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INCORPORATING  
KIETI LAW LLP, KENYA

# AGRICULTURE, AQUACULTURE & FISHING SECTOR ALERT

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### Growing concerns regarding the national minimum wage and its impact on the agri-business sector

The impact of the national minimum wage (NMW) on rising input costs was identified as being of great importance to the agricultural sector, according to an August 2021 report compiled by Who Owns Whom titled Trends in South African Agri-Business. Given this importance, an understanding of the factors taken into account by the NMW Commission (Commission) in deciding not only to recommend an increase in the NMW in 2021, but also the equalisation of the NMW for farmworkers, is instructive. This understanding is perhaps even more significant if one considers the disruptive impact the COVID-19 pandemic has had on the sector, including delays in orders being processed due to reduced staff in processing facilities, delays experienced at ports which have increased costs, and a decline in demand for certain food products given the closure of restaurants.

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## Growing concerns regarding the national minimum wage and its impact on the agri-business sector

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The impact of the national minimum wage (NMW) on rising input costs was identified as being of great importance to the agricultural sector, according to an August 2021 report compiled by Who Owns Whom titled Trends in South African Agri-Business. Given this importance, an understanding of the factors taken into account by the NMW Commission (Commission) in deciding not only to recommend an increase in the NMW in 2021, but also the equalisation of the NMW for farmworkers, is instructive. This understanding is perhaps even more significant if one considers the disruptive impact the COVID-19 pandemic has had on the sector, including delays in orders being processed due to reduced staff in processing facilities, delays experienced at ports which have increased costs, and a decline in demand for certain food products given the closure of restaurants.

The National Minimum Wage Act 9 of 2018 (Act) came into effect on 1 January 2019. The Act introduced an NMW of R20 an hour. To avoid disruption across the agricultural sector and anticipating challenges with compliance, the decision was taken to introduce a reduced NMW of R18 an hour for farmworkers (the Act defines a "farm worker" as a worker who is employed mainly or wholly in connection with farming or forestry activities). Over time, there would be a gradual process of equalising the NMW for farmworkers with the overall NMW.

On 1 March 2021, the NMW increased to R20,76 an hour. As part of the gradual equalisation process, the NMW for farmworkers increased to R18,69 an hour. On 1 March 2021, the NMW increased to R21,69 an hour and the decision was taken that this would also apply to

farmworkers. The equalisation of the NMW for farmworkers resulted in a significant increase of about 16%.

In terms of section 6 of the Act, the Commission (consisting of members nominated by organised business, organised community and organised labour and independent experts who are knowledgeable about the labour market and conditions of employment) is required to review the NMW annually and to make recommendations to the Minister of Employment and Labour regarding any proposed adjustment in the NMW. The Commission's report must reflect any alternative views, including the views of the public.

In terms of the proposal made by the Commission for the 2021 adjustment, the majority of the commissioners recommended that the NMW be increased by 1,5% above inflation, as measured by the consumer price index (CPI), which would equate to about a 4,5% increase, and that the NMW for farmworkers be equalised. This proposal was not supported by a minority of commissioners (comprised of organised business).

When conducting the annual review and recommending adjustments, section 7 of the Act requires the Commission to promote the alleviation of poverty and the reduction of wage differentials and inequality. It also requires the Commission to consider inflation, the cost of living and the need to retain the value of the minimum wage; wage levels and collective bargaining outcomes; gross domestic product; productivity; ability of employers to carry on their businesses successfully; the operation of small, medium or micro-enterprises and new enterprises; and the likely impact of the recommended adjustment on employment or the creation of employment.

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The minority of the commissioners argued that any increase in the NMW would contribute towards the relief of poverty, which would reduce wage differentials and inequality.

In applying the first set of criteria, the majority of the commissioners concluded that the 2020 NMW remained below the poverty line for most households, and argued that in order to reduce the wage gap, a real increase in the NMW was required. Conversely, the minority of the commissioners argued that any increase in the NMW would contribute towards the relief of poverty, which would reduce wage differentials and inequality.

The commissioners' conclusions on the second set of criteria are outlined below.

## **Inflation, the cost of living and the need to retain the value of the NMW**

The majority of the commissioners concluded that in order to retain the purchasing power of the NMW, any annual adjustment should be set at an increase above the increase in the cost of living and that inflation should be measured by the increase in the CPI.

## **Wage levels and collective bargaining outcomes**

The majority of the commissioners argued that, as the agreement on wage increases for the major bargaining councils during 2019 and 2020 ranged between 5% and 9%, which is between 1% and 5% above inflation, an adjustment to the NMW of 1.5 % above inflation was not out of line with collective bargaining outcomes. On the other hand, the minority of the commissioners submitted that many agreed on 0% increases for 2020 given the economic impact of COVID-19.

