

# NATIONAL MINIMUM WAGE ACT 2019

## HOW DOES IT AFFECT YOU?

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### INTRODUCTION:

The issue of the National Minimum Wage (“**NMW**”) for Nigerian workers has been a controversial issue which has led to several discussions and stand offs between the Nigerian Government, labour unions and stakeholders over the years.

The previous monthly NMW stood at ₦18,000.00 (Eighteen Thousand Naira) (approximately \$50 USD) by virtue of the National Minimum Wage Act, Cap. N61, Laws of the Federation, 2004. The Nigerian Labour Congress (NLC) had continued between 2016 and 2018 to push for an increase of the monthly minimum wage to ₦ 56,000.00 and ₦ 65,000.00 respectively.

Following months of pressure from labour unions, President Muhammadu Buhari, inaugurated a tripartite committee, comprising of the government, organised private sector and labour to consider the wage issue and make recommendations for its upward review.

In January 2019 the National Council of State approved the sum of ₦ 27,000.00 as the minimum wage, however the Governors counter – offered with the sum of ₦ 22,500.00 as the NMW, as a more affordable option for their States. This was rejected by the NLC and eventually the sum of ₦30,000.00 (Thirty Thousand Naira) was proposed by the NLC and accepted by the Federal Government. This led to the enactment of the National Minimum Wage Act, 2019 (the “**Act**”) in March, 2019.

### OVERVIEW:

The Act was enacted in 2019 and is dated 26<sup>th</sup> March, 2019. The Act contains 18 (Eighteen) sections and repeals the National Minimum wage Act, Cap. N61, Laws of the Federation, 2004. Although repealed, proceedings may still be taken against any offence committed under the repealed Act of 2004 and any proceeding pending immediately before the commencement of this Act may be continued and enforced to the same extent that any proceeding would have been enforced under the Act (Section 16 (2) of the Act).

The Act prescribes the minimum wage or salary a Nigerian employee working in any part of Nigeria, is entitled to for his or her services every month and criminalises the contravention of the provisions of the Act relating to the NMW. The Act also provides for a review of the NMW which expires after 5 (five) years.

### **CURRENT NATIONAL MINIMUM WAGE:**

By virtue of the Act, the NMW for every worker in Nigeria is **₦30,000.00 (Thirty Thousand Naira)** (approximately **\$83 USD**) per month. Under Section 3 of the Act, employers are not allowed to pay less than this amount to any staff in their employment and as such, any agreement between an employer and employee to pay and or receive an amount lesser than the minimum wage of **₦30,000.00** is void *ab initio*.

### **IS EVERY WORKER ENTITLED TO RECEIVE THE NATIONAL MINIMUM WAGE?**

According to the Act, certain categories of workers are exempted from receiving the NMW as their monthly salary. Section 4 of the Act, states that the Act does not apply to workers who work on;

- a) part time basis**
- b) commission or piece – rate**
- c) establishments employing less than 25 persons**
- d) workers in seasonal employment like agriculture; and,**
- e) any person employed in a vessel or aircraft to which laws regulating merchant shipping or civil aviation apply.**

These categories of workers are specifically exempted from the application of the national minimum monthly wage and employers can pay them an otherwise agreed sum for their wages.

Further to the list above, the Act empowers the Minister of Labour and Employment (the “**Minister**”) through the National Labour Advisory Council, to grant other categories of workers exemption to the provisions of the Act and the NMW as he deems necessary in the interest of the national economy. Such exemptions made by the Minister are to be published in the Federal Government Gazette.

### **OFFENCES AND PUNISHMENT:**

The Act specifically defines offences that can be committed under the Act and the penalties for infractions.

Under Section 9 of the Act, it is an offence for an employer to pay his employees any amount less than the minimum wage and any employer found guilty of such an offence is liable to pay:

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- a) a fine not exceeding 5% of the offenders monthly wage;**
  - b) all outstanding arrears of the workers' wages; and**
  - c) an additional penalty of not less than the prevailing CBN lending rate on the wages owed, for each month of continuing violation, provided that the power to order payment on account of wages under subsection (2) shall not derogate from the right of the worker to recover wages due to him by any other proceeding in a court of competent jurisdiction.”**

It is also an offence for the employer not to keep records of wages and conditions of employment of his staff that are necessary to show compliance with provisions of the Act and such records are to be kept for 3 years after the period, which they refer to (section 10 (1) of the Act).

