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19 February 2018

UCT research group notes shortcomings in the National Minimum Wage Bill

The Department of Labour is considering one of the biggest changes to South Africa's labour laws since 1995 by, amongst other things, introducing a National Minimum Wage (NMW). The NMW Bill will set a wage of at least R20 for workers across all sectors of the economy subject to lower wages in the domestic and farming sectors. Amendments to the Basic Conditions of Employment Act (BCEA) and the Labour Relations Act (LRA) are also proposed. The respective bills were gazetted for public comment in mid-November 2017.

UCT's Labour and Enterprise Policy Research Group (LEP) has engaged in a study of how the proposed NMW could be aligned with existing labour legislation, in particular the BCEA, the LRA and the Employment Equity Act. This research provided the basis for comments on the NMW Bill and the bill amending the BCEA.

Dr Shane Godfrey, Co-ordinator at the LEP Research Group, states: "It is difficult to understand why the Department of Labour is so insistent on removing sectoral determinations from their policy tool-box. The proposed National Minimum Wage Commission could easily take over the functions of the Employment Conditions Commission (ECC) with regards to sectoral determinations. Retaining provision for sectoral determinations to be issued and reviewed would allow the Department to balance the absolute minimum remuneration provided by the NMW with higher wages in sectors where these are warranted and customised terms to match conditions in specified sectors."

LEP's submission comments on a number of important problems in the bills. It strongly criticised the phasing out of sectoral determinations. Sectoral determinations set minimum wages in specified sectors as well as varying conditions in the BCEA to better match circumstances in sectors.

The bill to amend the BCEA repeals the sections dealing with the issue and review of sectoral determinations, eliminating the ECC and consigning the existing sectoral determinations to what seems to be only a temporary reprieve in a schedule to the bill. Sectoral determination minimum wages will continue to increase by the same percentage as the NMW for three years but no longer. There will be no way to vary other conditions in the sectoral determinations.

This point has been strongly argued in a [submission](#) by the National Minimum Wage Research Initiative at Wits.

One of the consequences of repealing the chapters dealing with sectoral determinations is that it removes an instrument that the Department had in terms of section 27 of the Employment Equity Act (EEA) to address disproportionate income differentials. Further, the Department has not used the opportunity of the amendment process to revisit section 27 of the EEA so that raising wages at the bottom of wage schedules through the NMW could be accompanied by narrowing the income differentials in the rest of the wage schedule.

Another concern raised by LEP is the status of the negotiation process in the National Economic Development and Labour Council (NEDLAC) regarding the three bills. This issue was raised starkly by the change of definition of the term 'worker', which saw a wider definition that included independent contractors or own-account workers replaced by the current definition of employee in the BCEA which excludes independent contractors. The Department of Labour subsequently stated that the change to the definition was an error and that the wider definition would stand.

However, the memoranda of objects to two of the bills point to a bigger problem, namely that what appeared to be negotiations in NEDLAC were viewed by the Department only as consultations with the organised business, labour and community sectors.

Godfrey concludes that this approach is "surprising and sharply at odds with the Department's stated commitment to social dialogue". It represents a major shift from the status accorded to previous negotiation processes in NEDLAC.

ENDS

Notes to Editors

LEP's full report on the accommodation of the NMW in existing labour legislation can be found [here](#).

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