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| **COSATU, FEDUSA and NACTU** **Joint Submission on:** * **National Minimum Wage Bill;**
* **Basic Conditions of Employment Amendment Bill;**
* **Labour Relations Amendment Bill; and**
* **Labour Laws Amendment Bill.**
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**Submitted to:****Select Committee:****Economic and Business Development****National Council of Provinces****Republic of South Africa**08 June 2018**National Minimum Wage Bill and Basic Conditions of Employment Amendment Bill, 2017** |

1. **Introduction**

COSATU, FEDUSA and NACTU have about 3 million members and operate across the entire economy, in the mining, agriculture and other primary sectors, in manufacturing and other secondary sectors and in the services, public sector and other tertiary sectors. These federations and their affiliates have a long history of fighting for higher wages for their members and for workers in general.

In countless previous submissions to the government, Parliament, Nedlac and other institutions and bodies, we have pushed for interventions to help deal with South Africa’s gross inequality and systemic poverty. For years, we have agitated for a national minimum wage as one such intervention.

In this submission, we do not enter into the debate about whether a NMW should be introduced and what the benefits thereof would be. This debate has been exhausted and the ruling party, government and social partners have agreed to the introduction of a NMW.

The three federations’ commitment to the introduction of a NMW is reflected in our signing of the February 2017 ‘Agreement on the Introduction of a National Minimum Wage’ (“the February 2017 Agreement”), our participation in the subsequent process at Nedlac (“the Nedlac process”) on the NMW Bill and the BCEA Bill, both in the task team and the Committee of Principals, led by the then-Deputy President, and our participation in the process to consider these bills at the National Assembly’s Portfolio Committee on Labour.

Similarly, the commitment of Government, Organised Business and Organised Community to the introduction of a NMW is also reflected in their signing of the February 2017 Agreement. All social partners participated in the Nedlac process, which started in January 2015. It saw all constituencies make numerous inputs on the NMW.

It is important to note that in the February 2017 Agreement, the level of the NMW was already agreed by all the constituencies. This level was arrived at after lengthy and in-depth research, including by the panel set up by the then-Deputy President and others. It was also informed by information and guidance from the International Labour Organisation (ILO) using international examples and from other countries themselves. Most significantly, it was agreed by the constituencies.

The R20 per hour is not Labour’s desired level and should not be regarded as such. It is a level that is much lower than the level proposed by Labour, and even much lower than Labour’s compromise proposal.

We do not comment on the level here because it was agreed prior to the legislative process but it should be noted that any further watering down of the level agreed will lead to major unhappiness and possible action.

Some of the provisions in the NMW Bill will already undermine the agreed NMW level. For instance, a lack of protection for workers on minimum hours opens the gate for the formal level of the NMW to be undermined in practice.

During the Nedlac process and also during the separate process leading up to the signing of the Agreement, the three federations made multiple joint submissions dealing with the need for a NMW but also the architecture thereof. We did extensive work and commissioned research. We worked closely with the Nedlac Community constituency, and shared similar positions on numerous issues. We also consulted the ILO and several national minimum wage bodies from other countries. (We do not share the details contained in our numerous submissions here but can do so on request).

Our focus in this submission is the legislation that will introduce a NMW in South Africa, including the architecture of the NMW, the body tasked with administering and monitoring it and other aspects thereof.

1. **Unresolved issues to be addressed in future amendments to the bills**

During the Nedlac process, we had detailed discussions about the Bills and their clauses but we were under time pressure and did not exhaust all discussions.

The agreements reached during the Nedlac process are captured in a Nedlac report but, as a result of time pressure, some areas of concern in the Bills remain unresolved. In the Nedlac report it is explicitly stated that Constituencies may continue to advocate their views and raise their concerns in the public consultation, Parliamentary and other processes.

This part of the submission focuses on those unresolved areas. We arrange this part of the submission as follows:

* Section 4 deals with the unresolved areas in the NMW Bill; and
* Section 5 deals with the unresolved areas in the BCEA Bill.

The unresolved issues we fear may undermine the objectives behind the introduction of a NMW and the agreed NMW level and structure include the following matters.

1. **Urgency**

Whilst organised labour did not manage to resolve all our areas of concern in the bills, we are concerned about the continuous delays in the bills’ adoption and implementation. Our members and workers more broadly feel that the bills have been delayed for too long and now need to be implemented. We thus call upon the NCOP to not allow any further delays and to pass the bills as soon as possible.

