



INTERNAL MEMORANDUM

To: Nigeria Governors' Forum
 From: Director General
 Date: 30th October, 2018
 Subject: **Re: New Minimum Wage**

The above subject refers.

Your Excellency would recall that the Tripartite National Minimum Wage Committee headed by Ms. Ama Pepple was constituted by Mr. President on November 27, 2017. To make the consultation truly representative, the NGF was included in the Committee and the Director General accorded an Observer status. At the Geopolitical level, the States are represented by the following Governors: Gombe, Plateau, Kebbi, Osun, Rivers and Imo.

The Tripartite Committee has concluded its report and produced a draft bill to be submitted to Mr. President.

However, States are yet to adopt a uniform position. While the unions are insisting on a N30,000 per month minimum wage, the federal government is proposing N24,000 per month. The Vice President, Professor Yemi Osinbajo held a meeting on Monday, 29th October 2018 between some members of the Forum who represent the States in the Tripartite Committee, with the NGF Chairman Gov. Abdulaziz Yari in attendance, to address this pressing issue.

We have attached the Proposed Draft Bill on a New National Minimum Wage for your consideration.

Director General

**THE PROPOSED
DRAFT BILL ON A
NEW NATIONAL
MINIMUM WAGE**

TRIPARTITE COMMITTEE ON NATIONAL MINIMUM WAGE 2018

ANNEX VIII

LEGISLATIVE DRAFTER'S DIGEST

ON

THE PROPOSED DRAFT BILL ON A NEW NATIONAL MINIMUM WAGE

INTRODUCTION

This Bill is a product of a painstaking exercise by members of the Tripartite Committee on National Minimum Wage as constituted by the President of the Federal Republic of Nigeria. This was in exercise of his powers as enshrined in the Constitution of the Federal Republic of Nigeria, 1999 (as amended), which placed national minimum wage on the Exclusive Legislative List. The Bill proposes to prescribe a new national minimum wage when passed into law. The tripartite social partners- the government, organized labour and organized private sector were fully represented and participated in its formulation. This is with a view to ensuring the provision and implementation of a new National Minimum Wage in consonance with best practices.

THE BILL

This Bill has taken into consideration present economic realities, considering the provisions of the Labour Act, the National Salaries, Incomes and Wages Commission Act and International Labour Organisation Conventions and definitions. It has proposed far reaching amendments to some of the provisions of the extant National Minimum Wage Act, as well as introduced novel provisions to actualize the intent and purpose of the setting up of this Committee. Thus the need to repeal the extant Act and all amendments to it, and propose a new Act to be known as the National Minimum Wage Act, 2018.

A look at the National Minimum Wage (Amendment) Act 2011, shows that what has been in existence is the Principal Act of 1981 save the change of figures provided in Sections 2, 3, and 4. These figures too, have become negligible and need to be amended. This Bill, therefore, has proposed far reaching changes to these figures as can be found in its Sections 1, 5, 9, and 10.

INNOVATION

The Committee has proposed innovations in this Bill which were neither within the contemplation of the National Minimum Wage Act of 1981 nor any of the amendments thereto. The provisions of S. 3 – Composition of Tripartite Committee; S. 4 – Powers of the Tripartite Committee; S. 5 – Meetings of the Committee; S.6 – Exemptions; S. 10 – Monitoring Compliance; S. 11 – Enforcement; S.14 – Repeals, Transfers etc.; and S. 15 – Interpretations, buttress this fact.

EFFECT ON NIGERIANS

The effect of this Bill on Nigerians, when passed into law cannot be over emphasized. It would affect the purchasing power of the average worker which would translate positively on the National economy.

FINANCIAL IMPLICATION

As a fall out of this proposed Bill, there would be need to make budgetary provisions for the resulting increase in Personnel costs, as well as the cost implication of monitoring and enforcement of the proposed new National Minimum Wage and the funding of the activities of the Tripartite Committee whenever constituted. These can come under Over Head.

COMMENDATION

The Bill, therefore, is highly commended for passage into law as the advantage of doing so would have a multiplier effect on not only the national economy but also the productivity, commitment, dedication and motivation of the workforce.

