



**SUBMISSION  
BY  
THE FEDERATED HOSPITALITY ASSOCIATION OF SOUTHERN AFRICA  
[FEDHASA]**

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**Date:** 30<sup>th</sup> November 2017

**Reference**

- 1] Gazette 41257 Notice No R1275 dated 17 November 2017  
**National Minimum Wage Bill**
- 2] Gazette 41257 Notice No R1274 dated 17 November 2017  
**Draft Basic Conditions of Employment Amendment Bill**
- 3] Gazette 41257 Notice No R1273 dated 17 November 2017  
**Draft Labour Relations Amendment Bill**

**Address:** Department of Labour  
Private Bag X 117  
Pretoria  
0001

**For attention:** Mr Thembinkosi Mkalipi

**E-Mail:** Thembinkosi.Mkalipi@labour.gov.za  
lan.macun@labour.gov.za

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**THE HOSPITALITY INDUSTRY OF SOUTH AFRICA**

The Federated Hospitality Association of Southern Africa [FEDHASA], established in 1949, is both a registered section 21 Company and an Employers Association and represents the commercial interests of the hospitality industry on a variety of matters that directly or indirectly impact the South African trading and employment environment.

FEDHASA represents the interests of over 10,000 direct and associate member establishments in the following sub-sectors of the South African hospitality industry - Hotels, B&Bs, Guest Houses, Home Stay SME's, Game Lodges, Restaurants, Pubs, Taverns, Shebeens, Conference Centre's and Gaming establishments.

The observations, comments and proposals contained in this document have been submitted by the Association on behalf of the group, independent, established and emerging hospitality establishments and relate specifically to the National Minimum Wage Bill, the Draft Basic Conditions of Employment Amendment Bill and the Draft Labour Relations Amendment Bill as published in

FEDHASA would like to thank the Minister of Labour for the opportunity to make comment on these extremely significant documents and ask that this submission be given due consideration and that the contents are closely considered.

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### **The National Minimum Wage Bill**

1. The Association fully support the notion of a national minimum wage.

2. In terms of Section 7, it is proposed that the National Wage Commission conducts a review and recommends a minimum wage adjustment to the Minister of Labour annually. As part of the review, the Commission must consider various factors including inflation, the cost of living, gross domestic product etc.

**Comment** - Whilst FEDHASA agrees with the various criteria to be considered we recommend that, as provided for in section 54 (3) (b) of the Basic Conditions of Employment Act, “the ability of employers to carry on their business successfully” must be taken into account. Whilst adjustments to the minimum wage should be fair and seek to address current social inequalities, an unforeseen consequence of not including the ‘ability of employers to carry on their business successfully’ could be increased wages together with decreased employment.

3. The Bill does not currently make provision for the consideration of a submission by members of the public as is the case in terms of Section 52(2)(c) of the Basic Conditions of Employment Act.

**Comment** - We propose that the National Minimum Wage Bill include provision for the Minister to publish the annual recommendations of the Commission so that members of the public are afforded a chance to give input on any proposed adjustments to the minimum wage.

### **The Draft Basic Conditions of Employment Amendment Bill**

1. Section 20(3) which deals with Transitional Provisions provides for those sectoral determinations in which the prescribed minimum wage will be higher than the proposed National Minimum Wage, as at the anticipated date of implementation of the National Minimum Wage Act (possibly 1 May 2018). In such event, the wages in that particular sectoral determination must be increased “proportionately to any adjustment of the national minimum wage in terms of the National Minimum Wage Act for a period of 3 years ...”

**Comment** - Section 20(3) does not however specify the date upon which such future increases will apply to a sectoral determination whose minimum wage is higher than the proposed national minimum wage. Will the adjustment take place on the prescribed increase date for that particular determination or on the 1st May? We submit that further clarity should be provided in this regard.

