



This Policy Brief addresses the question of the **composition** of a national minimum wage (NMW); that is, how remuneration is defined and what forms or components of remuneration are included within the NMW. It provides an overview of the current minimum wage-setting mechanisms in South Africa, presents international best practice on each issue and considers factors relevant to the design of a NMW in South Africa.

Key Questions:

- How are minimum wages currently structured in South Africa? (p.2)
- Should a national minimum wage be based on basic or gross earnings? (p.7)
- Should a national minimum wage include: productivity and performance pay (p.8), in-kind benefits (9), premia for abnormal work (p.10) and annual bonuses (p.10)?

Summary of Findings:

- It is important to ensure that the new NMW-setting mechanism is clear, easy to comply with and straightforward to enforce.
- Top-ups by employers when productivity and performance pay falls below NMW levels, would safeguard incentive pay while ensuring that workers do not earn below the NMW and/or are not forced to work overtime. The case of piecework must be carefully considered.
- Given the prevalence of unreported tips and gratuities, their inclusion in the calculation of a NMW would complicate monitoring, compliance and enforcement.
- In some sectors in-kind benefits may be beneficial for both employers and employees. These are, however, prone to abuse and over-valuation and it is therefore important to clearly limit deductions as is current practice in South Africa.
- ILO experts recommend that allowances and premiums for dangerous work, non-standard work hours or overtime not count towards compliance with the minimum wage. These currently do not count towards minimum wage compliance in South Africa.
- While annual bonuses such as the thirteenth cheque are based on the basic wage, and could therefore be derived from the NMW, internationally they are generally excluded from the calculation of the NMW.

"It is important to ensure that the new NMW-setting mechanism is clear, easy to comply with and straightforward to enforce."

The National Minimum Wage Research Initiative is an independent academic research initiative run by CSID in the School of Economic and Business Sciences (SEBS) at the University of the Witwatersrand. It is undertaken in the context of a national dialogue on wage inequality and the potential institution of a national minimum wage (NMW) in South Africa.

The views presented are the views of the National Minimum Wage Research Initiative.

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THE CURRENT MINIMUM WAGE-SETTING MECHANISMS IN SOUTH AFRICA

South Africa does not have a national minimum wage (NMW). Minimum wages are set through a combination of bargaining council agreements, negotiated between trade unions and employer organisations, and sectoral determinations, set by the Minister of Labour on the recommendation of the Employment Conditions Committee (ECC). The latter target sectors where workers are considered to be "vulnerable" and/or sectors that are not represented by workers' organisations.

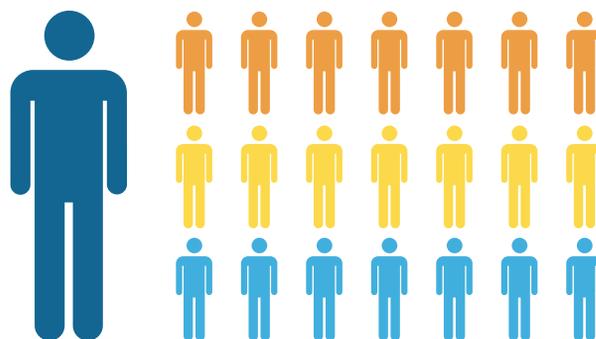
The Labour Relations Act of 1995 (LRA) and the Basic Conditions of Employment Act of 1997 (BCEA) provide the legal framework for the regulation of minimum wages. While the LRA legislates the right to freedom of association and collective bargaining, the BCEA provides a definition of remuneration and wages; defines the ordinary hours of work, against which the minimum wage is calculated, as well as premium payments for overtime, work on Sundays and night work; and permissible payroll deductions. Furthermore, the BCEA outlines the process for introducing new sectoral determinations and mandates the creation of the ECC (Department of Labour 1997).

"The adoption of a NMW is an opportunity to simplify South Africa's minimum wage-setting mechanisms, strengthen collective bargaining, uphold the principle of equal pay for work of equal value, contribute to and improve compliance."

The advantage of the sector-specific wage-setting system that combines bargaining council agreements and sectoral determinations, is that it promotes collective bargaining in sectors represented by workers' organisations, while providing an administrative wage-setting process for workers in unrepresented sectors. Furthermore, because minimum wages vary not only by sector but also in some instances by geographic location, firm size, occupational category, experience, skill level and whether the worker is full time or part time, sectoral wage determinations can respond to the heterogeneous nature of work arrangements.

