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Policy Brief 1 outlines the components of a national minimum wage (NMW). This Brief addresses the issue of the reference period that is, whether a NMW should be paid on an hourly, daily, weekly or monthly basis and premium payments for work beyond the ordinary hours of work. It offers an overview of current practice in South Africa, presents international best practice, and discusses relevant factors for consideration in the definition of a NMW in South Africa.

Key Questions:

- What counts as time worked? (p.2)
- Should a NMW be set on an hourly, daily, weekly or monthly basis? (p.2)
- What are the approaches to ensuring a minimum income for hourly workers over a longer reference period? (p.5)
- Should the NMW include provisions for short time, compressed time and emergency work? (p.6)
- What should be the approach to premium payments beyond the ordinary hours of work? (p.7)

Summary of Findings:

- Wages are calculated in relation to time worked. It is important to clearly define what constitutes time worked so that the NMW can be correctly applied.
- This definition is also important to prevent erroneous deductions and ensure that workers receive premium payments for work performed beyond the ordinary hours.
- A combination of an hourly, daily, weekly and monthly assessment period enables the NMW to respond to heterogeneous work arrangements. This is in line with current practice in South Africa and recommendations from ILO experts.
- Approaches to ensure that the NMW raises income and protects hourly workers by incentivising a minimum income over a longer reference period include: a guaranteed minimum number of hours of work per day; a threshold number of hours or days above which an employee will earn a full-time daily, weekly or monthly wage; and a premium rate for part-time workers.
- Provisions for short-time and emergency work should be considered in order to respond to companies in distress.

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.

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WHAT COUNTS AS TIME WORKED?

Before defining the reference period to which a national minimum wage would apply, it is important to **clearly define the period during which a worker is considered to have worked** and ensure that the definition is aligned with statutory labour protections. Internationally, there are three primary approaches to defining what counts as time worked:

Actual working time, which excludes breaks and periods of leave. This means that if a worker is at work for nine hours but has one hour's worth of breaks they are deemed to have worked for eight hours.

Normal working time or the prescribed ordinary hours of work. This includes breaks and other statutory provisions. If a worker is at work for nine hours and has the statutory right to an hour worth of breaks during that period, they are still considered to have worked for nine hours.

Full working time, which includes all the time when workers are required to be at work, even if unable to work (as in the case of stand-by work).

"An approach which focuses on ordinary hours of work would ensure that workers' wages are not deducted for breaks and other statutory rights, and that they receive premium payments for work beyond the ordinary hours."

Considerations for a NMW in South Africa

Most countries define the minimum wage based on the normal working time or ordinary hours of work. An approach which focuses on ordinary hours of work would ensure that workers' wages are not deducted for breaks and other statutory rights, and that they receive premium payments for work beyond the ordinary hours. This is in line with current practice in South Africa and the recommendations from ILO experts (ILO 2008).

In addition, some sectoral determinations and collective bargaining agreements provide for stand-by work, which refers to any period where a worker is required to be present at the workplace regardless of whether they are asleep or awake. Stand-by work is remunerated at a premium rate.

Therefore, it is recommended that the minimum wage be established according to normal working time and that overall wages take account of full working time.

DEFINING THE REFERENCE PERIOD

When considering the implementation of a national minimum wage a country must decide over what time period that minimum wage applies. Should it be set hourly, daily, weekly or monthly?