DRAFT

NATIONAL MINIMUM WAGE BILL 2018

ARRANGEMENT OF SECTIONS

SECTION

1. Employer to pay minimum wage.
2. Establishment of Tripartite Committee on National Minimum Wage
3. Composition of Tripartite Committee on National Minimum Wage
4. Powers of the Tripartite Committee
5. Meetings of the Tripartite Committee
6. Exemptions.
7. Employer's obligations in respect of minimum wage.
8. Employers to keep records.
9. Officers and their powers
10. Monitoring Compliance
11. Enforcement
12. Offences by agents, etc.
13. Other offences and penalties
14. Repeal, transfer of assets and liabilities
15. Interpretation.
16. Short title.

<p>Long title.</p> <p>Employer to pay minimum wage.</p>	<p style="text-align: center;">NATIONAL MINIMUM WAGE BILL 2018</p> <p style="text-align: center;">A Bill for</p> <p>An Act to repeal the National Minimum Wage Act Cap. N61 Laws of the Federation of Nigeria, 2004 and its amendments; prescribe a National Minimum Wage for workers and for other matters connected therewith.</p> <p>1. (1) As from the commencement of this Act, it shall be the duty of every employer (except as provided for under this Act) to pay a wage not less than a national minimum wage of N000.00 per month to every worker under his establishment.</p> <p>(2) The national minimum wage as stated in subsection (1) of this section shall be the minimum total amount of money an employer of labour is required to pay the lowest paid worker or employee monthly in his establishment.</p> <p>(3) Any agreement for the payment of wages less than the national minimum wage as prescribed in subsection (1) of this section, shall be void and of no effect whatsoever.</p> <p>(4) The national minimum wage shall be for a duration of four (4) years, after which it shall be reviewed in line with the provisions of this Act.</p>
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<p>Establishment of Tripartite Committee on National Minimum Wage.</p>	<p>(5) The national minimum wage shall be as prescribed in Sub-section 1 of this Section and shall be published in the Federal Government Official Gazette.</p>
<p>Composition of the Tripartite Committee.</p>	<p>2. (1) There shall be established, a Tripartite Committee on National Minimum Wage (hereinafter in this Law referred to as 'the Tripartite Committee') consisting of representatives of Government, Organised Labour and Organised Private Sector, on equal representation.</p> <p>(2) The Secretariat of the Committee shall be domiciled in the National Salaries, Incomes and Wages Commission.</p> <p>3. The Tripartite Committee which shall be appointed by the President shall be composed as follows:</p> <p>(1) A Chairman;</p> <p>(2) A Secretary who shall be appointed by the President from the National Salaries, Incomes and Wages Commission;</p> <p>(3) Government's representatives consisting of the following:</p> <p>(a) The Secretary to the Government of the Federation;</p> <p>(b) Head of the Civil Service of the Federation;</p> <p>(c) Minister of Labour and Employment;</p> <p>(d) Minister of Finance;</p> <p>(e) Minister of Budget and National Planning;</p> <p>(f) The Executive Chairman, National Salaries, Incomes and Wages Commission; and</p>