However, the South African case also points to the design and implementation challenges of a sector-specific minimum-wage system. First, not all employees are covered by collective bargaining agreements or sectoral wage determinations. An estimated one million workers are currently excluded from minimum wage coverage (DPRU 2015). Second, the complexity of such a system can have negative implications for compliance and enforcement, particularly where resources for labour administration are limited (ILO 2014); with 124 wage rates, South Africa has the highest number of wage rates in sub-Saharan Africa (Bhorat *et al.* 2015). In their analysis of wage violations in South Africa, Bhorat *et al.* (2012) found that 44% of workers covered by minimum wage regulations were paid on average 36% below the minimum wage in their respective sectors.³

Third, sectoral minimum wages tend to set lower wages for sectors that primarily employ women, young workers, migrant workers and people with disabilities, thereby perpetuating wage inequality (ILO 2014). In South Africa, paid domestic work for instance, is the second most important source of employment for women yet the hourly rate for a domestic worker is the lowest of any sectoral determination. Fourth, the sectorally-specific wage setting process typically takes account of a more limited range of factors, with broader social objectives such as reducing poverty and inequality or providing a uniform "decent" standard of living overshadowed by sector-specific considerations. Finally, the potential effect on aggregate indicators such as employment (overwhelmingly not realised in practice) are only considered at a sectoral level, without accounting for potential positive implications on inter-sector aggregate demand from higher wages.



¹There are approximately 38 bargaining councils in the private sector, in addition to sectoral bargaining arrangements. In this document information regarding the collective bargaining agreements is derived from agreements from the respective bargaining councils, as listed in the bibliography, unless stated otherwise (see Department of Labour 2007a, 2012, 2014a, 2014b).

²There are currently 9 sectoral wage determinations: domestic work, contract cleaning, private security, wholesale and retail, farm work, forestry, taxis, hospitality and learnerships. There are also non-wage determinations for civil engineering, and children in the performance of advertising, artistic and cultural activities sector. In addition there is a Ministerial Determination for the Expanded Public Works Programme (EPWP). In this document information regarding the sectoral wage determinations is derived from the corresponding gazetted legislation listed in the bibliography unless stated otherwise (see Department of Labour 1999, 2001a, 2001b, 2001c, 2002, 2005, 2006a, 2006b, 2006c, 2006d, 2007b).

³This is not to suggest that low levels of compliance are simply the outcome of complex wage-setting mechanisms. Compliance rates are influenced by a series of factors including the availability of administrative resources for dissemination and enforcement, and the punitive measures and incentives in place.

THE COMPOSITION OF MINIMUM WAGES IN SECTORAL DETERMINATIONS AND COLLECTIVE BARGAINING AGREEMENTS IN SOUTH AFRICA

In South Africa, there is currently no uniform stipulation of which earning components should be included in the calculation of sectorally-set minimum wages. The BCEA defines the wage as a component of remuneration paid to an employee "in respect of ordinary hours of work, or if they are shorter, the hours an employee ordinarily works in a day or week" (Department of Labour 1997, p. 6). The specification of "ordinary hours" is important because it excludes, for example, productivity or overtime pay. Ordinary hours of work are calculated based on a 45-hour workweek; this comprises a 9-hour workday if an employee works 5 days a week, or an 8-hour workday if an employee works 6 days a week. An employee's monthly remuneration is four and a third times the weekly remuneration or wage.

Remuneration is defined as "any payment in money or in kind, or both in money and in kind, made or owing to any person in return for that person working for any other person, including the State". However, Clause 35 (5) allows the Minister to determine "after consultation with the Commission [ECC] and NEDLAC... whether a particular category or payment, whether in money or in kind, forms part of an employee's remuneration for the purpose of any calculation made in terms of this Act". This has allowed for the sectoral determinations (and bargaining agreements) to determine which components of total earnings constitute the sector-specific minimum wage.

Neither the BCEA nor sectoral determinations state whether the definitions for wages and remuneration refer to before- or after-tax income. Currently all sectoral determinations fall below the income tax threshold. The minima specified in collective bargaining agreements pertain to before-tax remuneration and therefore should they exceed the tax threshold the taxes are deducted from the prescribed minimum wage.