THE CURRENT APPROACH IN SOUTH AFRICA

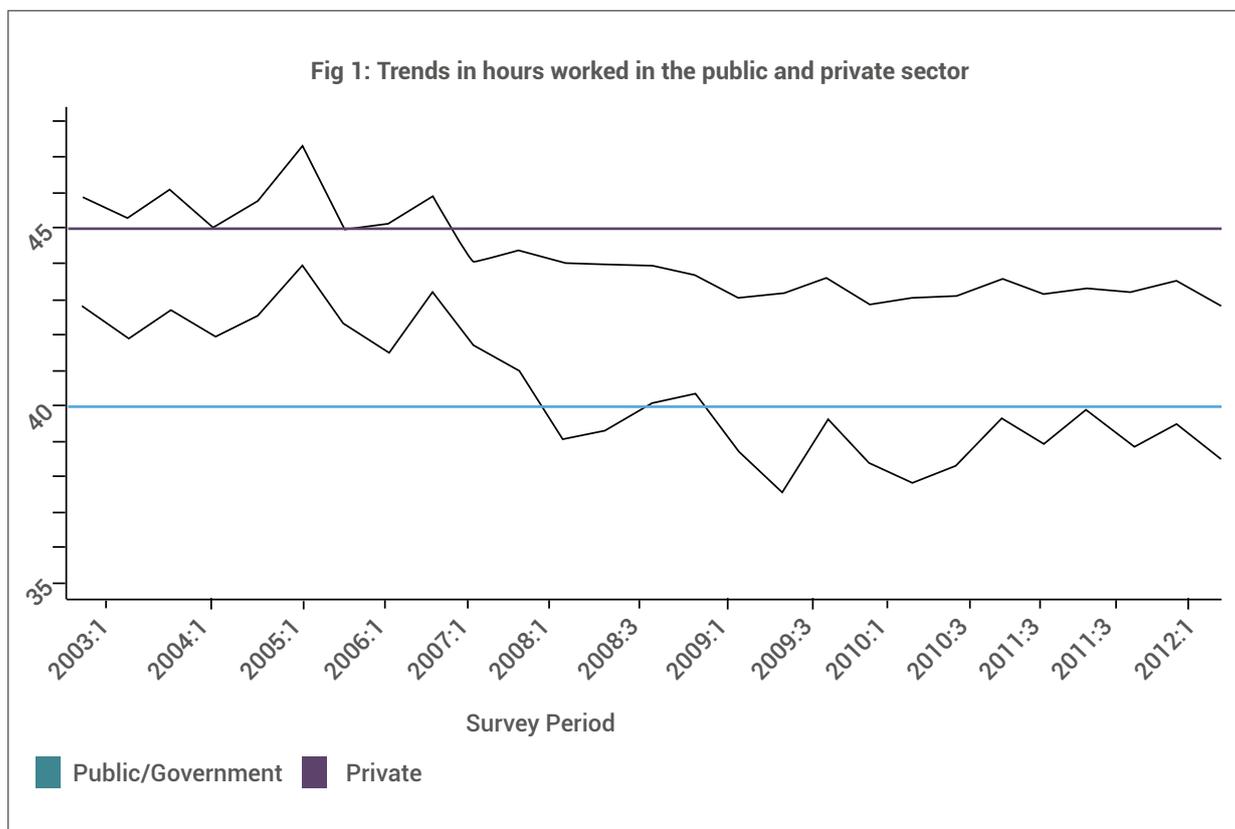
In South Africa, sector-specific minimum wages¹ are set as **hourly wages**, and converted to a daily, weekly or monthly rate. Some sectors, such as contract cleaning, only publish an hourly minimum wage. The **daily wage** is the hourly wage multiplied by the number of ordinary hours of work prescribed in a day. The ordinary hours of work in a day is nine hours if an employee works for five days or less a week, and eight hours if an employee works for more than five days a week. The **weekly wage** is the hourly wage multiplied by the ordinary hours of work in a week, which the BCEA defines as 45 hours a week. The **monthly wage** is the weekly wage multiplied by four and one third (BCEA 1997).²

¹ 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). There are currently nine sectoral wage determinations and thirty-eight bargaining council agreements. 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, 2007a). Information regarding collective bargaining agreements is derived from the respective bargaining councils as listed in the bibliography, unless stated otherwise (see Department of Labour 2007b, 2012, 2014a, 2014b).

² The Basic Conditions of Employment Act of 1997 (BCEA) provides the legal framework for the definition of ordinary hours of work, overtime, night work, work on Sundays and public holidays.

