



# planning, monitoring & evaluation

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Department:  
Planning, Monitoring and Evaluation  
**REPUBLIC OF SOUTH AFRICA**

**SOCIO-ECONOMIC IMPACT ASSESSMENT SYSTEM (SEIAS)**  
**FINAL IMPACT ASSESSMENT TEMPLATE (PHASE 2)**

**BASIC CONDITIONS OF EMPLOYMENT BILL, 2017**

**DEPARTMENT OF LABOUR**

## **The Final Impact Assessment: Department of Labour - Basic Conditions of Employment Bill.**

The Final Impact Assessment provides a detailed assessment of the Basic Conditions of Employment Bill 2017 that introduces amendments to the Basic Conditions of Employment Act 1997 (BCEA). These amendments follow the introduction of the new Minimum Wage Bill. The BCEA makes provision for the regulation of minimum wages in sectors through the mechanism of sectoral determinations. With the introduction of a national minimum wage, the status of sectoral determinations and other aspects of the BCEA are changed. The primary amendments in the BCE Bill therefore aim to do the following:

- i. Repeal the provisions dealing with the making of Sectoral Determinations and the powers and functions of the Employment Conditions Commission;
- ii. Extend the provisions for monitoring and enforcement by the labour inspectorate to apply to the minimum wage and unemployment insurance;
- iii. Extend the jurisdiction of the Commission for Conciliation Mediation and Arbitration (CCMA) to include enforcement procedures and claims for underpayment in terms of the BCEA, the minimum wage, unemployment insurance legislation, and claims arising from contracts or collective agreements.

The BCEA Bill follows a two year engagement process between government, organised business and organised labour in the National Economic Development and Labour Advisory Council (NEDLAC) to address the challenges of labour market stability and wage inequality as posed by the President in his State of the Nation Address in June 2014. In February 2017 an agreement on the introduction of a national minimum wage was concluded and amendments to the BCEA were drafted simultaneously with the drafting of a National Minimum Wage Bill. Both bills were tabled in NEDLAC for further engagement in May 2017 and the work of the task team established to deal with the bills was concluded in August 2017.

## 1. The problem Statement/ Theory of Change

1.1. Give summary of the proposal, identifying the problem to be addressed and the root (causes) of the problem that will be addressed by the new rule.

a) **Summary of the proposal (Summary Background of the proposed policy/bill/regulations/ other):**

### **Background**

The introduction of a national minimum wage requires change to the existing legislative landscape for the regulation of basic conditions of employment in South Africa. The Basic Conditions of Employment Act of 1997 has established and enforced basic conditions of employment and provided for the variation of basic conditions of employment. The model in the BCEA is for a sectoral determination to establish basic conditions of employment, including minimum wages, for employees in a sector and area. The process of arriving at a sectoral determination involves the staff of the Employment Standards Directorate in the Department of Labour conducting an investigation and preparing a report for consideration by the Employment Conditions Commission (ECC). The ECC, a tripartite body consisting of employer and trade union representatives as well as independent experts, advises the Minister who will make the final determination. Enforcement and legal proceedings are dealt with by labour inspectors in terms of the powers and procedures provided for in the BCEA.

In contemplating a national minimum wage, the policy and legislative approach has been to provide for a national minimum wage that forms the minimum floor for wages. The national minimum wage cannot be varied by contract, collective agreement or law. It is therefore envisaged that the national minimum wage will replace the minimum wages that have been set through sectoral determinations for particular sectors. The National Minimum Wage Bill also establishes the National Minimum Wage Commission which is intended to review the national minimum wage and to make recommendations for adjustment to the Minister of Labour. In

line with these provisions, the relevant chapters of the BCEA that deal with sectoral determinations and the Employment Conditions Commission are repealed.

The BCEA will continue to regulate basic conditions of employment and will provide for enforcement measures, including for non-compliance with the National Minimum Wage Bill. It is therefore envisaged that the National Minimum Wage Act and the BCEA will be closely related or complementary pieces of legislation.

The amendments to the BCEA are primarily aimed at the following:

- i. To repeal the provisions dealing with the making of Sectoral Determinations and the powers and functions of the Employment Conditions Commission;
- ii. To extend the provisions for monitoring and enforcement by the labour inspectorate to apply to the minimum wage and unemployment insurance;
- iii. To extend the jurisdiction of the CCMA to include enforcement procedures and claims for underpayment in terms of the BCEA, the minimum wage, unemployment insurance legislation, and claims arising from contracts or collective agreements;
- iv. To create transitional provisions to regulate sectoral determinations currently in force.