Employee contributions to social insurance:

Employee contributions to the Unemployment Insurance Fund (UIF) are mandatory for all workers except learners, public servants, migrant workers, those who work less than 24 hours a month, and workers who work only on commission. Employees must contribute 1% from their total earnings, excluding commissions, to UIF. Employees may also contribute to pension, provident, and retirement funds with contributions often around 7.5% of total earnings. However, only a small proportion of workers are members of such funds.

Productivity and performance pay

Productivity and performance pay is a supplemental form of remuneration (ILO 2014). In South Africa it includes commission work, piecework, and profit and gain sharing, among others. This section will focus only on commission and piecework.

Subject to limitations discussed below the components of remuneration considered as part of minimum wages set via sectoral determination are:

- The **wage**, as defined above;
- **Employee contributions** to the Unemployment Insurance Fund (UIF), benefit funds such as pension, provident, retirement and medical aid funds, and dues to registered trade unions where applicable;
- **Productivity and performance** pay including commissions and piecework;
- **In-kind benefits**, including accommodation, food and, in some sectors, uniforms;
- **Deductions** for loans, goods purchased from the employer, and damaged goods under very specific circumstances.

Excluded are:

- Allowances for night work, transportation and stand-by work;
- Overtime beyond the ordinary hours of work;
- Tips and gratuities (only explicitly mentioned in hospitality);
- Annual bonuses;
- Not all collective bargaining agreements have been reviewed here but the composition is similar for those reviewed.

Commission work refers to any system under which an employee receives supplemental pay based on the value or volume of sales. In the hospitality, wholesale and retail sectors in South Africa, commission work counts towards compliance with the minimum remuneration provided that the employer and employee agree to the terms in writing. However, safeguards to ensure that commission workers receive a wage sufficient to meet their basic needs vary across sectors – a reflection of the contradictions of South Africa's sectoral minimum wage-setting mechanism. In the hospitality sector, an employee who performs commission work must be paid "not less than the prescribed minimum wage for the period worked" (Department of Labour 2007b Clause 3(2)), whereas in the wholesale and retail sector an employee who performs commission work is guaranteed only "two thirds of the applicable minimum wage" (Department of Labour 2006a, Clause 4(2)). In both instances, "if during the calculation period the employee does not earn an amount equivalent to at least the prescribed minimum wage because any act of omission by or on behalf of an employer has restricted the employee's ability to earn commission, the employer must pay the employee at least the applicable minimum wage" (Department of Labour 2006a, Clause 4(5)).



Piecework refers to an employment arrangement where workers are paid by the piece or task, rather than by the time worked. In South Africa, no employee shall be paid less than the prescribed amount that they would have earned had they been employed on a timework basis. In addition, in sectors like the Motor Industry, piecework may not be given out or performed without the consent of the Regional Bargaining Council concerned. The Bargaining Council agreement for the Motor Industry also states that apprentices shall not undertake piecework. Other bargaining council agreements prohibit piecework entirely; this is the case of the Contract Cleaning Bargaining Council for KZN.

Tips are not included in calculations of the sectoral minimum wage for the hospitality sector.



In-kind benefits refer to non-wage compensation or payments to employees.

The BCEA includes in-kind benefits in the definition of minimum remuneration, however the sectoral determinations for paid domestic work, forestry work, farm work, and the taxi industry all define maximum levels of deductions. For paid domestic work there is a maximum deduction of 10% of the workers' salary for accommodation while deductions for food supplied during work or at the workplace are prohibited. In the forestry and farm sector, there is a maximum deduction of 10% for accommodation and an additional 10% for food, ⁴but workers under the age of 18 can only be charged a deduction for accommodation. Finally, when more than two farm or forestry workers reside in communal accommodation, the maximum deduction that an employer can make in respect of all workers is 25% of the applicable minimum for an individual farmworker to be divided equally between all residing in the accommodation. In the hospitality and private security sector the sectoral determinations explicitly prohibit such deductions.

