

UNIVERSITY OF THE
WITWATERSRAND,
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NATIONAL
MINIMUM
WAGE
RESEARCH INITIATIVE



NATIONAL MINIMUM WAGE SYMPOSIUM

2nd and 3rd of February 2016, Wits Club, University of the Witwatersrand

DESIGN CONSIDERATIONS FOR A NATIONAL MINIMUM WAGE FOR SOUTH AFRICA

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Defining the NMW

- 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 or 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 the light of national economic and social conditions. (ILO 1992, p. 13)
- However, it is important to establish:
 - What components of remuneration count towards compliance with the NMW;
 - The reference period over which compliance is calculated;
 - What counts as time worked.

The minimum wage-setting system in South Africa

- In South Africa, minimum wages are determined sectorally either through collective agreements or sectoral determinations, upon recommendation of the Employment Conditions Commission (ECC).
- The Basic Conditions of Employment Act of 1997 (BCEA) provides the legal framework for the regulation of minimum wages and defines:
 - **Remuneration**: any payment in money and/or in kind made to any person in return for work
 - **Wages**: a component of remuneration paid in relation the ordinary hours of work, or the hours ordinarily worked
 - **The ordinary hours of work**: 45-hour workweek; 9-hour workday if a 5-day week, or 8-hour workday if a 6-day week
 - **Premium payments**: for overtime, work on Sundays and night work;
 - **Permissible** payroll deductions.
- However the components of what counts towards a wage are determined at the sectoral level, and therefore vary.

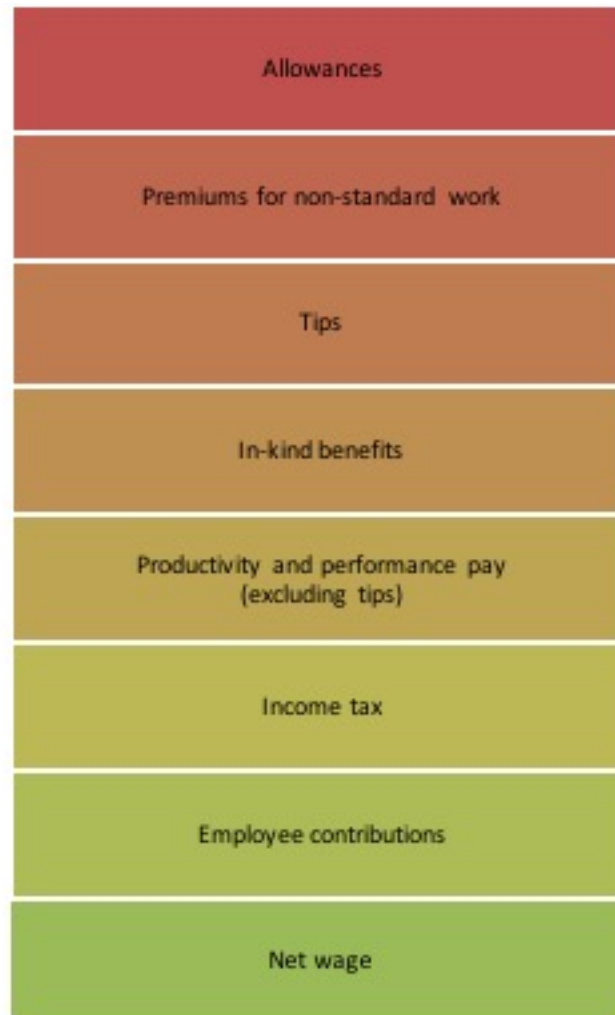
The minimum wage-setting system in South Africa: what counts towards compliance?

Included across all sectors	Included in some sectors	Excluded in all sectors
Net wage: employee's take home pay after taxes and statutory deductions.	Productivity and performance pay including commission and piecework. Piecework is prohibited in some sectors such as the contract cleaning bargaining council in KZN.	Allowances for night work, transportation and stand-by work.
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.	In-kind benefits, including accommodation, food and, in some sectors, uniforms are deductible from the minimum wage through particular formulas and with strict limits, for example in domestic work. Such deductions are prohibited in some sectors, including hospitality and private security.	Overtime and premium payments beyond the ordinary hours of work.
	Deductions for loans, goods purchased from the employer, and damaged goods under very specific circumstances.	Tips and gratuities (only explicitly mentioned in the hospitality sector).
		Annual bonuses.

Challenges of South Africa's sectoral wage setting system

- The **exclusion** of some categories of workers from minimum wage coverage.
- The complexity of such a system can have **negative implications for compliance and enforcement**, particularly where resources for labour administration are limited; with 124 wage rates, South Africa has the highest number of wage rates in sub-Saharan Africa (Bhorat *et al.* 2015).
- 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.
- 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.
- The potential effect on aggregate indicators such as employment are only considered at a sectoral level, without accounting for potential positive implications on inter-sector aggregate demand from higher wages.

International approaches to defining what counts towards the NMW



International approaches to defining the reference period

- Hourly basis (eg. UK, US, Germany):
- Daily, weekly or monthly basis: 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 workers are not forced to work overtime without additional compensation.
- 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.

International approaches to ensuring a minimum income over a longer reference period

- Limit the categories of work that can be paid on an hourly basis.
 - In Malaysia, The hourly rate applies only to part-time employees, who work less than 70% of the ordinary hours of work.
 - In South Africa, workers in the private security sector can only be paid on an hourly basis if they work 24 hours or less a week. Beyond that, workers must be paid according to a daily or monthly rate.
- Establish higher wage rates for part-time workers.
 - In Malaysia, the daily rate is higher for workers who work less days (but more hours) in a week.
 - In South Africa, 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.
- Stipulate a minimum number of hours of work per day:
 - In South Africa, 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.

International approaches to defining what counts as time worked?

- 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.
 - Normal working time or the ordinary hours of work. 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 of work.
 - 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).
- In the context of South Africa, an approach based on the ordinary hours of work but that take into consideration full working time, including stand-by work, should be considered.

Conclusion

- While there is no single approach to defining a NMW it is important to ensure that definitions of what counts as time worked, the reference period and what components of remuneration count as part of the NMW are clear, easy to comply with and straightforward to enforce.
 - The NMW is the **basic wage**.
 - **Productivity and performance pay, with *top-ups*** by employers when these fall below NMW levels, would safeguard incentive pay while ensuring that workers do not earn below the NMW. However, this must be carefully considered.
 - The inclusion of **tips** and **piece work** is discouraged.
 - ILO experts recommend that **allowances** and **premiums** for dangerous work, non-standard work hours or overtime not count towards compliance with the minimum wage.
- Given the South African context, an approach which combines an hourly and weekly/monthly 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:
 - the restriction of hourly pay to casual employees without a fixed contract who work 24 hours or less a week,
 - the establishment of a minimum number of hours and
 - a premium rate for casual or part time workers.

- THANK YOU

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