### **Summary of proposal**

The proposed **amendments to the Basic Conditions of Employment Act** deal with the following areas:

- i. Guaranteed Minimum hours of work

A new section provides that an employee who works for less than four hours on any day is entitled to be paid for four hours' work. There are currently provisions for minimum hours of work in some sectoral determinations and in collective agreements. The guaranteed minimum hours will apply in the case where the worker is employed, but on any particular day where there are circumstances beyond the control of the employee that prevent work being performed. It is envisaged that the minimum hours of work will apply to workers earning below a

threshold of R50 per hour, although this will be introduced in the Regulations to the BCEA.

ii. Sectoral Determinations and Employment Conditions Commission

These chapters are deleted from the BCEA as they are being replaced by the national minimum wage, the National Minimum Wage Commission and transitional provisions that will set a certain period for the continued operation of sectoral determinations.

iii. Monitoring, Enforcement and Legal Proceedings

The provisions for monitoring and enforcement of the Act by labour inspectors and the mechanisms for legal proceedings arising from non-compliance are extended to apply to the national minimum wage and unemployment insurance.

The jurisdiction of the Commission for Conciliation Mediation and Arbitration (CCMA) is extended to include enforcement procedures and claims for underpayment in terms of the BCEA, the minimum wage and unemployment insurance legislation.

In terms of the changes, inspectors will be able to secure an undertaking from employers who have not complied with the national minimum wage. If an employer fails to comply with the written undertaking, the inspector may apply to the CCMA to have the undertaking made an arbitration award.

Inspectors may also issue compliance orders in relation to non-compliance with the national minimum wage and provisions of the Unemployment Insurance Act and Unemployment Insurance Contributions Act.

A new provision is made in the BCEA to enable employees earning below the threshold prescribed by the Minister of Labour to refer disputes about failure to pay wages or any underpayment to the CCMA for arbitration. The provision makes this referral by employees possible in relation to the BCEA, the minimum wage, a

collective agreement, a contract or a sectoral determination. The intention of this provision is to provide a cheaper and more expeditious method of resolving disputes over payment and underpayment and to avoid claims being split into proceedings before different forums. Employees earning above the earnings threshold will retain the right to bring claims in the Labour Court or a civil court with jurisdiction.

The CCMA is empowered to issue an arbitration award to enforce compliance orders thus removing the power of the Labour Court to make a compliance order by an inspector an order of court.

New penalties for not complying with the national minimum wage are introduced. These require that an employer who fails to pay any worker at least the minimum wage must pay an amount that is the greater of –

- Twice the value of the underpayment; or
- Twice the employee's monthly wage.

#### iv. Transitional provisions

The transitional provisions provide for the sectoral determinations to remain in force, except to the extent that they prescribe wages that are below the minimum wage.

The wages in sectoral determinations, as well as remuneration and benefits associated with those wages, will be increased in proportion to the adjustment of the national minimum wage for a period of three years.

The Sectoral Determination 5: Learnership remains in force and the learner allowances will be adjusted by the National Minimum Wage Commission as part of the annual review process.

The Sectoral Determination 10: Children in the Performance of Advertising, Artistic and Cultural Activities also remains in force.

**b) Problem/s and root causes that the proposal is trying to address**

Identified Problem	Root causes
Compliance with the national minimum wage.	Lack of knowledge, lack of willingness, inability to pay prescribed minimum wage, poor enforcement.
Accessible and efficient enforcement measures.	Increased number of workers covered by the national minimum wage and limited enforcement capacity.

**1.2. Describe the intended outcomes of the proposal**

At a strategic level, the overall intended outcome of the proposal is to ensure an optimal level of compliance with the national minimum wage and to ensure that workers can enforce claims for non-payment or underpayment in the most effective manner possible.

**1.3. Describe the groups that will benefit from the proposal,** and the groups that will face the cost. These groups could be described by their role in the economy or in society. As a minimum, consider if there will be specific benefits or costs for the poorest households (earning R 7000 a month or less); for black people, youth or women; for small and emerging enterprise; and /or for rural development. Add more rows if required.