## **Gross domestic product**

The majority of the commissioners were of the view that the downturn in the economy as a result of the pandemic was a unique circumstance and that the economy was expected to rebound, although it was not expected to fully recover in 2021. In the circumstances, they reasoned that a modest increase in the NMW would not be seen as aggravating the downturn.

## **Productivity**

The majority of the commissioners were of the view that the downturn caused by the COVID-19 pandemic made it impossible to estimate the labour productivity due to the extraordinary constraints on production. While the minority of the commissioners concluded that the only reliable measurement in place to gauge productivity was from the Productivity SA annual report, which illustrated an increase of labour input, without a correlating growth in output.

## **Ability of employers to carry on their businesses successfully**

Although the majority of the commissioners recognised the impact that the pandemic-related downturn had on most employers, they argued that the proposed increase in the NMW would not be unduly difficult for most employers. In arriving at this conclusion, they considered the research conducted by the Development Policy Research

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Unit (DPRU) at the University of Cape Town, which found that the impact of the introduction of the NMW did not place an undue burden on employers in its first year of implementation. Notwithstanding this, employers who were unable to pay the prescribed NMW could find relief through the Act's exemption procedures.

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The minority of the commissioners argued that this item was already a problem prior to the COVID-19 pandemic and would be virtually impossible post the pandemic. In the circumstances they argued that businesses would need as much help as possible, including reduced labour costs, in order to sustain employment.

### **The operation of small, medium or micro-enterprises and new enterprises**

The majority of the commissioners recognised that while these enterprises faced some challenges as a result of the proposed increase in the NMW, these challenges could be mitigated by the Act's exemption procedures.

### **The likely impact of the recommended adjustment on employment or the creation of employment**

The majority of the commissioners argued that it was difficult to evaluate the impact of an increase in the NMW due to the implementation of the Temporary Employer Employee Relief Scheme (TERS) during the COVID-19 pandemic, which limited retrenchments. The research conducted by the DPRU concluded that the introduction of the NMW did not lead to job losses in the first year of implementation.

The minority of the commissioners argued that smaller increases would have smaller impacts, especially considering the proposed equalisation of farmworkers. On the other hand, a larger increase in the NMW would likely lead to job losses or less job creation.

Based on the considerations outlined above, the majority of the commissioners proposed an increase in the NMW of 4,5%, while the minority were unable to recommend an increase beyond the rate of inflation.

### **The equalisation of the NMW for farmworkers**

In determining whether the NMW for farmworkers should be equalised to the overall NMW, the majority of the commissioners considered the objective of gradual alignment and the impact of the current economic climate and concluded that the agricultural sector had not been as severely impacted as other sectors during the pandemic because the food value chain constituted an essential service. Having regard to the fact that the 2020 NMW wage for farmworkers was 90% of the NMW, it was recommended that the NMW for farmworkers be equalised with the NMW in 2021 – resulting in an adjustment of R350 a month for farmworkers.

The minority of the commissioners argued that any excessive increase in the NMW in the agricultural sector would cause extensive job losses. While they supported the need to increase the NMW for farmworkers, they argued that this should be done in a sustainable manner

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and that the increase should be phased in over a period of four years. They reiterated the concern that no industry could sustain a double-digit increase and that this would lead to job losses and increased non-compliance.

The Commission considered a report from the Centre for Social Development in Africa at the University of Johannesburg, which recorded that the implementation of the NMW in relation to the agricultural sector in 2019 resulted in:

- an increased rate of job losses, which affected employees with lower skill levels;
- a high rate of non-compliance with the NMW in the agricultural industry;
- the offsetting of the NMW through work intensification and increased monitoring of performance;

- the increased use of seasonal and temporary workers;
- a decrease in non-wage benefits such as training, accommodation and medical expenses; and
- an increase in mechanisation.

Notwithstanding this input, the majority of the commissioners recommended equalisation, which was accepted by the Minister of Employment and Labour.

The wide-ranging impact of the increase in the NMW and the equalisation of the NMW for farmworkers (resulting in a staggering 16% increase), in the midst of the global pandemic, has yet to be seen. However, it is likely that it will regrettably affect job security and employment conditions within the agricultural sector – at a time when job security is under threat in almost all sectors of our economy.

*Gillian Lumb and Taryn York*



### CDH's Agriculture, Aquaculture & Fishing Sector Specialists

provide practical and commercial advice to help our clients in this sector achieve their business objectives, protect existing interests and maximise opportunities.

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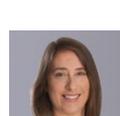
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### BBBEE STATUS: LEVEL ONE CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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