Schedule 1 of the Basic Conditions of Employment Act (BCEA) makes a provision for the progressive reduction of the ordinary hours of work to 40 hours a week and 8 hours a day, through collective bargaining and sectoral determinations (Schedule 1, BCEA 1997), although a timeline for this process has not yet been determined.

Figure 1 illustrates that there has been a gradual decline in the number of hours worked both in the public and the private sectors although it is uncertain what has driven this (Finn 2015). Possible factors include the extension of labour protection to historically excluded sectors, increased adherence to the terms of the BCEA and a shift from full-time to part-time work in some sectors with the casualisation of work arrangements.



Source: Finn (2015)

INTERNATIONAL APPROACHES

HOURLY MINIMUM WAGES

In some countries a minimum wage is set only on an hourly basis. This is the case in the United Kingdom, Germany and the United States. There are a number of advantages to having a single hourly minimum wage. First, it is clear and simple to disseminate, easy to remember and straightforward for workers to enforce because there is only one way to calculate the rate. International research shows that the simpler the minimum wage system is, the easier it is to enforce (ILO 2014). Second, it ensures that workers are paid for every hour worked. This is particularly important in sectors where working hours fluctuate or where there is poor adherence to the ordinary hours of work. Third, it facilitates flexible work arrangements, which, though prone to abuse, may be beneficial to employers in some instances.

The Code of Good Practice on the Regulation of Working Time provides guidance on work arrangements and its impact on workers' health, safety and welfare. Sectoral determinations are based on the BCEA. Collective agreements may only replace the conditions outlined in the BCEA with the consent of trade unions.

However, there are disadvantages to an hourly minimum wage. First, it does not guarantee workers a minimum wage over a longer period of, for example, a week or a month. This is particularly harmful in sectors where casualised or seasonal work is prevalent, or where there is a concern that a NMW will result in a reorganisation of employment arrangements that will lead to a substantial reduction in working hours. Workers may find that they work few hours over a longer reference period, or so irregularly, that they are unable to earn enough, even at the hourly minimum wage, to meet their basic needs, which is ultimately the objective of a NMW.

DAILY, WEEKLY OR MONTHLY MINIMUM WAGES

If minimum wages are not defined on an hourly basis, it is important to specify the ordinary hours of work in order to ensure that the worker is not forced to work overtime without additional compensation. Ordinary hours of work range between 35 hours, in France and Equatorial Guinea, to 48 hours a week, as is the case in Cambodia and Malaysia. The majority of countries including Nigeria, Venezuela, Uruguay, China, and Ghana calculate the minimum based on a 40-hour workweek. In Costa Rica it is further specified that, in the case of a minimum hourly wage, normal hours of work refer to daytime work.

The advantage of a weekly or monthly wage is that it guarantees workers a minimum wage over a longer reference period, thereby ensuring that they earn enough to meet their basic needs. The disadvantage is that if the number of hours for which remuneration is to be taken into account is either not clearly defined or not clearly enforced, workers may be forced to work unpaid overtime. Consequently, daily, weekly or monthly wages can result in less pay overall. This is of particular concern in sectors where workloads intensify during particular periods, as is the case with agricultural work.

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A COMBINED APPROACH

Many countries opt for a combined approach. Malaysia sets an hourly, daily and a monthly rate, based on a 48-hour work week. The hourly rate applies only to part-time employees, who work less than 70% of the ordinary hours of work.

Beyond that, workers must be paid according to a daily or monthly rate. The daily rate is higher for workers who work less days (but more hours) in a week. This is to ensure that they receive the same minimum wage at the end of the month. In Latvia, legislation fixes a minimum monthly wage for normal hours of work, in addition to a minimum hourly wage. China sets an hourly wage for part-time workers and a monthly wage for full-time workers, while Morocco differentiates by sector, with agricultural workers receiving a daily rate and industrial, commercial and liberal sectors receiving an hourly rate.