To ensure speedy implementation, we accept that our remaining areas of concern may not be addressed in this round of legislative amendments. We will accept that they can then be addressed through regulations or a future amendment bill.

However if the NCOP chooses to make amendment to the bills and the bills are sent back to the National Assembly, we would request that the below matters be addressed now.

1. **National Minimum Wage Bill, 2017**

With regards to the NMW Bill, we have the following comments and propose the following amendments to be included in a future amendment bill.

1. 1. **Re Section 5, ‘Calculation of wage’**

We propose a new subsection, possible numbered as 5(1)(d) that will explicitly make it clear that employer contributions to medical aid schemes or retirement funds are excluded from the calculation of the NMW.

While it is agreed that employer contributions to these benefits and statutory contributions cannot be included in the calculation of the NMW, including it here will mean it is unambiguous and will act as a reference for workers.

Employer contributions to benefits cannot be included in the calculation of the NMW or it will further dilute the NMW, resulting in workers taking less money home. Ethical employers will not do this but to protect workers against unethical employers this needs to be explicitly stated in the Act. During the Portfolio Committee deliberations, the Department of Labour indicated that in principle it did not want employers to deduct their contributions from the NMW.

**4.2 Re Section 7, ‘Conduct of annual review’**

Subsection 7(b)(i) should be amended in a future amendment bill with the insertion of “and improve” after “… the need to retain…”

The revised subsection will then read: “inflation, the cost of living and the need to retain and improve the value of the minimum wage”.

The NMW Commission should be tasked to promote a progressive improvement in the real value in the NMW on an annual basis to deal much more decisively with inequality and poverty. The value of the NMW should not only be maintained but there should be a real increase following inflation to ensure the value of the NMW is not eroded over time. (The only current reference to this is in Section 2, ‘Purpose of Act’ and in Section 7(b)(i) but these are not sufficient, could see the value of the NMW stagnating and the NMW not dealing with inequality and poverty.)

This objective to increase the real wage is captured in paragraph 4 of the February 2017 Agreement, which states:

“It is specifically agreed that the adjustment should not lead to the erosion of the value of the NMW.”

**4.3 Re Section 11, ‘Functions of Commission’**

Subsection 11(d) should be amended in a future amendment bill with the deletion of the final part (“within three years”) and the addition of the following at the end of the subsection: “within one year”.

This is a reference to paragraph 3 of the February 2017 Agreement, which states

“The NMW Commission to be established will, as part of its mandate, establish a medium term aspirational target for the NMW and take into account appropriate benchmarks and International Labour Organization (ILO) guidelines.”

The NMW Bill stipulates a medium-term target must be set within three years. This is too long, as it could be six to eight years (2024 or 2026) before the medium-term target kicks in (if the medium-term target will only be reached three to five years after the announcement thereof). For the NMW to make a difference to inequality, poverty and the working poor, a medium-term target needs to be set sooner.

While Labour would prefer that a medium-term target is set within one year, we would be prepared to accept it being set within two years. This can be dealt with by the NMW Commission during its deliberations.

**4.4 Re Section 15, ‘Exemptions’**

A future amendment bill should delete, from subsection 15(1), the following:

“or an employers’ organization registered in terms of section 96 of the Labour Relations Act, or any other law, acting on behalf of its members”

Labour does not support the opening up of exemptions to mass groups of employers (or employers’ organizations as described in the NMW Bill), believing that this will undermine the facility of exemptions and the NMW as a whole and are, in fact, disguised exclusions from the NMW.

1. **Basic Conditions of Employment Amendment Bill, 2017**

With regards to the BCEA Bill, we have the following comments and propose the following amendments in a future amendment bill.

**5.1 Re Section 76A, ‘Fine for not complying with the national minimum wage’**

This section also needs to cover companies that obtained an exemption (or an exemption notice) in terms of the exemption regulations by providing false or incorrect information.

Such companies cannot only be penalised by the cancellation of their exemption notice. They need to pay a fine but, importantly, also refund their workers for the underpayment that took place during the period for which the company had the exemption notice.

1. **Conclusion**

The introduction of a NMW in South Africa is a major policy advancement that can help to address poverty and inequality, two of the three major crises facing the country.

It can only do so if the legislation is sound and comprehensive.

Labour believes that the proposals contained in this submission will help to strengthen the legislation and address the gaps that still exist within it and that these can be done in future amendment bills.

Our clear mandate now as organised labour is for the bills to simply be passed with no further delays.