Groups that will benefit	How will they benefit?
Workers	<p>The proposed amendments are intended to provide measures that will enhance compliance with the payment of the minimum wage by employers.</p> <p>The amendments also introduce enforcement measures that will be easier for workers to pursue.</p>

<b>Groups that will bear the cost or lose</b>	<b>How will they incur the costs or lose?</b>
CCMA	Costs associated with increased case load arising from disputes arising from the new national minimum wage.
Government (DOL inspectorate)	Costs associated with monitoring and enforcing the implementation of the national minimum wage

**1.4.** Describe the behaviour that must be changed, main mechanisms to achieve the necessary changes. These mechanisms may include modifications in decision making process systems; changes in procedures; educational work; sanctions; and or incentives. Also identify groups inside or outside government whose behaviour will have to change to implement the proposal. Add more rows if required.

<b>Groups inside Government</b>	<b>Behaviour that must be changed (Current Behaviour)</b>	<b>Main mechanism to achieve the necessary changes</b>
DOL inspectorate	Inspections and investigations in relation to sectoral determinations	Training
CCMA	Case management excluding minimum wage	Training

<b>Groups outside Government</b>	<b>Behaviour that must be changed (Current Behaviour)</b>	<b>Main mechanism to achieve the necessary changes</b>
Employers and Employer associations	Payment of wages below legislated minimum wage.	National Minimum Wage Bill and amendments to Basic Conditions of Employment Act that deal with enforcement.

**1.5.** Report on consultations on the proposal with the affected government agencies, business and other groupings. What do they see as the main benefits, costs and risks? Do they support or oppose the proposal? What amendments do they propose? And have these amendments been incorporated in your proposal?

Consultation took place during 2015-2016 under the auspices of NEDLAC and via a Committee of Principals chaired by the Deputy President. Government was represented



in the Committee of Principals by the Ministers of Labour, Finance, Economic Development, Trade and Industry and Small Business. The NEDLAC consultations were facilitated by a Senior Commissioner of the CCMA who provided regular reports to the Committee of Principals on the work of the task team. These reports recorded areas of agreement and disagreement between the constituencies represented in the task team. In April 2016, the Task Team on Wage Inequality deadlocked over the proposed level at which that national minimum wage should be set. The Committee of Principals agreed to the establishment of an Advisory Panel which was tasked with interrogating the research that had been carried out and to recommend a meaningful level or range for the first national minimum wage. The Advisory Panel was established by the Deputy President and submitted its report in August 2016. The process culminated in the adoption of a Declaration on Wage Inequality and Labour Market Stability (attached as **Annexure A**) and an Agreement on the Introduction of a National Minimum Wage in February 2017. Since the February agreement, the Department of Labour submitted a draft National Minimum Wage Bill and amendments to the Basic Conditions of Employment Act to NEDLAC for consideration. A task team was established and has deliberated on all aspects of the BCEA Amendments.

Affected Stakeholders	What do they see as main <u>benefits, costs and risks?</u>	Do they <u>support or oppose</u> the proposal?	What <u>amendments</u> do they propose?	Have these amendments been <u>incorporated</u> in your proposal?
1. Department of Labour and CCMA	Improved compliance with minimum wage and simpler enforcement mechanisms. Costs are primarily associated with training and	Support.	N/A	N/A

	increased case load for the CCMA.			
2. Business- Business Unity South Africa, Black Business Council.	Benefits are associated with a simpler minimum wage system. Costs are associated with penalties for non-compliance. Risks relate to the pursuit of legal cases by workers and possible increases to wages in Sectoral Determinations over the next three years.	Support	Definition of employee to be retained. Jurisdiction of Labour Court to be retained for issuing of court orders. Ability of Inspectors to issue compliance orders for wage claims going back 3 years.	No
3. Organised Labour- COSATU, NACTU, FEDUSA.	Improved enforcement provisions in BCEA in relation to national minimum wage.  No costs or risks.	Support	Criminalization of non-compliance with national minimum wage.  Retention of Sectoral Determinations.	No  SD's retained for 3 year period.
4. Civil Society- Community constituency as represented at NEDLAC.	Improved enforcement provisions in BCEA in relation to minimum wage.  No costs or risks.	Support	Criminalization of non-compliance with national minimum wage.	No

**1.6.** Describe possible disputes arising out of the implementation of the proposal, and system for settling and appealing them. How onerous will it likely be for members of the public to lodge a complaint and how burdensome and expeditious is the proposed dispute-settlement procedure?

