

## Legal Alert – July 2011 – New National Minimum Wage Act 2011

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## Legal Alert – July 2011 – National Minimum Wage Act

### Introduction

The 1999 Constitution of the Federal Republic of Nigeria (as amended) recognises Nigeria as one indivisible and indissoluble Sovereign Country consisting of Thirty-Six (36) States, a Federal Capital Territory and Seven Hundred and Sixty-Eight (768) Local Government Areas.

The legislative powers of the Federal Government of Nigeria are vested in the National Assembly. Item 34 of the Exclusive Legislative List, under the 1999 Constitution (as amended), confers on the National Assembly the exclusive authority to legislate on Labour matters, which encompasses trade union activities, industrial relations, employees' conditions of service and welfare, industrial dispute, prescribing a National Minimum Wage for the Federation or for any part of the Federation, and industrial arbitrations.

Based on the above constitutional provisions, the Nigerian National Assembly recently passed into law a National Minimum Wage (Amendment) Act, 2011. Controversy, misrepresentations and threats of strike actions have followed the implementation of the provisions of this law with some State Governments insisting that they cannot afford to pay the new national minimum wage.

This Alert provides you with some legal insights on what a national minimum wage is all about in Nigeria.

## What is a Wage?

A wage is described by the National Minimum Wage Act (as amended) to mean the total emolument paid every month to an employee, for performing the services for which he or she is employed, on the basis of a Forty-Hour week, and howsoever as the emolument may be designated by the employer.

The National Minimum Wage (Amendment) Act, 2011 was enacted to amend some Sections of the National Minimum Wage Act, 2004 by providing for a new national minimum wage for the entire country, and regulating matters relating to the national minimum wage in Nigeria.

## 2011 National Minimum Wage Act

As from the commencement of this 2011 National Minimum Wage Act, every employer is required to pay a wage that is not less than ₦18,000:00 per month to every employee engaged by an employer. The amount of ₦18,000:00 (Eighteen Thousand Naira) must be clear of all deductions except for those authorised by law; for example, pension contributions, payee tax, etc.

## Exemptions

The amended National Minimum Wage statutory provisions do not however apply to the following category of persons:-

- (i) Any establishment with less than fifty employees.
- (ii) Any establishment in which the employees are employed on a part-time basis.
- (iii) Any establishment in which the employees are paid on commission or on a piece-rate basis.
- (iv) Persons employed in a vessel or aircraft to which maritime or civil aviation laws already apply.
- (v) Any establishment with a Minister's permit to pay an employee with physical injury or infirmity less than the prescribed national minimum wage.

## Penalties

The penalty, on conviction, for an employer not paying the prescribed national minimum wage, is a fine not exceeding ₦20,000:00 (Twenty Thousand Naira) in the case of a first offender, and in the case of a continuing breach, a fine not exceeding ₦1000 for each day during which the offence continues to be committed.

The 2011 National Minimum Wage Act also authorises a Court of Law, to in addition to the fine, Order the employer so convicted to also pay to the employee or employees the difference in the wages that the employer had paid, and the exact minimum wage that the employer failed to pay in the first instance.

## Conclusion

The Provisions of the National Minimum Wage Act (as amended) 2011 again raises the vexed constitutional question of the appropriateness of the Federal legislature legislating a Minimum Wage Law that applies to the States and Local Governments Areas when the earning capacity and the expenditures of the different States and Local Government Areas differ.

Some insight on what a true Federalism is can be gathered from the decision of the Supreme Court in the matter of Attorney General of Abia State & ors V. Attorney General of Federation & 33 Ors. (2006) 7 S.C. (Pt 1) 51 @ 72 where the Supreme Court reiterated the constitutional concept of what a true Federalism is; namely, Federalism, as a legal and political concept, connotes an association of States, formed for certain and defined common purpose(s) with the States retaining a large measure of their original independence and autonomy.

The 1999 Constitution of the Federal Republic of Nigeria (as amended) has provisions like the National Minimum Wage Act (as amended) which conflict with the true meaning of what Federalism means in practice. The overbearing federal structure on the State Governments and the State Governments dominance over the Local Government structures is not reflective of the Nigerian State as a true Federal State; in its stead, the current status quo is reflective more of a Unitary Government than of a true Federal Government. Amendments of the provisions of the 1999 Constitution which go against true federalism should therefore be effected as soon as possible.

Another concern with a National Minimum Wage Law in Nigeria is the question of whether the current minimum wage is a living wage that can cater for or ameliorate the deficit costs of the serious infrastructural problems in the entire country? Or will improvements in governance and infrastructure not provide a greater return to all employees than an artificial minimum wage that can lead to further inflation?

Employers of labour at all levels of government and in the private sector must in the interim pay this minimum wage as it is presently the applicable law in this country.

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