**Labour Relations Amendment Bill, 2017**

1. **Introduction**

COSATU, FEDUSA and NACTU participated for two and a half years in detailed negations at Nedlac on the Labour Relations Amendment Bill.

As organised labour we are proud that we defeated attempts by business to undermine workers’ hard won constitutional right to strike.

We are also proud of the major victories that we have won as organised labour with the bill’s provision for the Minister of Labour to extend collective bargaining agreements.

In short the LRA Amendment Bill represents the power or a united organised labour and a victory in defense of workers’ rights to strike and collective bargaining.

1. **Extending Collective Bargaining**

The bill enables the Minister to extend collective bargaining agreements where it is deemed that unions and/ or employers are sufficiently representative of their sectors.

It further states that collective bargaining covers not just salaries but the entire conditions of service of workers e.g. pensions, medical aid, bonuses, leave etc.

These are huge victories for organised labour. Unions across economic sectors struggle to organise workers especially as increasing levels of workers are being outsourced to labour brokers. As casual labour rises, it becomes more difficult to reach majority thresholds. Casual work is precarious and casual workers who join unions are routinely dismissed by employers. This extension of collective agreements to sectors where parties are sufficiently representative is a huge victory for the extension of collective bargaining.

Organised labour strongly supports these progressive provisions.

1. **Picketing Rules**

The bill provides for the CCMA to provide picketing rules in the absence of picketing rules that have been agreed to by employees and employers. These would be based upon a code of good practise negotiated with unions and employers.

This would protect workers in precarious places of work and where unions are weak or not present or employers are abusive and attempt to intimidate and undermine workers’ rights to picket.

Organised labour welcomes this as a further protection of workers’ rights.

However we want to warn employers that the absence of picketing rules cannot be used to delay or interdict pickets and strikes. Unions will not allow that to happen.

1. **Essential Services**

Organised labour notes that there are no major changes to the conditions and rules applying to essential services and that the provisions in the bill are largely matters of administrative and procedural clarification for existing policies and practises.

Organised labour is satisfied that the labour rights, including the right to strike of essential service workers are protected within their minimum service level agreements as negotiated and approved by the Essential Services Commission.

1. **Ballots**

A great deal of hysterical commentary has been unleashed in the media about the balloting provisions in the bill by persons who have not been part of the intensive negotiations and have simply not bothered to read the various drafts of the bill.

The 1995 Labour Relations Act requires any union or employer’s organisation seeking registration by the Department of Labour to have a provision in their constitution requiring the balloting of their members (employees and employers as relevant) to decide upon embarking on a strike or a lock out. In other words unions and employers’ organisations have been required for the past 23 years to have the mandatory requirement to ballot their members when they want to strike or lockout.

The sole change to the balloting provision in this bill is to insert the word secret before ballot. The majority of unions, political parties and other organisations elect their leadership through secret ballots. South Africans vote in elections through secret ballot. The National Assembly elects and unelects the President through secret ballots. This insertion is a simply clarification as to what a ballot constitutes. It is in line with common law, practise and the Constitution.

The majority of unions elect their leaders through secret ballots and vote on strikes through secret ballots. Union belong to their members. They exist to serve workers. So why is it a problem to say workers must vote on big matters such as embarking upon a strike? Since when have we been opposed to workers’ control and democracy?

Some of the chattering classes have made false claims that the bill states that employers must be present during secret balloting. This is simply false. There is no such provision. The 1995 Act requires employers to avail their premises e.g. workers’ place of work when workers want to hold union meetings etc. including when they want to ballot etc.

A previous draft of the bill required workers to ballot on offers made by employers. This was rejected by organised labour as it could disrupt workers on strike and that it is sufficient for unions to simply consult their members on offers as has been the practise.

Organised labour is comfortable that it has protected workers’ hard won constitutional right to strike. However we want to warn employers not to attempt to interdict and delay strikes over matters of secret ballots. They are not the IEC.

Lastly we are satisfied with the bill’s transitional provisions providing processes and timeframes for the Department and unions whose constitutions do not include balloting provisions to be amended in a reasonable time frame at their next congresses. This has been the process for several years and is acceptable.

1. **Advisory Arbitration**

The bill allows space for the CCMA to provide advisory arbitration in the event of negotiations collapsing during a strike, the public interest being at serious risk or constitutional rights threatened.

Organised labour is comfortable with this. The criterion when the CCMA can come in is sufficiently clear. It does not affect workers’ rights to continue striking during the advisory arbitration. The CCMA is workers’ preferred facilitator as it is free and accessible and neutral.