Disputes are likely to arise in relation to underpayment of wages and/or non-payment of wages owing to workers. The amendments make it simpler and easier for workers to lodge complaints relating to wage disputes and for inspectors and the CCMA to deal with these disputes.

The process for dispute resolution is made much simpler through the amendments.

## 2. Impact Assessment

**2.1.** Describe the costs and benefits of implementing the proposal to the groups identified in point 1.5 above, using the following chart. Add more rows if required

Group	Implementation Costs	Costs of changing behaviour	Costs/Benefits from achieving desired outcome	Comments
Government	Training costs for inspectorate (still to be determined).	Inspectorate will be required to enforce compliance.	Improved compliance with minimum wages.	
CCMA	Estimated at R50m for training activity, advocacy and increase in case load.	Estimated at R50m for training activity, advocacy and increase in case load.	Costs will be associated with training, advocacy and case load increase. Benefits will derive from enhanced capacity to deal with new areas of dispute resolution and support.	Cost estimates for the CCMA are preliminary and are still to be finalised.

**2.2.** Describe the changes required in budgets and staffing in government in order to implement the proposal. Identify where additional resources would be required for implementation. It is assumed that existing staff are fully employed and cannot simply absorb extra work without relinquishing other tasks.

No envisaged change in staffing in government. Potential increase in workload of CCMA associated with implementation in next two years. Additional costing exercise not completed at this point.

**2.3.** Describe how the proposal minimises implementation and compliance costs:

The proposal does not bring any significant budget impact so there are no proposals to minimise implementation cost.

### 3. Managing Risk

**3.1.** Describe the main risks to the achievement of the desired ends of the policy/bill/regulations/other and/ or to the national priorities (aims) that could arise from adoption of the proposal. Also describe the measures taken to manage the identified risks. Add more rows if necessary.

Identified Risk	Mitigation Measures
Non-adherence to the Declaration on Wage Inequality and Labour Market Stability	Pressure to be exerted on parties through the Committee of Principals

**3.2.** Describe the mechanisms included in your proposal for monitoring implementation, evaluating the outcomes, and modifying the implementation process if required. Estimate the minimum amount of time it would take from the start of the implementation process to identify a major problem and remedy it.

**Mechanisms:**

The proposal will be monitored through CCMA operational reporting as well as through the activities of the Department of Labour inspectorate. This monitoring and reporting does not need to be included in the proposal as it is part of the operations of both the CCMA and the Department.

It is estimated that major problems in implementation will be detected very quickly as it concerns wages and remuneration. The time taken to remedy it will depend on the dispute resolution and enforcement processes.

## 4. Summary

**4.1.** Summarise the impact of the proposal on the main national priorities

National Priority	Impact
1. Social Cohesion	Improved standard of living.
2. Security (Safety, Financial, Food, Energy and etc.)	Enhanced food security for those workers that benefit from the national minimum wage.
3. Economic Growth	N/A
4. Economic Inclusion (Job Creation and Equality)	Greater equality in earnings for lower income workers expected through the enforcement of the minimum wage.
5. Environmental Sustainability	N/A

**4.2.** Identify the social and economic groups that would benefit most and that would bear the most cost. Add more rows if required.

<b>Main Beneficiaries</b>	<b>Main Cost bearers</b>
Employees and workers	Employers
Government	Government

**4.3.** In conclusion, summarise what should be done to reduce the costs, maximise the benefits, and mitigate the risks associated with the policy/bill/regulations/other. Note supplementary measures (such as educational campaigns or provision of financing) as well as amendments to the draft itself, if appropriate. Add more bullets if required.

A well-publicised and well-coordinated implementation of the national minimum wage in 2018 should mitigate risks by creating advance awareness, giving certainty and managing expectations. Such steps should also serve to maximise the benefit of the national minimum wage by ensuring maximum compliance by employers.

**4.4.** Please identify areas where additional research would improve understanding of the costs, benefits and/ or risks of the policy/bill/regulations/other:

**For the purpose of building SEIAS body of knowledge please complete the following:**

<b>Name of Official/s</b>	<b>Tendani Ramulongo</b>
<b>Designation</b>	<b>Director</b>
<b>Unit</b>	<b>Research Policy and Planning</b>
<b>Contact Details</b>	<b>012-3094231</b>
<b>Email address</b>	<b>tendani.ramulongo@labour.gov.za</b>