The punishment for such offence is contained under section 10 (2) of the Act, which states that **“an employer is liable upon conviction of such offence to a fine not exceeding ₦75,000.00 (Seventy Five Thousand Naira) and an additional penalty of ₦10,000.00 (Ten thousand Naira) or less for everyday that the offence continues”**.

Additional offences are also listed in section 15 of the Act. Under this section an employer commits an offence, where:

- a. An employer refuses or neglects to furnish an authorised officer with the means necessary for an entry in exercise of his power under the Act.
- b. Hinders any authorised officer in the exercise of his powers.
- c. Refuses or neglects to produce any document or give any information required by an authorised officer to carry out his duty.
- d. If an employer makes or causes to be made any wage sheet or record; or record of conditions of employment which is false.
- e. Produces or causes to be produced any wage sheet or record to an authorised officer under this Act, which he knows is false.
- f. Furnishes any false information to any authorised officer in the exercise of his powers under this Act.

Each of the offences listed above attracts a maximum fine of **₦250,000.00 (Two Hundred and Fifty Thousand Naira)** or imprisonment for a term not exceeding 6 (six) months or both.

## **ENFORCEMENT:**

The Minister under section 11 of the Act, may authorise any officer in the Civil Service of the Federation to act for the purpose of enforcing the provisions of the Act and such officer is referred to as an 'authorised officer'. Section 11 (3) of the Act empowers such authorised officers to:

- a) Require the employer to produce records of their employees' payroll or records of wages and records of conditions of employment for inspection.
- b) Order any employer found to have contravened any of the provisions of the Act to take remedial action within a specified period of time.
- c) Make recommendation for the prosecution of any person who contravenes the provisions of the Act.
- d) Institute proceedings to recover the sum due to the aggrieved worker on his behalf or in the worker's name against the employer.

Section 12 of the Act also empowers the Ministry of Labour and Employment and National Salaries, Incomes and Wages Commission to monitor the implementation of the NMW in line with the provisions of the Labour Act and National Salaries, Incomes and Wages Commissions Act. Monitoring of compliance is to commence 6 (six) months after the commencement of the Act.

The authorised officers are to make report of non-compliance of the provisions of the Act to the Minister and also copy labour centres and employment associations. Upon receipt of such report the Minister shall 'activate the machinery' for enforcing compliance within 30 (thirty) working days.

Furthermore, the provisions of the Act can also be enforced by an aggrieved worker, trade unions and the Minister (section 13 of the Act). The Act also states that where there is failure to pay the NMW by an employer;

- a) A worker who is paid an amount less than the NMW is contractually entitled to whichever is the higher amount of the difference between his pay and the amount of the national minimum wage that he should have been paid.
- b) The worker has the right to take his case directly to the National Industrial Court.
- c) The worker can file a formal complaint with the Minister.
- d) The worker can file a complaint to its trade union and the union may demand compliance with the provisions of the Act on behalf of their members not later than 30 days after receipt of the complaint. The trade union can also file the complaint at the National Industrial Court.
- e) An authorised officer can serve a Notice of Enforcement on the employer requiring the employer to pay the arrears of the wage to the worker named on the notice within 30 days. The employer is also entitled

to appeal such notice to the Minister and the Minister is to resolve the matter within 30 days of receipt of the appeal.

If an employer fails to comply with the Notice issued on him by the authorised officer in the exercise of his powers under this Act, the matter can be referred to the National Industrial Court for resolution.

### **DEFENCE:**

An employer who is accused of committing an offence under this Act, is entitled to certain defences. Under Section 14 of the Act, any employer charged with an offence under the Act is entitled to prove that;

- a) The offence was due to the act or default of another person
- b) He has used all due diligence to ensure that the Act is complied with

These defences are against offences proscribed by the Act. If the employer successfully proves to the authorised officer that the offence is due to the act or default of another person and the said officer is 'reasonably satisfied', the officer may make a recommendation for proceedings to be taken against such other person and the person will be charged with the same offence that was initially charged against the employer (section 14(4) of the Act).

### **ANALYSIS:**

The enactment of this Act is a welcome development as it aims to assuage the plight of the Nigerian worker by the increment of their minimum monthly salary.

However, pessimism abounds over the implementation of the minimum wage and its actual effect on the Nigerian workers. The current NMW seems to fall short of its aim of enabling the average Nigerian worker afford basic necessities for himself and family in the present economic climate.