Considerations for a NMW in South Africa

Although more complex, a combined approach to establishing a reference period has the advantage of being able to respond to a variety of work arrangements. In order to prevent abuse, it is important to ensure that: the ordinary hours of work are clearly defined and workers duly compensated for work performed beyond these; and that hourly workers are guaranteed a minimum level of income in order to ensure their wellbeing over a longer period of time. Therefore it is recommended that the definition of ordinary hours of work be revisited



"In instances where minimum wages are defined only on an hourly basis – as is the case in contract cleaning and the textile sector in South Africa– workers may earn the hourly minimum wage, but work insufficient hours to earn enough to meet their basic needs, thereby undermining the objective of a minimum."

ENSURING A MINIMUM INCOME THROUGH MINIMUM WORKING HOURS

While the ordinary hours of work establish the upper bounds of a working day or working week, they do not define a minimum number of hours.

In instances where minimum wages are defined only on an hourly basis – as is the case in contract cleaning and the textile sector in South Africa– workers may earn the hourly minimum wage, but work insufficient hours to earn enough to meet their basic needs, thereby undermining the objective of a minimum wage.

This is of particular concern in sectors where there is significant pressure to restructure work arrangements in order to transfer the cost of fluctuating workloads onto the employee. In an attempt to address this risk, some sectoral determinations and collective agreements have introduced a web of incentives and regulations to ensure that workers earn a minimum income.

The first way to reduce worker vulnerability to casualisation is to limit the categories of work that can be paid on an hourly basis. In the wholesale, retail and private security sectors, hourly wages can only be paid to casual employees who do not have a fixed contract of employment and who work 24 hours or less a week. Employees who work more than 24 hours a week must be paid a weekly or monthly wage. In the domestic, forestry and farm work sector, full-time employees are given the option to reject being paid the hourly wage. In the road freight and logistics sectors, workers can only be paid on a weekly basis.

A second mechanism is to establish higher wage rates for part-time workers. In the private security sector, casual workers receive an additional 15% over the prescribed hourly wage of a full-time employee. In the retail and wholesale sector, employees who work less than 27 hours a week are paid 25% above the hourly wage for a full-time worker but forfeit the right to premium payments for work on Sunday, paid sick leave, and allowances for night work.

Domestic workers who work less than 27 hours a week are also entitled to a premium rate. In the collective agreement for the motor industry, workers who work two hours or less, are paid two and two third times the hourly wage. Legislated premium wage rates for part time workers in some sectors – which range from 15% to 25% – can provide a guide for a NMW.

A final means through which to ensure a minimum number of working hours is to directly stipulate them. In the contract cleaning sector an employee must be paid for a minimum of six hours on a given day, even if they work less than that. In the private security sector and domestic work sector, an employee who works less than four hours a day is deemed to have worked four hours.

Considerations for a NMW in South Africa

In order to ensure that hourly workers receive a wage which can meet their basic needs over a longer reference period, it is important to standardise protections that guarantee hourly workers a minimum number of working hours or premium payments for part-time workers. Currently there is a fragmented web of protections in South Africa which includes: a guaranteed minimum number of hours of work per day; a maximum number of hours above which an employee must be paid a daily, weekly or monthly wage; and a premium wage rate for part-time workers. Current measures provide a basis for defining universal protections and should be carefully considered.

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SHORT TIME, COMPRESSED WORKING WEEK AND EMERGENCY WORK

In special circumstances, the ordinary hours of work can be altered in order to respond to the specific needs of particular sectors, without workers qualifying for premium payments. These include short time, compressed time and emergency work.

THE SOUTH AFRICAN APPROACH

Some sectoral determinations and collective bargaining agreements allow for short time, compressed working time or an averaging of hours over a longer period.

