

REPUBLIC OF SOUTH AFRICA

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

**[B 30—2017]**

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

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**[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—”;

- (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**”.