Table 1: Variation in the Components of Remuneration in Sectoral Determinations, South Africa

	Commission and piecework	In-kind benefits
Domestic Work		Up to 10% deduction for accommodation provided it meets standards.
Hospitality	Commissions count towards the minimum wage but the wage shall be no less than the prescribed minimum wage for the period worked.	No deduction for uniforms or uniform deposits.
Forestry and Farm Worker		Up to 10% deduction for food and 10% deduction for accommodation provided it meets standards. A max deduction of 25% for communal accommodation. ⁵
Wholesale and retail sector	Commissions count towards the minimum wage but workers must earn at least 2/3 of the minimum wage. If earnings are lower than the minimum wage because of employer action, the employer must top these up.	The real value of outfits that are the workers' property can be counted towards the minimum wage. The amount owed must be paid for in four equal monthly instalments.
Private Security		No deduction for uniforms or uniform deposits.
Learners		In kind benefits do not count towards the minimum wage.
Contract cleaning		Accommodation counts towards the minimum wage. An employee is not obliged to accept employer provided accommodation.
Civil engineering	Piecework must be equivalent to the minimum wage rate at the end of the reference period.	

Source: Sectoral Determinations.

⁴On the basis that it is provided free of charge by the employer at the employer's cost on a consistent and regular basis and that the accommodation meets the requirements outlined in Clause 8(3) of the sectoral determination.

⁵When more than two farm or forestry workers reside in communal accommodation, the maximum deduction that an employer can make in respect of all workers is 25% of the applicable minimum for an individual worker.

Table 2: Examples of Variation in the Components of Remuneration in Collective Bargaining Agreements, South Africa

	Commissions & Piecework	In-kind benefits
Motor Industry	Commission work: the basis for commission work, in addition to a workers' wage, must be specified in writing. Piece work: the Regional Bargaining Council must consent to piecework. Employees must be paid at least the prescribed minimum wage. Apprentices cannot undertake piecework.	Deductions possible for goods purchased directly by employers. Up to 10% deduction for accommodation provided it meets standards.
Metal and Engineering	Rates agreed between an employer and an employee must allow an average employee engaged on the particular bonus-rate work to earn not less than 10% above the rate for that class of work scheduled in the Agreement. Apprentices may not be employed on incentive-bonus work unless prior permission of the Council has been obtained and the apprentice has completed his or her first two years.	No employee shall be required as part of his or her contract of service to accept board or lodging or both from his or her employer, nor to purchase any goods or hire any property from his or her employer. Where an employee agrees, the employer may make a deduction provided that the Council is notified in writing prior to said deductions.
Textiles	Piecework is not provided for in the collective bargaining agreement. Calculation of wages is only based on the hourly wage.	The employee may authorise other deductions. In kind benefits are not explicitly defined.
Road Freight and Logistics	The bargaining council must approve incentive schemes, and the employer must set up a committee consisting of worker representatives and management to define the terms of the scheme.	Subject to consent by the council, an employer may deduct for the cost of protective clothing, tools, and equipment, issued free of charge and which are not returned to an employer.
Contract Cleaning Services	Piecework is prohibited.	

Source: Bargaining Council Agreements

"Tips are not included in calculations of the sectoral minimum wage for the hospitality sector."

OTHER DEDUCTIONS

The BCEA also permits deductions to reimburse the employer for the loss or damage to goods, not greater than the original value of the good and no more than 20% of the employee's remuneration, if the employee is found to be at fault. There is a concern however that some employers have abused a number of these provisions, particularly in the most vulnerable sectors. In some sectors deductions are also permitted for the repayments of loans to financial institutions, under strict oversight from the bargaining council where it exists. In the metal and engineering industry the maximum amount that can be deducted is 25%.

"Other bargaining council agreements prohibit piecework entirely."