Short time is “a temporary reduction in the number of ordinary hours of work owing to slackness of trade, shortage of raw materials, vagaries of the weather, a breakdown of plant or machinery or buildings that are unfit for use or is in danger of becoming unfit for use” (Department of Labour 1999). Deductions for short time are limited to one third of the employee's weekly wage irrespective of the reduction in the number of hours. The employer must notify the employee the previous day (Department of Labour 2006b).

The BCEA allows for a **compressed working week**, in which an employee may work up to 12 hours a day without receiving overtime pay, provided that they agree and do not work more than 45 hours a week (Department of Labour 1997). The ordinary hours of work can be averaged over a period of up to four months a year, with the consent of an employee. This is pertinent for sectors where the intensity of work fluctuates significantly. However, hours worked cannot exceed 50 hours a week and 10 hours a day (Department of Labour 1997).

Some sectoral determinations and collective agreements allow for **emergency work**. Emergency work is defined as “work which is required to be done without delay owing to circumstances for which the employer could not reasonably have been expected to make provision and which cannot be performed by employees during their ordinary hours of work” (Department of Labour 2006b). In these circumstances, the BCEA stipulates that ordinary hours of work do not apply. However, the employer must pay premium wages for overtime, night work and work on Sundays as discussed in more detail.

INTERNATIONAL APPROACHES

Some NMW legislation outline stipulations for **short time**. In France for instance, short-time work is permitted for the following reasons: a) economic reasons; b) difficulties in obtaining the necessary energy or raw materials; c) exceptional circumstances; d) transformation, restructuring or modernisation. However, in exchange for a reduction in working time, an employee will receive a government allowance equivalent to €3,84 per hour for companies with between 1 and 250 employees and €3,33 for enterprises with more than 250 employees. If the company is closed for more than six weeks employees are eligible for unemployment benefits.

In Germany, there is no general statutory provision for short time. However, the Social Security Legislation allows for short-time allowances to be paid through social insurance for a period of up to 24 months in the case of a temporary, considerable and unavoidable reduction of work. The allowance is equivalent to 60% of the difference between what the worker would have ordinarily earned and what they earn under short time.

“However, the criteria for short time and compressed working time must be clearly defined and the limits stipulated, in accordance with other statutory regulations including the BCEA.”

³ In most sectors, the maximum overtime permitted is 10 hours a week, although in domestic work, the forestry and farm work sector, the maximum overtime permitted is 15 hours per week.

⁴ The BCEA defines night work as worked performed between 18:00 and 6:00. This is also the definition used in the domestic, forestry, private security and learnership sectors. For farm workers, night work is defined as between 20:00 and 4:00. In the contract cleaning and motor industry sectors, it is defined as work performed between 23:00 and 6:00.

⁵ Employees who work one hour or less on a Sunday are paid double the wage for one hour of work; employees who work more than one hour but less than two are paid double the ordinary wage for the time worked; employees who work more than two hours but not more than five are paid the ordinary daily wage; and employees who work more than five hours are paid either double the ordinary daily wage or double the hourly wage for the time worked, depending on which is greater. A farm worker who does not reside on the employer's farm and who works on a Sunday must be regarded as having worked at least two hours on that day even if they worked less than.

⁶ The shift allowance ranges from R30 for domestic workers to R80.52 for motor industry workers.

In China, companies can request to **compress the weekly hours of work** into fewer days. This can be done: on the basis that their job requires them to work continuous hours, as is the case in the transport, railway, maritime, aviation and fishing sectors; where work is regulated by seasonal conditions, for example, for workers in the sugar industry and tourism sector; and where employees prefer compressed working hours. However, the average daily and average weekly hours should correspond to the ordinary hours of work. In Nicaragua, compressed working hours can only be extended by a maximum of two hours a day, which corresponds to the maximum limits on overtime.

Generally the ordinary hours of work do not apply in instances of **emergency work**. In Germany for instance, it is possible to exceed these when the work cannot be postponed, particularly when there is a risk of the deterioration of raw materials or food that will threaten profits, provided that over a period of 6 months or 24 weeks the average hours correspond to the ordinary hours of work. However, it is important to clearly define not only the ordinary hours of work but also the rates for non-ordinary hours.

