

South African Payroll Association

18 February 2019

Misrepresenting your business to obtain minimum wage exemption could land you in jail, says the South African Payroll Association

The National Minimum Wage Act came into effect on 1 January 2019. While the Department of Labour has issued exemptions to the Act, it reported that it had only received 26 applications for the exemption. By the end of January, one employer had been arrested by the South African Police Services for fraud for claiming that it could pay workers R16 an hour.

“The Department of Labour said that it planned to open a case against an employer that misrepresented his company to obtain an exemption from paying the National Minimal Wage. This is a clear and harsh message to companies who want to underpay workers by misrepresenting the profitability and assets of their business,” says Jetro Malapane, Executive Committee member of the South African Payroll Association

What are the rules surrounding the Minimum Wage and exemptions?

The National Minimum Wage Act No 9 of 2018, which was signed by President Cyril Ramaphosa, established a new minimum wage of R20.00 per hour for every ordinary hour worked, excluding farm workers, domestic workers and workers employed on an expanded public works program.

If an employer cannot afford to pay the National Minimum Wage, it can apply for an exemption under Section 15 of the National Wage Act.

The requirements to apply for an exemption haven’t been finalised, but it is anticipated that employers will have to submit audited financial statements, written submissions of employees’ reaction to the exemption application, and particulars such as the employer’s SARS number and UIF number, among others details.

“There was only a short time between the signing of the Act and its commencement date, which sent many employers into a tailspin. The Department of Labour is going to make sure that a company that cannot pay minimum wage is truly not in a financial position to pay the minimum wage. It will also make sure the employer’s particulars and the way they treat employees are above board before they consider granting an exemption,” says Malapane.

What payroll professionals need to know about the Minimum Wage

While the exemption procedure hasn’t been established, Section 16 of the Act will be dedicated to the Minister of Labour’s regulations on the information an employer must provide for an exemption, the procedure that needs to be followed, the manner of consultation with employees and the period within which an application for the exemption should be made. According to SEESA, the Department of Labour is in the process of creating an online National Minimum Wage Exemption System that employers can use to apply for an exemption, but the launch of the system is yet to be established. If an employer receives an exemption from minimum wage, it may not exceed a period of one year.

“Payroll professionals should ensure that their clients and employers are aware of the Minimum Wage Act and that employees are being paid accordingly. The Department of Labour’s spokesperson has stated that the Department is intent on naming and shaming employers who are engaging in fraudulent activities by paying below the minimum wage. Claiming that your business has exemption to the minimum wage when it doesn’t is fraud,” concludes Malapane.

ENDS

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