

1 October 2021

**Directorate: Employment and Labour Standards**

Department of Employment and Labour

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Dear Mesdames / Sirs

**SUBMISSIONS FROM THE ONE WAGE CAMPAIGN: ANNUAL REVIEW**

1. We act for the One Wage Campaign, a coalition of workers' rights organisations, unions and civil society members have united in favour of a living wage and against the exclusion of certain sectors of workers from the full national minimum wage.
2. Our client has noted the Commission's recent call for submissions in respect of the current review process in terms of section 6 of the National Minimum Wage Act 9 of 2018.
3. Our client welcomes the step taken by the Commission to invite public submissions in the review process, which is mandated and required by the Constitution, South African law and international law. On behalf of our client, we request the Commission to exercise its powers throughout the review process in an open, consultative and inclusive manner, including in respect of specifically affected sectors such as those represented by our client. This extends beyond the duty to hear affected persons to a duty to keep the public informed about the process as it unfolds and the reasons for decisions made.
4. Domestic workers and workers in the Extended Public Works Programme continue to be subject to a tiered system and be paid a sub-minimum wage. In view of our client's commitment to achieving national minimum wage parity, we hereby submits brief submissions for consideration

by the Commission and the Minister during the current review process on its behalf. The current submissions have been prepared with the assistance of senior and junior counsel (Susannah Cowen SC and Lauren Leeuw). They draw in part on submissions previously advanced which, we respectfully contend, remain relevant to the ongoing deliberations.

5. We would be grateful if you could confirm receipt of this letter and its accompanying documentation.

Yours faithfully,



**M CLEMENTS**

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**SUBMISSIONS**  
**ON BEHALF OF THE ONE WAGE CAMPAIGN**  
**NATIONAL MINIMUM WAGE PARITY**

1. The One Wage Campaign is a coalition of workers' rights organisation, unions, and civil society members who have united in favour of a living wage and against the exclusion of certain sectors of workers from the full National Minimum Wage ("NMW"). The Campaign membership represents a wide-range of organisations concerned to protect the rights, interests and concerns of workers.
  
2. These submissions are filed in response to the recent call of the National Minimum Wage Commission ("the Commission") for public input for purposes of the current annual review process of the NMW in terms of section 6 of the National Minimum Wage Act 9 of 2018 ("the NMW Act").
  
3. In short, the One Wage Campaign calls for NMW parity for domestic workers and workers who form part of the Extended Public Works Programme ("EPWP"). There is no reason why NMW parity can't and should not be achieved for domestic workers during the current review period: indeed, this is overdue and the Constitution demands that parity is achieved. Furthermore, the Commission is now well placed to support what is a similarly necessary process of securing NMW parity for EPWP workers, if need be through identifying the need for legislative amendment.

## Brief background

4. The NMW Act was promulgated on 27 November 2018<sup>1</sup> and came into force on 1 January 2019. As is well known the NMW Act previously provided for the NMW in Schedule 1 as adjusted annually in terms of section 6. The amount in Schedule 1 was initially R20 per hour. However, farm workers were entitled to a lesser minimum wage of R18 per hour and domestic workers were entitled to an even lower minimum wage of R15 per hour. Workers in the EPWP programmed were entitled only to a paltry NMW of R11 per hour. Thus the initial NMW system created was a tiered NMW system that treated farm-workers, domestic workers and EPWP workers differently and less favourably than all other workers. It was however, always contemplated that the tiered system for domestic and farm workers would be reviewed within a two-year period, in terms of section 4 of the NMW Act, with a view to achieving NMW parity in these sectors.
  
5. Although its processes were delayed, the Commission ultimately invited public comment on its initial report, and the One Wage Campaign participated in this process. The final outcome of the process was announced on 9 February 2021. On that day, Employment and Labour Minister TW Nxesi announced the increase of the NMW for each ordinary hour worked from R20,76 to R21,69 for the year 2021 with effect from 01 March 2021. It was also announced that the farm worker sector would be aligned with the NMW rate of R21,69 per hour. But domestic workers sector would continue on a tiered system and would only be entitled to R19,09 per hour. However, both the Commission (in its majority view) and the Minister have indicated that national minimum wage parity for this sector should be achieved during the

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<sup>1</sup> Government Gazette 42060, Vol 641, No 1303.

current review process. As to the call to achieve NMW parity for EPWP workers, there has been silence from the Commission.

6. In light of the constitutional concerns that arise from the ongoing disparities, LHR sent a request dated 3 June 2021 for reasons to the Minister. In a response thereto dated 9 July 2021 the Minister sought to address the concerns raised and accepted the importance of achieving national minimum wage parity for domestic worker. The Minister acknowledged the necessity of all stakeholders to progressively work towards increasing the value of NWM to fast track the achievement of equality income and the realisation of decent work as this is not only a source of income but more importantly a source of personal dignity, family stability, peace in community and a contributor to economic growth that expands opportunities to productive jobs and employment. The Minister expressly noted the expectation from the Commission to achieve national minimum wage parity for domestic workers during this upcoming review process. In respect of the position of EPWP workers, the Minister relied on the legislative prescript (arrived at by Parliament in discussion with Nedlac) that the increase should be aligned with the overall NMW increase rather than be fundamentally revisited.

### **Ongoing relevance of previous submissions**

7. We respectfully contend that the previous submissions provided by the One Wage Campaign remain relevant to the current review process. In this regard, in November 2019, the One Wage Campaign provided submissions to the Commission (“the initial submissions”) on its own initiative. The initial submissions were prepared for the One Wage Campaign by counsel of the Johannesburg Society of Advocates (Susannah Cowen SC, Carol Makhajane and Lucelle Buchler) instructed by Sanja Bornman from Lawyers for Human Rights. They were

accompanied by an economic report prepared by G Isaacs and P Choga of the Institution for Economic Justice (“the economic report”).