Considerations for a NMW in South Africa

Given the South African context and international experience, it is recommended that the NMW include a provision for short time and compressed working time. However, the criteria for short time and compressed working time must be clearly defined and the limits stipulated, in accordance with other statutory regulations including the BCEA. Currently, deductions for short time cannot be higher than 1/3 of the established wage and a compressed working day must be no longer than 12 hours.

PREMIUM PAYMENTS FOR WORK BEYOND THE ORDINARY HOURS OF WORK

In most circumstances, work performed beyond the ordinary hours of work qualifies for premium payments. Defining what forms of work are eligible for premiums, how premium should be structured and whether they should count towards compliance with the NMW, is crucial.

This section will focus on five forms of work that are most commonly associated with premium payments: overtime, stand-by work, work on Sunday, work on public holidays, and night work.

SOUTH AFRICAN APPROACHES

Overtime

In South Africa overtime is defined as “the time that an employee works in excess of the ordinary hours of work” (Department of Labour 1997). Across all sectors, an employer may not compel an employee to work overtime. Employees are also not permitted to work more than 12 hours a day. The maximum overtime permitted ranges between 10 and 15 hours a week depending on the sector.³

Overtime must be paid at a rate of 1.5 times the ordinary wage. Alternatively, the employee can opt to be paid the ordinary wage together with being granted 30 minutes of paid time off for every hour of overtime worked, or exclusively receive paid time off at a rate of 90 minutes of time off for each hour of overtime worked.

Night work

Definitions of night work vary across sectors⁴ and there is no stipulated premium payment. Employees are compensated with a transportation allowance and in some sectors – contract cleaning, wholesale and retail, farm work and forestry – an additional payment equivalent to 10% of their ordinary wage.

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Work on Sundays

Work on Sunday refers to any work which either commences on Sunday or where the majority of the shift is performed on Sunday. Generally, an employee who would not ordinarily work on a Sunday receives double pay, while an employee who ordinarily works on Sundays receives 1.5 times the ordinary wage. Employees do have the option of being compensated through paid time off at the same rate outlined above for overtime. The exception is compensation for farm work and forestry work, which varies depending on the number of hours worked and whether workers reside on the employer's property.⁵

Public holidays

An employee cannot be compelled to work on a public holiday. If the public holiday falls on an employee's ordinary day of work, they must be paid double the ordinary wage, unless they choose to exchange the public holiday for time off. If an employee would not ordinarily work on the public holiday, they must be paid the ordinary wage for the day worked, plus the hourly wage for each hour worked on the public holiday.

Stand-by work

Some sectors, such as domestic work and the motor industry, have stipulations regarding stand-by work. Stand-by work refers to any period where a worker is required to be present at the workplace, regardless of whether they are asleep or awake. Stand-by work must be mutually agreed to in writing and may not exceed 50 shifts a year. In addition to the overtime rate, workers are eligible for a shift allowance.⁶

INTERNATIONAL APPROACHES

Overtime

The inclusion of overtime pay in the calculation of a NMW may force workers to work overtime in order to receive the minimum wage. ILO experts recommend that premiums for non-standard work hours or overtime should not count towards compliance with the minimum wage (Belser 2008) and most countries, including Azerbaijan, China, Guinea Bissau, Sao Tome and Principe, Germany, France and Mauritania, exclude these. In contrast Honduras includes overtime pay in the calculation of the minimum wage.

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According to the German minimum wage law: 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)

Compensation for overtime ranges from 150% of the hourly or daily NMW, as is the case in Argentina, Brazil and China, to 200% of the NMW in countries such as Malaysia, Bolivia and Nicaragua. In the Philippines emergency overtime is remunerated at a higher rate. Cambodia and Ecuador have a higher rate for overtime performed at night.