INTERNATIONAL APPROACHES TO THE DESIGN OF A NMW AND IMPLICATIONS FOR THE SOUTH AFRICAN CASE

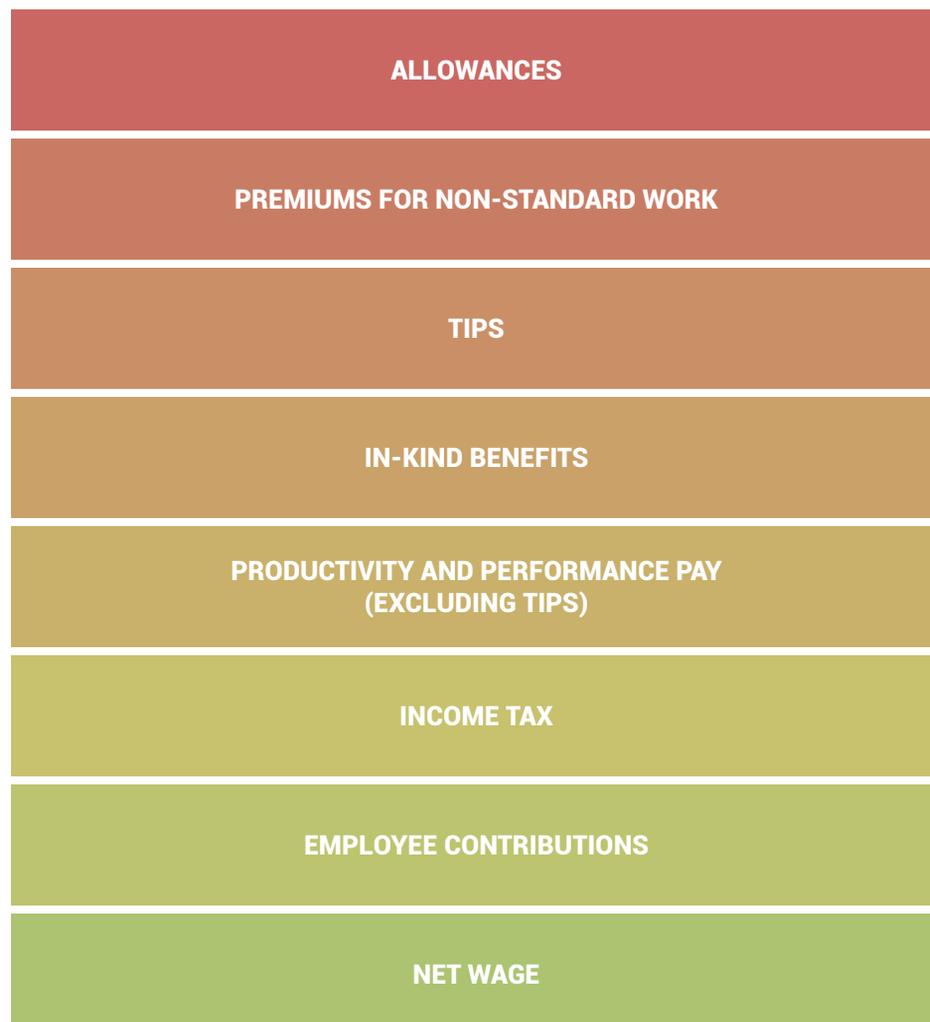
There is no international, legally binding definition of a national minimum wage (NMW) or of its components. Minimum wage systems differ depending on their objective and design. Nonetheless, the ILO Committee of Experts on the Application of Conventions and Recommendations defines the minimum wage as:

The minimum sum payable to a worker for work performed or services rendered, within a given time period, whether calculated on the basis of time or output, which may not be reduced either by individual or collective agreement, which is guaranteed by law and which may be fixed in such a way as to cover the minimum needs of the worker and his or her family, in light of national economic and social conditions. (ILO 1992, p. 13)

Internationally, the definition, and hence components, of a NMW vary widely. Whereas France, for example, provides a very brief definition, the United Kingdom outlines detailed specifications of what should and should not be included in a NMW. A brief definition may seem more straightforward, however it can be more ambiguous, leaving open the space for misinterpretation and legal challenge. In Germany, for instance, the absence of a precise definition has resulted in a legal debate between the Federal Government and the Labour Courts on whether annual bonuses and in-kind benefits should be included when calculating the minimum wage (Schulten 2015). These ambiguities can threaten the successful implementation of the NMW and undermine its objective as a wage floor below which no worker can be paid. For this reason, the ILO recommends that definitions must be clear, transparent, easy to comply with and straightforward to enforce (ILO 2014).

Figure 1 provides a summary of the components that are considered internationally for inclusion within the NMW. Those components highlighted in green are the most commonly used in NMW calculations, those in orange contested, and those in red discouraged.

Figure 1: Possible Wage Components



Net wage, basic wage or total earnings?

The **net wage** refers to the employee's take home pay after taxes and statutory deductions. The advantage of a net NMW is that it is easier for workers to enforce because they know exactly what they will get in take-home pay. However, few countries set a NMW as a net wage because wage data is generally collected and analysed in gross terms, and minimum wages are sometimes set in relation to national median or average wages. While net earnings are an important component of minimum wage calculations and negotiations, it is the gross wage or employee's pay prior to tax and employee contribution deductions that is generally published. Exceptions include Serbia and Montenegro (ILO 2014).

The **basic wage** refers to cash earnings including income tax and contributions to social insurance but excluding wage supplements such as variable payments based on productivity and performance, premium payments to compensate workers for overtime or those working in dangerous conditions, and in-kind benefits such as food and accommodation.