Prior to the enactment of the Act, State Governors had vehemently opposed the NMW, as they claimed that they could not afford it. Alhaji Abubakar Yari, former Governor of Zamfara State, who was also the former Chairman of the Nigerian Governors Forum, said that it would be difficult for Governors to pay the NMW as the NMW is unrealistic and only economically vibrant States like Lagos can afford to pay such wages as the NMW.<sup>1</sup>

This reaction by the Governors is to be expected as only a few states of the Federation can boast of a substantial Internally generated revenue, with the

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<sup>1</sup> 'Don't pass minimum wage states cannot pay, Governor tells National Assembly'. Published January, 28, 2019 by Premium Times Newspaper – "[www.premiumtimesng.com/news/more-news/308468-dont-pass-minimum-wage-states-cannot-pay-governor-tells-national-assembly.html](http://www.premiumtimesng.com/news/more-news/308468-dont-pass-minimum-wage-states-cannot-pay-governor-tells-national-assembly.html)"

majority of States in Nigeria, solely relying on allocations from the Federal Government.

The Federal Government itself has been accused of adopting delay tactics in implementing the NMW through various means such as, setting up different committees to pass propositions on the implementation of the NMW. Labour has threatened to resume its industrial action over what they perceive as an inordinate delay in the implementation of the NMW by the Federal Government.<sup>2</sup>

There is also the issue of inflation. This issue is aptly summarised by Ayodeji Adegboyega in his article for the Premium Times Newspaper where he writes:

***“The proposed N30,000.00 is coming at a time the Country’s economy is already facing difficulties that have seriously devalued the workers take home pay.***

***Even where the proposal has finally been approved, only N12,000.00 is what would be added to the existing minimum wage, which is hardly sufficient to scratch the surface of the economic challenges the workers face.***

***The real value of the package can hardly afford an average worker the basic necessities of life- food, shelter, housing and clothing.”<sup>3</sup>***

Thus, it can be argued that the NMW does not truly address the agitation of the Nigerian workers as the NMW is not sufficient to meet even the basic needs of the workers in the face of a depressed economy plagued with inflation.

Also notable is the fact that the Act exempts employers from paying the NMW if they have less than 25 employees. This is marginalisation of a large group of workers and will definitely affect a significant section of workers. It is no secret that Nigeria, along with many other economies in the world have a large number of small and medium size enterprises and most of these enterprises have a staff strength less than 25 persons. A significant percentage of workers will therefore not benefit from the NMW as contained in Section 4 of the Act.

## **CONCLUSION:**

Although the NMW has been reviewed upward, it is still significantly low compared to the NMW in other Countries of the world. More importantly the

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<sup>2</sup> “Minimum Wage: Labour threatens strike over delay in implementation.” Published on July 2, 2019 by Punch Newspaper – ***“<https://punchng.com/minimum-wage-labour-threatens-strike-over-delay-in-implementation/>”***

<sup>3</sup> “New Minimum, Wage and Inflation – Can New Minimum Wage Increase Inflation in Nigeria?” by Ayodeji Adegboyega published on the 31<sup>st</sup> of March, 2019 by Premium Times Newspaper – ***“[www.premiumtimesng.com/news/headlines/323234-can-new-minimum-wage-increase-inflation-in-nigeria.html](http://www.premiumtimesng.com/news/headlines/323234-can-new-minimum-wage-increase-inflation-in-nigeria.html)”***

current NMW is still not sufficient to provide the basic needs and meet the cost of living expenses for the Nigerian worker.

The delay in the implementation of the NMW and the posture of the Governors is beginning to erode the whole essence of the enactment even before its implementation.

It is therefore imperative for the Federal Government to take urgent steps towards the implementation of the NMW. The Governors should be made to see reason why the implementation of the NMW is not negotiable, as it is now the law and has to be implemented.

## About Kayode Sofola & Associates

Kayode Sofola & Associates (KS LEGAL) is a full service law firm that has provided commercially focused legal advice in Nigeria for over 60 years. We have six core practice areas of Banking & Finance, Corporate & Commercial, Dispute Resolution, Employment, Real Estate, and Tax by which we provide services to the banking, energy & infrastructure, funds & investment management, insurance, real estate, and

telecommunications & technology sectors. Our client promise is consistency as we deliver accurate and practical advice.

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