8. These submissions and the economic report were then re- lodged with the Commission in December 2020 in response to the Commission’s Invitation for Written Representations to its Investigation into the NMW for purposes of its reviews as contemplated by section 4(2) and section 6 of the Act. They were at that stage accompanied by two other documents being first, further submissions prepared with the assistance of Susannah Cowen SC and Lucelle Buchler, in respect of the impact of COVID-19, and second, the results of a survey conducted by Izwi among domestic workers in April 2020.
9. As we are of the view that these previous submissions and documents remain relevant to the issues arising during the current review process, we resubmit them for fresh consideration. We do so by providing herewith, a copy of the covering letter of LHR dated 19 December 2020 and its attachments being the initial submissions, the economic report, the further submissions on COVID-19 and the Izwi survey report.
10. In essence the initial submissions motivated the mandate of the One Wage Campaign in that there should be a NMW for all workers, specifically that the tiered NMW system is unconstitutional and in breach of the right to dignity and equality. The initial submissions drew on the content of the economic report providing a sound economic argument for the contentions. The economic report illustrated that there is no conclusive evidence that increasing the levels of these identified sectors will have adverse effects. Conversely, that there is considerable evidence that increasing minimum wages has significantly positive

benefits on workers' incomes, poverty and inequality, with the possibility of a demand stimulus in the economy. The further submissions on COVID-19 explained why parity should be achieved despite the challenges presented by the pandemic.

11. The One Wage Campaign, of course, welcomes the achievement of national minimum wage parity for farmworkers achieved during the previous review process. However, it contends that the ongoing disparity that regrettably continues for domestic workers and EPWP workers, who still receive sub-minimum wages, must now be addressed. This is because it constitutes a perpetuation of unconstitutional discriminatory treatment against domestic workers, and EPWP workers. It must thus be addressed as a matter of urgency.

### **Domestic workers**

12. Section 1 of our Constitution provides that: “the Republic of South Africa is one sovereign, democratic state founded on the following values: (a) Human dignity, the achievement of equality and the advancement of human rights and freedoms; (b) Non-racialism and non-sexism ...”. In turn, the rights to equality and dignity are expressly protected in section 9 and 10 of the Constitution.

13. By excluding domestic workers from the protection of the full NMW with insufficient justification, domestic workers are denied these rights and fundamental constitutional values are not realised. The exclusion of domestic workers amounts to unfair discrimination and impairs their dignity. Domestic workers are predominantly black women, and the

discrimination against them constitutes indirect discrimination on the basis of race and gender.

It is unfair, unreasonable and unjustified.

14. It has now been recognised that domestic workers are amongst the most vulnerable groups in society, whose work and worth is insufficiently valued. This shameful reality is true historically and continues to be true, as reflected in the perpetuated tiered system.

15. In its deliberations, the Commission is reminded of the Constitutional Court decision in *Mahlangu and Another v Minister of Labour and Others*<sup>2</sup> in which the Constitutional Court held that when considering those who are most vulnerable or most in need, a Court should take cognisance of those who fall at the intersection of compounded vulnerabilities due to intersecting discrimination based on race, sex, gender, class and other grounds. The judgment went on to say that adopting intersectionality as an interpretative criterion enables the consideration of social structures that shape the experience of marginalised people. It also reveals how individual experiences vary according to multiple combinations of privilege, power, and vulnerability as structural elements of discrimination. An intersectional approach is the kind of interpretative approach which will achieve “the progressive realisation of our transformative constitutionalism”.

16. These principles must inform the Commission’s deliberations and we submit mean that NMW parity for domestic workers cannot be delayed any longer. It is overdue.

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<sup>2</sup> [2020] ZACC 24 .



## **EPWP workers**

17. The One Wage Campaign appreciates that the legislative scheme governing EPWP workers entitlement to the full NMW differs to that of domestic workers and has noted that the Minister regards himself to be legislatively bound by the choices of Parliament which ties EPWP increases to the rate of increases in the NMW. Nevertheless – even if correct – this does not discharge either the Commission or the Minister from considering the position of EPWP workers in the review process. The duties of the Commission and Minister in this regard are dealt with in paragraphs 27 to 30 of the initial submissions. Even if a process of legislative reform must be initiated to root out unjustified discrimination, this is a matter for the Commission's consideration.

18. The One Wage Campaign thus maintains that the failure to propose NMW parity for EPWP workers constitutes unfair discrimination, in violation of the Equal Pay for Work of Equal Value principles. Its more detailed submissions in this regard are set out in the initial submissions<sup>3</sup> and motivated economically in the economic report. The State as an employer cannot continue to sanction a system whereby a sub-class of state employees is created. The cost entailed is not prohibitive, and viewed in perspective, is necessary to achieve equality, dignity and the upliftment of amongst society's most marginalised. The State must take the lead and set the example in the process of restoring the dignity of these workers, and indeed the dignity of all black South Africans.

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<sup>3</sup> The position is addressed throughout the submissions but see especially, paras 8, 27 to 30 and 67 to 91.

## **Conclusion**

19. In conclusion, while the One Wage Campaign welcomed NMW parity for farmworkers and trusts that the review process will yield a reasonable increase in the NMW for all workers.

20. NMW disparity must however now be eliminated. The Commission (through the majority) has rightly accepted that NMW parity can be achieved at this stage. This is a priority. The position of EPWP workers must also be addressed. To allow this form of state-sanctioned inequality flouts the values of our still newly constituted society namely human dignity, the achievement of equality and freedom and ubuntu.