commission** may—”;
- (b) by the substitution for subsection (2) of the following subsection: 30
 “(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: 35
- “(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. 35
- (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 40

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 Chapter 9 of the principal Act is hereby repealed.

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 45

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):

- “(dA) referring disputes to the CCMA concerning failure to comply with this Act, 5
the National Minimum Wage Act, 2018, the Unemployment Insurance Act
and the Unemployment Insurance Contributions Act;
(dB) 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 (dA); and” 10

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 15
paragraph:
“(c) any place at which any person provides or purports to provide any
employment services as defined in terms of the [**Skills Develop-
ment Act, 1998 (Act No. 97 of 1998)**] Employment Services Act,
2014 (Act No. 4 of 2014);” 20

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: 25
“(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 30
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: 35
“(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.” 40

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: 45
“(1) A labour inspector who has reasonable grounds to believe that an
employer has not complied with a provision of this Act, the National
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 50
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 55
in the case of a failure to pay the national minimum wage, the