The advantage of using the basic wage in the calculation of the minimum wage is that it is straightforward to implement and enforce, particularly in instances where the value of commissions, tips, bonuses and in-kind benefits may be difficult to assess. Chile for example, defines the minimum wage with reference to the basic wage (ILO 2014). However, a basic-wage approach could result in the reduction of supplemental benefits. This may have little adverse impact on low-wage workers in countries where they do not receive complex wage packages, as is the case in the UK (Low Pay Commission 1998) but a greater impact in countries where supplemental forms of income such as performance pay are more prevalent.

Some countries, such as Brazil include all wage supplements in the calculation of the NMW. This is called the **total-earnings approach**. The drawback of the total earnings approach is that if premium payments like overtime are included, workers may be forced to work overtime or in abnormal conditions in order to earn the minimum wage (ILO 2014). The merits of the inclusion of each of these components are discussed in the forthcoming sections.

Most countries use a combination of the basic-wage and total-earnings approach, thereby including income tax, social insurance, and a selection of non-wage supplements in the calculation of the NMW. Some countries have tailored their approach as evidence of the impact of the NMW has emerged.

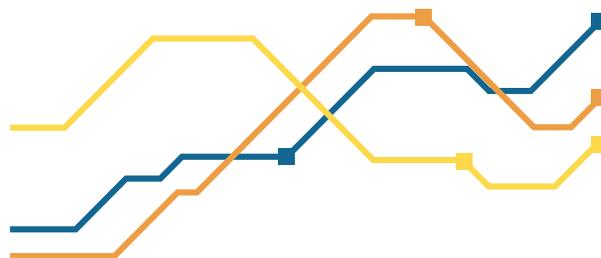
In 2002 Chile legislated that the minimum monthly income should be equivalent to the monthly wage. The government then allowed tips and commissions to count towards compliance, but in 2014 reversed the decision (Dirección del Trabajo. Gobierno de Chile 2015).

Consideration for a NMW in South Africa: a net wage, basic wage or total-earnings approach?

The income tax threshold for 2015 is R 5 891 a month, and will rise to R6 137 a month in 2016. This means that the difference between the net wage and basic wage may not be significant for low-wage workers earning below this threshold. In terms of social insurance, UIF employee contributions are currently 1% of employee's pay and in some sectors there are additional deductions of approximately 7.5% towards personal retirement funds. In addition, forms of supplemental income are important parts of the overall pay structure for some South African workers.

As is current practice, a minimum wage comprised of the basic wage and certain, but not all, wage supplements, appears appropriate for the South African context. These are discussed in greater detail below.

"The advantage of this system is that it does not deny the right to pay or receive earnings above the NMW due to positive performance while providing safeguards to ensure that all workers, including commission workers, are able to meet their basic needs as defined by the law."



Productivity and performance pay: commissions, piecework and tips

Productivity and performance pay are supplemental forms of remuneration to the basic wage. They include commission work, piecework and tipped work.

Commissions are incentive payments related to the value or volume of sales, profit margin or the number of orders submitted to and accepted by an employer. Some countries exclude commissions from the calculation of the NMW in order to minimise abuse and confusion. However, in certain sectors, such as the hospitality and retail sector, commissions are an important component of the pay structure.



In most countries, including Germany, Malaysia, Portugal and the United Kingdom commissions are included in the calculations towards the NMW, but if at the end of the reference period the total value of commissions falls below the NMW level, the employer must top these up in order to meet the NMW (Low Pay Commission 1998, Schulten 2015). The advantage of this system is that workers can receive earnings above the NMW due to positive performance while providing safeguards to ensure that all workers, including commission workers, are able to meet their basic needs as defined by the law (National Wages Consultative Council 2012).

Piecework is an employment arrangement where workers are paid by the piece or task completed, rather than by the time worked. For employers the advantage of piecework is that it is directly tied to output and production targets and can incentivise greater productivity. For workers however, it can lead to long working hours and subminimum wages. Internationally, piece work is being phased out (ILO 2014).



In Malaysia, if the pieceworker wage at the end of the reference period is lower than the statutory minimum, the employer must top it to meet the minimum wage."