Organised labour is also comfortable that advisory arbitration awards are not binding and that workers can reject them or renegotiate the settlements if needs be.

The provision to consult members on the settlement offers are in line with long standing democratic union practise.

1. **Conclusion**

COSATU, FEDUSA and NACTU accept the Labour Relations Amendment Bill. It has not undermined a single worker’s right. It has not touched upon workers’ constitutional right to strike.

It provides huge victories for unions, organised and unorganised workers by allowing the Minister to extend collective bargaining agreements where parties are sufficiently representative.

# Labour Laws Amendment Bill, 2015

# Introduction

COSATU, FEDUSA and NACTU strongly welcome and supports the correct and progressive objectives and intentions of the Labour Laws Amendment Bill.

Whilst we have additional proposals with regards to the Bill, we believe that it is progressive, seeks to achieve important improvements in the lives of workers and their families, is in line with organised labour’s long standing calls and should be strongly supported.

1. **Parental Leave**

Organised labour strongly supports the Bill’s proposal for parents who to be entitled to 10 days parental leave in the event of the birth of their children. Currently fathers are only entitled to 3 days family responsibility per annum. This is quickly exhausted as it also covers illnesses and deaths of family members.

It is important for society and children’s well being for both parents to play an active role in their lives. This is especially critical during the infant stage. Mothers who recently gave birth often require the help of their spouse to take care of the baby as they are often still recovering from their birth, e.g. caesarean sections, premature births etc.

Society’s well being depends upon both parents’ playing an active role from birth. This is thus critical towards ensuring the long term well being of the child.

Organised labour thus is determined that all parents must be entitled to ten days paid leave for their birth of their children. This was also part of the recent public service negotiations. This must be separate from the three days family responsibility leave and from maternity leave. We therefore strongly support the ten day proposal.

Having said that, we believe this must only be the first step of the way towards advancing the rights of parents. Cameroon offers 10 days paid paternity leave of which 3 are compulsory. Australia and Kenya offer 14 paid days. Sweden offers a combined 480 days leave for the parents to share. We strongly believe that the Swedish model of 480 days is an objective that we should begin working towards as labour, business, society and government.

In the meantime 10 days paid parental leave must be implemented as a matter of the utmost urgency.

1. **Adoption Leave**

In line with our strong support for the minimum first step of 10 days paid parental leave in case of the birth of children, COSATU also strongly supports the Bill’s objective of the provision for 10 weeks paid leave for parents when adopting children.

In future, we believe that it should be expanded to be in line with existing maternity leave e.g the same 4 to 6 months provisions of maternity leave. As adopted parents do not need to recover from having given birth, provision should be made for the adopted parents to sub-divide this 4 to 6 months adoption leave when future amendments are considered.

We believe this will lay the foundation for a healthier adopted child and stronger family. Many adopted children come from traumatic backgrounds and thus need additional time to bond with their new families.

In future we would like to see this provision apply equally to all adopted children and not only those under the age of 2 as proposed by the Bill. Children aged, 3, 4, 5 years etc. need equally to bond with their adoptive families. Likewise do teenage children.

However we support the bill as it is now in full and call for its urgent adoption without further amendments. Expansions to its provisions can be dealt with in future. Any amendments to it now would simply delay its passage and risk it now being adopted before the 2019 elections.

1. **Conclusion**

The Labour Laws Amendment Bill is progressive, critical and will play an important role with regards to helping society raise healthy children and strengthening the families needed to support them.

The Bill is long overdue and should be welcomed by all. Organised labour strongly supports the Bill and urges all Members of Parliament and government to do so as well and to speedily pass the bill into law.

It is in line with organised labour’s long held support for the achievement of paternity and its expansion. We believe that the Honourable, Ms. Dudley, MP, should be congratulated for this progressive initiative and urge all MPs to support and expand such worker friendly bills.

Arguments against providing for parental and adoption leave, such as that men do not give birth etc. are out of date, not in line with our democratic Constitution and should be dismissed as relics from the era when child rearing was left to women who in turn were expected to be stay at home mothers. Such opposition is out of touch with the progressive modern caring society that organised labour strongly supports and which all our children deserve.

Lastly, whilst strongly supporting this progressive bill, we believe this is merely the first step towards achieving similar parental, maternity and adoption paid leave provisions as enjoyed by Sweden.

Thank you.

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