<p>Powers of the Tripartite Committee.</p>	<p>(h) a Governor from each of the six Geo-Political Zones, to be nominated by the Governors from that zone;</p> <p>(4) Organised Labour consisting of representatives from:</p> <p>(a) Nigeria Labour Congress;</p> <p>(b) Trade Union Congress; and</p> <p>(c) any such Labour Centre that may be so registered in accordance with the Labour Laws.</p> <p>(5) Organised Private Sector consisting of representatives from:</p> <p>(a) Nigeria Employers' Consultative Association;</p> <p>(b) Manufacturers' Association of Nigeria;</p> <p>(c) Nigerian Association of Chambers of Commerce industry, Mines and Agriculture;</p> <p>(d) Nigeria Association of Small and Medium Enterprises; and</p> <p>(e) any such Employers' body that may be so registered in accordance with the Labour Laws.</p> <p>(6) Without prejudice to the membership listed above, the Minister of Labour and Employment shall in consultation with Social Partners recommend the appointment of additional members.</p> <p>4. The Tripartite Committee shall have the power to recommend a national minimum wage in accordance with Sub-section (5) of Section (1) of this Act.</p>
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Meetings of the Tripartite Committee	<p>5. The Tripartite Committee shall be convened and may meet as expedient, but not later than six months to the expiration of the existing National Minimum Wage to consider a new national minimum wage; the proceedings and ancillary matters connected therewith to be decided by the members.</p>
Exemptions.	<p>6. (1) The provisions of subsection (1) of section 1 of this Act shall not apply to:</p> <ul style="list-style-type: none"> (a) an establishment in which workers are employed on part-time basis; (b) an establishment at which workers are paid on commission or on piece-rate basis; (c) workers in seasonal employment such as agriculture; (d) any person employed in a vessel or aircraft to which the laws regulating merchant shipping or civil aviation apply. <p>(2) The Minister of Labour and Employment shall, through the National Labour Advisory Council and by Order published in the Federal Government Gazette, grant other exemptions as he deems necessary in the interest of the national economy, taking into consideration reports from the National Salaries, Incomes and Wages Commission or such other body as might make representation for exemption on this behalf.</p>
Employer's obligations in	

<p>respect of the minimum wage.</p>	<p>7. (1) An employer shall pay to the worker a wage not less than the national minimum wage subject to statutory deductions.</p> <p>(2) Where an employer fails to comply with the provisions of Sub-section (1) of this Section, he shall be guilty of an offence and on conviction be liable to:</p> <p>(a) pay a fine not exceeding 5% of the offenders monthly wage;</p> <p>(b) pay all outstanding arrears of the workers' wages; and</p> <p>(c) be liable to pay in addition, a penalty not less than the prevailing Central Bank of Nigeria lending rate on the wages owed for each month of continuing violation,</p> <p>Provided that the power to order payment on account of wages under subsection (2) of this Section, shall not be in derogation of the right of the worker to recover wages due to him by any other proceeding in a court of competent jurisdiction.</p>
<p>Employers to keep records.</p>	<p>8. (1) It shall be the duty of every employer of workers in respect of whom this Act applies to keep such records of wages or conditions of employment as are necessary to show that the provisions of this Act are being complied with in respect of workers in his employment and to retain the records for a period of three years after the period to which they refer.</p>