Some countries like Vietnam exclude piece workers from the Labour Code since they do not work in a fixed place where hours can be easily monitored and measured. Other countries have incorporated piecework into the calculation of the NMW thereby safeguarding existing systems of incentive pay. In Canada, Iran, Madagascar, Morocco, and Malaysia pieceworkers' wages cannot be lower than the applicable minimum wage. In Malaysia, if the pieceworker wage at the end of the reference period is lower than the statutory minimum, the employer must top it to meet the minimum wage."

The calculation of remuneration for each piece produced or task completed is extremely important because if the salary is set too low, it will in fact be the equivalent to performing unpaid overtime work. In the UK, a "fair rate" was introduced based on the average rate of tasks completed per hour divided by 1.2 so that slightly less productive workers are not disadvantaged (Low Pay Commission 1998). In Cambodia, pieceworkers' wages must be fixed at a level that enables a wage earner with mediocre skills and normal output to receive, for the same length of work, a salary at least equal to the guaranteed minimum wage (ILO 2014).

Tips are a type of productivity or performance pay paid by the customer rather than the employer. They may be paid through a centralised payroll system, a central collection or directly to workers. Some countries, including Chile and Germany exclude tips and gratuities from national minimum wage calculations. According to the German NMW law:

Tips are not remuneration that an employer pays his employees for their work. They are a gratuity that third parties give to employees for good service. According to court rulings, they are to go to the individual employee (or the respective group of employees, as the case may be) and thus cannot be counted. (Federal Ministry of Labour and Social Affairs 2015, p. ,17)

Other countries allow tips to be calculated towards minimum wage compliance but legislate a "top-up" in instances where total earnings do not reach the minimum wage, one such example is France (ILO 2014). The challenge of including tips in minimum wage calculations is that the prevalence of unreported tip income makes it more difficult to define and enforce top ups. This is perhaps less difficult when tips are centralised by the employer, or added to cheque and credit card payments, but more difficult where they are in cash. To address this challenge, the NMW law in the UK stipulates that tips and gratuities can count towards a minimum wage in instances where workers receive their tips via a payroll system. Cash tips are considered a gift and not remuneration, given the difficulty of monitoring these (Low Pay Commission 1998).

In contrast tipped workers in the US and Canada have an entirely different (and significantly lower) minimum wage. Whereas the federal minimum wage in the US is currently \$7.25 an hour, the federal minimum wage for workers who receive tips is \$2.13 an hour.



While conventionally tips in the US are higher than in Europe, studies show that tipped workers in the US are twice as likely to fall below the poverty line as other workers (Filion and Allegretto 2011). In addition, tipped workers are prone to wage theft by being denied all or some amount of the tips owed. The result is

that employers have been able to establish a permanent sub-minimum wage for tipped workers. Where tips had previously been a gratuity, they have become, through a differential minimum wage, a significant part of the wage bill subsidised by consumers. At the state and city level there have been movements to increase the minimum wage in the US; in Seattle for instance a minimum wage of \$15 an hour was introduced with a phase in period up to 2021 for tipped workers.

Considerations for a NMW in South Africa: Productivity and Performance Pay

Given the incentive pay structures currently in place in South Africa the inclusion of commission work in the calculation of the NMW would maintain the current remuneration structure, productivity incentives and benefits. In order to ensure that workers do not earn below the minimum wage, or are not forced to work overtime, it is recommended that in reference periods where wages fall below minimum levels, employers top these up.

Because some bargaining council agreements prohibit piecework for particular sectors such as contract cleaning, or particular occupations within sectors, such as apprentices, explicitly recognising piecework as part of the composition of the NMW would conflict with current practice. Careful consideration must be given to whether this form of remuneration should be included.

Tips are currently not included in minimum wage calculations in South Africa. Given the prevalence of unreported tip income, and the difficulty of monitoring and enforcing this aspect of remuneration, it seems appropriate to exclude tips from the calculation of the NMW.

In-kind benefits

Benefits in kind refer to non-wage compensation to employees. While in some sectors in-kind benefits such as accommodation may be beneficial for both employer and employee, they are also prone to abuse and over-valuation because it is difficult to estimate and monitor the value of benefits in each reference period.

An expert panel of the ILO recommended that the payment of any part of minimum wages in kind should be discouraged, and in instances where parties agree that it is desirable, arrangements should be made for the valuation of any part of the minimum wage paid in kind to be subject to the approval of the competent authority. This, argued the ILO panel, is the only way to ensure that the spirit of minimum wage legislation is upheld.