### **Draft Labour Relations Amendment Bill**

1. Section 32(3)(b) – Extension of Collective Agreements to Non-Parties

The extension of a collective agreement to non-parties within a particular sector is directly at odds with an employer’s common law freedom to contract. Whereas an employer has the Constitutional right to participate in the activities and programmes of an employer’s organization (Section 23(3) of the Constitution), this includes the right to choose not to do so. As such, any infringement of this right should be subject to strict criteria. Section 32 currently provides that, before extending a collective agreement to non-parties, the Minister must be satisfied that a range of factors are in place, including both of the following criteria:

“the majority of all the employees who, upon extension of the collective agreement, will fall within the scope of the agreement, are members of the trade unions that are parties to the bargaining council”

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**and**

“the members of the employer’s organisations that are parties to the bargaining council will, upon the extension of the collective agreement, fall within the scope of the agreement, be found to employ the majority of all the employees who fall within the scope of the collective agreement.”

The proposed amendment inserts the conjunction “or” between the amended Sections 32(3)(b) and 32(3)(c). The effect of this amendment is that only one of the above factors need be in place rather than both. Section 32(5) already provides leeway for the Minister to side-step requirements of the existing Section 32(3)(b) and 32(3)(c). In this regard, it is open for the Minister to extend a collective agreement where the parties to the bargaining council are “sufficiently representative within the registered scope of the bargaining council.” Section 32(5) therefore sufficiently caters for an exception to the majoritarian principles outlined in the existing Sections 32(3)(b) and 32(3)(c).

Given the importance of an employer’s freedom to associate or contract, it is inappropriate to remove the requirement that both factors should be present before the Minister extends a collective agreement. The Association strongly proposes that, given the impact of an extension on employers, the word ‘and’ should be retained, in order that both factors need to be in place before an extension is granted.

## 2. Section 208A–Transitional Provisions

In terms of Section 18(1) of the Transitional Provisions, a trade union / employer’s organisation will not be entitled to call a strike or lock-out unless its Constitution fully complies with the requirements of Section 95. One of the important requirements set out in Section 95(5) is that the Constitution of a union or employers’ organization must require it to conduct “a ballot of its members” before calling a strike or a lock out.

Whilst FEDHASA welcomes the more stringent requirements in respect of strikes and lock-outs, these amendments do not go far enough, as they do not stipulate that the ballot must result in a majority being in favour of the strike or lock-out, in order for the strike or lock-out to be protected. It makes little sense for the legislature to require a ballot of members, if the trade union officials or employer’s organization can simply disregard the results of any such ballot. If we are to avoid the high degree of violence and destruction that has characterized much industrial action in the recent past, we need to ensure that the majority of members have voted in favour thereof. We therefore strongly propose that the Amendment Bill be further amended to include such provision.

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This submission was compiled for and on behalf of the Federated Hospitality Association of Southern Africa (FEDHASA) by Luke Brodziak - FEDHASA Office Bearer and Peter Cumberlege - Legislative Consultant to FEDHASA.

Contact details –

Luke Brodziak – email: [lukeb@ils-sa.com](mailto:lukeb@ils-sa.com) Tel: (021) 462 3939

Peter Cumberlege – email: [info@statsonline.co.za](mailto:info@statsonline.co.za)

**30 November 2017**

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**Notice for Comment – November 2017**

Labour Relations Amendment Bill, Basic Conditions of Employment Amendment Bill and National Minimum Wage Bill: Comments invited – document links below:

**Draft Labour Relations Amendment Bill, 2017**

Draft Bill, explanatory summary and socio-economic impact assessment system (SEIAS) published for comment (GN R1273 in GG 41257 of 17 November 2017)

[https://www.gov.za/sites/default/files/41257\\_rg10779\\_gon1273.pdf](https://www.gov.za/sites/default/files/41257_rg10779_gon1273.pdf)

**Draft Basic Conditions of Employment Amendment Bill, 2017**, explanatory summary and socio-economic impact Draft Bill and assessment system (SEIAS) published for comment

(GN R1274 in GG 41257 of 17 November 2017)

[https://www.gov.za/sites/default/files/41257\\_rg10779\\_gon1274.pdf](https://www.gov.za/sites/default/files/41257_rg10779_gon1274.pdf)

**Draft National Minimum Wage Bill, 2017**

Draft Bill, explanatory summary and socio-economic impact assessment system (SEIAS) published for comment (GN R1275 in GG 41257 of 17 November 2017)

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