<p>Officers and their powers.</p>	<p>(2) Where an employer fails to comply with the provisions of Sub-section (1) of this Section, he shall be guilty of an offence and on conviction, shall be liable to pay a fine not exceeding #75,000.00; and he shall also be liable to a penalty not exceeding #10,000.00 for each day during which the offence continues.</p> <p>9. (1) The Minister of Labour and Employment may authorize any officer in the Public Service of the Federation to act for the purpose of this Act; and every authorised labour officer shall be deemed to have been so authorized.</p> <p>(2) Every authorised officer shall be furnished with a letter of his authority and an identification when visiting an employer's premises for the purposes of this Act and shall, if so required, produce both documents to the employer or other person holding a responsible position of management at the said premises.</p> <p>(3) An Authorised Officer may –</p> <p>(a) require the production by an employer of wages sheets, pay roll or other records of wages and records of conditions of employment, and inspect and examine them and copy any part thereof;</p> <p>(b) order any person or body of persons found to have contravened any of the provisions of this Act to take remedial action within a specified period of time; and</p> <p>(c) subject, generally to the powers of the Attorney-General of the Federation, institute proceedings for any offence</p>
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<p>Monitoring Compliance</p>	<p>under this Act and, if he so wishes appear and have all the necessary powers for the conduct of the proceedings.</p> <p>(4) An Officer who is authorized in that behalf by general or special directives of the Minister may, if it appears to him that a sum is due from an employer to a worker to whom this Act applies, or to a person who has been such a worker on account of the payment to him of wages less than the national minimum wage, may institute, on behalf and in the name of that worker or person, civil proceedings for the recovery of that sum, and in any such proceedings, the court may make an order for the payment of costs by the authorized officer as if he were a party to the proceedings.</p> <p>(5) The power given by subsection (4) of this section for the recovery of a sum due from an employer to a worker or other person shall not be in derogation of any right of that worker or other person himself to recover that sum by civil proceedings.</p> <p>10. (1) The Federal Ministry of Labour and Employment and the National Salaries, Incomes and Wages Commission shall collaborate to monitor the implementation of the national minimum wage in line with the provisions of the Labour Act, 2004 and the National Salaries, Incomes and Wages Commission Act, 2004.</p> <p>(2) Reports of non-compliance and infractions on the National Minimum Wage Act discovered by the Authorised Officer upon routine inspection shall be forwarded to the</p>
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<p>Enforcement</p>	<p>Minister of Labour and Employment and copied to Labour Centres and Employer Associations.</p> <p>(3) The Minister of Labour and Employment shall upon receipt of such reports activate the machinery for enforcing compliance within 30 working days.</p> <p>(4) Monitoring of compliance with the National Minimum Wage Act shall commence 6 months after the effective date of the commencement of the Act.</p> <p>11. The national minimum wage may be enforced by the aggrieved worker, the Trade Unions and the Minister of Labour and Employment as follows:</p> <p>(1) A worker who is paid an amount less than the national minimum wage shall be 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.</p> <p>The worker without prejudice to his right to take his case directly to the National Industrial Court of Nigeria, may file a formal complaint with the Minister of Labour and Employment.</p> <p>(2) Trade unions may demand for compliance with the provisions of this Act on behalf of their members. The trade union shall not later than 30 days from the</p>
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<p>Offences by agents, etc.</p>	<p>receipt of the worker's complaint bring the claim to the National Industrial Court of Nigeria.</p> <p>(3) Where an employer fails to pay the national minimum wage to a worker or group of workers, an Authorised Officer from the Federal Ministry of Labour and Employment shall serve a Notice of Enforcement requiring the employer to pay the arrears of the wage to the worker(s) named on the Notice within 30 days. During this period, the employer shall be entitled to appeal the Notice to the Minister of Labour and Employment who shall resolve the matter within 30 days of the receipt of the appeal.</p> <p>(4) The Notice of Enforcement shall state the following:</p> <ul style="list-style-type: none"> (a) the amount owed the worker; (b) the period to which the payment applies; and (c) the time limit for the payment. <p>(5) Where an employer served with an Enforcement Notice fails, in whole or in part, to comply with the Notice, the matter shall be referred to the National Industrial Court of Nigeria.</p> <p>12. (1) Where an offence for which an employer is by virtue of this Act liable to a penalty, has in fact been committed by some agent of the employer or by some other person, that agent or other person shall be liable to be proceeded against</p>
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	<p>for the offence in the same manner as if he were the employer.</p> <p>(2) Where an employer is charged with an offence under this Act, he shall be entitled upon complaint duly made by him and on giving to the prosecution not less than three days' notice in writing of his intention, to have any other person to whose act or default he alleges that the offence in question was due, brought before the court at the time appointed, for the hearing of the charge, and if after the commission of the offence has been proved, the employer proves that the offence was due to the act or the default of that other person, that other person may be charged with the offence, or if the employer further proves that he has used due diligence to secure that this Act is complied with, he shall be acquitted of the offence.</p> <p>(3) Where a defendant seeks to avail himself of the provisions of subsection (2) of this section:</p> <p>(a) the prosecution as well as the person whom the defendant charges with the offence shall have the right to cross-examine him if he gives evidence and any witness called by him in support of his plea, and to call rebutting evidence; and</p> <p>(b) the court may make such order as it thinks fit for the payment of the costs by any party to the proceedings, other than the prosecution, to any other party thereto.</p>