Night work

Internationally, there is significant variation in approaches to night work. Some countries, such as Argentina, stipulate reduced ordinary hours of work for night work. A few countries, like Uganda, explicitly prohibit women from performing night work. Some countries have introduced occupational health and safety-related requirements associated with night work, while many have special stipulations for pregnant women regarding night work. The rate of compensation also varies, from the regular wage rate to 130% of the NMW. In some instances night work done on an overtime basis is compensated at 200% of the NMW.

Work on Sundays and public holidays

Almost all countries provide a premium rate for work on Sundays and public holidays of between 125% and 200% of the NMW. Exceptions include: Chile, where work on Sundays and public holidays is compensated with another day off; China, where work on public holidays is compensated at 300% of the NMW; and Thailand, where overtime work on a public holiday is compensated at a higher rate than work on a public holiday.

Table 1: Variation in stipulations on overtime, night work, work on Sundays and work on public Holidays

Country	Compensation for Overtime	Compensation for Night Work	Compensation for Work on Sundays	Compensation for Public Holidays
Argentina	150%		200%	200%
Bolivia	200%	125%-150%	200%	200%
Brazil	150%	120%		
Cambodia	150%	130%; 200% for overtime night work		
Cape Verde	150%	125%	200%	
Chile	150%		Another day of rest	Another day of rest
China	150%		200%	300%
Ecuador	150%	125%; 200% for overtime night work	200%	
Kenya	150%		200%	
Malaysia	200%		125%	
Namibia	150%	106%	200%	200%
Nicaragua	200%		200%	200%
Philippines	125%; 155% for emergency overtime	110%	130%	200%
Thailand	150%			200%; 300% for overtime
Uruguay	150%		150%	150%

Source: Travail Database, ILO [accessed in August 2015]

Considerations for a NMW in South Africa

In South Africa, the standards for premium payments as outlined in the BCEA are aligned with international practice. It is recommended therefore that these standards be maintained. Where contradictions exist as a result of the sectoral wage-setting mechanism, a common approach must be defined. For instance, in the case of night work, some sectors only provide a transport allowance while other sectors include an additional payment of 10% of the wage. Similarly in terms of work on Sundays, in some sectors workers always earn double the sectoral minimum wage while in others they only earn double if it is not an ordinary workday. These questions need to be carefully considered so as to ensure that workers do not end up in a worse position that they were previously.

"Because the sectoral minimum wage setting mechanisms are fragmented, it is important to examine the contradiction in practices between sectors and define a common mechanism for calculating the payment of premiums."

CONCLUSION

It is important to have a clear definition of what counts as time worked. An approach based on ordinary hours of work which takes into account full working time would ensure workers' access to their statutory rights as defined by national labor law and international conventions. This is in line with current practice in South Africa and the recommendations from ILO experts (ILO 2008).

Given the South African context, a combined approach to establishing the reference period is most appropriate. In order to reduce the incidence of abuse and ensure that workers are able to meet their basic needs, it is important to clearly establish and enforce the ordinary hours of work, and extend current mechanisms that guarantee a minimum number of working hours to all sectors covered by the NMW. Mechanisms to be considered include: limiting the use of the hourly wage rate to employees without a fixed contract who work 24 hours or less a week, the establishment of a minimum number of hours per day and a premium rate for casual workers.

"These questions need to be carefully considered so as to ensure that workers do not end up in a worse position than they were previously."

In South Africa, the standards for premium payments as outlined in the BCEA are generally aligned with international practice. However, because the sectoral minimum wage setting mechanisms are fragmented, it is important to examine the contradiction in practices between sectors and define a common mechanism for calculating the payment of premiums. For instance, in the case of night work, some sectors only provide a transport allowance while other sectors include an additional allowance of 10% of the wage. Similarly in terms of work on Sundays, in some sectors workers always earn double the sectoral minimum wage while in others they only earn double if it is not an ordinary workday. These questions need to be carefully considered so as to ensure that workers do not end up in a worse position than they were previously.



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