In general, if the minimum wage is really to offer social protection to workers and their families, it is necessary to ensure that only benefits in kind that respond to their needs are included among the components of the minimum wage, that a reasonable value is attributed to them and that they are only taken into account up to a certain level. (ILO 2014).

In many countries, including Antigua and Barbuda, Argentina, Bahamas, Chile, Islamic Republic of Iran, Kenya, Mexico, Panama, Romania, and Spain in-kind benefits do not count towards minimum wage compliance.

In the UK, the Low Pay Commission decided that if the NMW did not allow for an in-kind accommodation charge there was a danger that employers would transfer this charge to workers. The LPC, therefore, decided to allow for this deduction but limited it to a maximum deduction of 20 pounds a week in 1998, or approximately 8% of the weekly wage. Furthermore, any meals provided are not calculated into the national minimum wage. In the long term, the LPC recommends that in-kind contributions should be monitored with the ultimate objective of phasing them out (Low Pay Commission 1998).

Considerations for a NMW in South Africa: In-Kind Benefits

The nature of in-kind benefits is a legacy of labour organisation and exploitation during the apartheid era. Nonetheless, they continue to offer workers in some sectors benefits. Given the fragmentation of the current minimum wage setting mechanism, in-kind benefits vary widely from sector to sector. The current approach taken in sectoral determinations limits the scope of in-kind benefits and the amount that can be deducted. The current maximum of 10% of the basic salary offers a useful guide.

Premium payments

Premium payments are supplemental forms of remuneration for overtime or extraordinary forms of work. The ILO recommends that allowances and premiums for non-standard work hours or overtime should not count towards compliance with the minimum wage (Belser 2008) and most countries exclude these. The inclusions of such premia could force workers to work overtime or in dangerous conditions in order to earn the NMW. "The German minimum wage law excludes these from the calculation on the basis that:

If an employee works "more" or performs "higher-value" work at the employer's request, the additional pay for this does not pertain to the employee's "normal work" and for this reason cannot be taken into account. (Federal Ministry of Labour and Social Affairs 2015, p. , 17)

Considerations for a NMW in South Africa: Premium Payments

The international experience and recommendations from ILO experts suggest that allowances and premiums for non-standard work hours or overtime should not count towards compliance with the minimum wage.

Annual bonuses

Annual bonuses are a supplemental form of remuneration. A few countries like the United Kingdom include annual bonuses in the calculation of the national minimum wage. However, this can result in under payment of the regular NMW. Many countries, including Brazil and the Philippines, base an annual bonus on the value of the NMW but do not include the bonus in the calculation towards compliance.

In the Philippines, all workers, including commission workers and piece workers, are entitled to a 13th cheque which should not be less than 1/12 of the wage earned by an employee within a calendar year. Workers with multiple employers, or who work on a part time basis, are entitled to a 13th cheque from all their employers. Workers who have worked at a place of employment for less than a year receive their pay in proportion to their earnings (Republic of the Philippines 1986).

In Brazil, all registered workers have the right to a 13th cheque equivalent to the 1/12 of the annual remuneration. In Brazil the annual bonus is made in two tranches, the first one between the 1st of February and 30th of November, and the second one until the 20th of December (Senado Federal da Republica do Brasil 1965).

Considerations for a NMW in South Africa: Annual Bonuses

In South Africa, the Christmas bonus or thirteenth cheque is common in numerous sectors covered by collective bargaining agreements. Based on the international experience, annual bonuses should not be included in the calculation of the NMW, but can be derived from the NMW.

"Factors that may influence the design of a NMW include current remuneration arrangements, the nature of the labor market, and the existing tax and benefits structure."

CONCLUSION

This policy brief illustrates the complex and fragmented nature of South Africa's current sectoral wage-setting mechanism. While this system is able to respond to the heterogeneous nature of work arrangements in particular sectors covered, it can also have negative implications in terms of coverage, compliance and enforcement. A NMW would simplify South Africa's minimum wage-setting mechanisms, increase coverage, potentially strengthen compliance and could contribute to the reduction of poverty and inequality.

As this policy brief highlights, there is no single approach to defining a NMW. It is important however, to ensure that definitions are clear, easy to comply with and straightforward to enforce. Factors that may influence the design of a NMW include current remuneration arrangements, the nature of the labor market, and the existing tax and benefits structure. Ultimately the introduction of a NMW is a policy experiment that must be closely monitored and adjusted over time.

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