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<p>Other offences and penalties.</p>	<p>(4) Where it appears to an Authorized Officer that an offence has been committed in respect of which proceedings might be taken under this Act against an employer, and the Officer is reasonably satisfied that the offence of which complaint is made was due to an act or default of some other person and that the employer could establish a defence under subsection (2) of this section, the Officer may cause proceedings to be taken against that other person, and in any such proceedings the defendant may be charged with the offence and on proof that the offence was due to his act or default, be convicted for the offence for which the employer might have been charged.</p> <p>13. Notwithstanding the provisions of other Sections of this Act, any person who -</p> <p>(a) refuses or neglects to furnish the means required by an Authorized Officer as being necessary for any entry in the exercise of his powers under this Act;</p> <p>(b) hinders any Authorized Officer in the exercise of his powers under this Act;</p> <p>(c) refuses or neglects to produce any document or to give any information which any authorized officer in the exercise of his powers under this Act requires him to produce or give;</p> <p>(d) makes, or causes to be made, or knowingly allows to be made, any wage sheet, record of wages or record of conditions of employment which is false in any material particular;</p>
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<p>Repeals, transfers of assets and liabilities.</p>	<p>(e) produces or causes to be produced, or knowingly allows to be produced, any such wages sheet or record to an authorized officer acting in the exercise of his powers under this Act, knowing the wage sheet or record to be false; or</p> <p>(f) furnishes any information to any Authorized Officer acting in the exercise of his powers under this Act, knowing the information to be false;</p> <p>shall be guilty of an offence and liable, on conviction, to a fine not exceeding A250,000.00 or to imprisonment for a term not exceeding 6 months or both.</p> <p>14. (1) the National Minimum Wage Act, 1981 and its amendments of 1990, 2000 and 2011 are hereby repealed.</p> <p>(2) notwithstanding subsection (1) of this section:</p> <p>(a) where any offence, being an offence for the continuance of which a penalty was provided, has been committed under the repealed enactment, proceedings may be taken on the offence after the commencement of this Act, in same manner as if the offence had been committed under the corresponding provisions of this Act.</p> <p>(b) any proceeding or cause of action pending or existing immediately before the commencement of this Act, by or against any person or body arising from the repealed Act in respect of rights, interests, obligations or liabilities of the person or body aforesaid may be continued or, as the case may be, commenced and any determination of a court of law, tribunal or other authority or person may be enforced to the same extent that any such proceedings, cause of</p>
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<p>Interpretation.</p>	<p>action or determination would have been continued, commenced or enforced if this Act had not been made.</p> <p>15. In this Act, unless the context otherwise requires –</p> <p>“Authorized Officer” means an officer in the Public Service of the Federation authorized or deemed to have been authorized to act for the purpose of this Act;</p> <p>"Authorised Labour Officer" means any Public Officer serving in a ministry or department for which the Minister of Labour and Employment is responsible; and with the consent of the State Authority, any officer in the Public Service of a State, for the purposes of this Act;</p> <p>"Employer" means any person who has entered into a contract of employment to employ any other person as a worker either for himself or for the service of any other person, and includes the agent, manager or factor of that first-mentioned person and the personal representatives of a deceased employer;</p> <p>"Minister of Labour and Employment" means the Minister responsible for labour matters;</p> <p>"Minister of Finance" means the Minister responsible for finance;</p> <p>"Minister of Budget and National Planning" means the Minister responsible for budget;</p> <p>"National Minimum Wage" means the national minimum wage prescribed by section 1 of this Act;</p>
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<p>Short title.</p>	<p>"Part-Time Work" means work of duration shorter than those for comparable full-time work in a sector or occupation;</p> <p>"Piece-rate basis" means any type of employment in which a worker is paid according to the quantity produced regardless of time;</p> <p>"Wage" means remuneration or earning (however designated or calculated) capable of being expressed in terms of money and fixed by mutual agreement or by law which is payable by virtue of a contract by an employer to a worker for work done or to be done or for services rendered; and</p> <p>"Worker" means any person who has entered into or works under a contract with an employer, whether the contract is for manual labour or clerical work or is expressed or implied or oral or written, and whether it is a contract of service or a contract personally to execute any work or labour, but excludes the exemptions contained in this Act;</p> <p>16. This Act may be cited as the National Minimum Wage Act, 2018.</p> <p style="text-align: center;"> NATIONAL MINIMUM WAGE ACT SUBSIDIARY LEGISLATION <i>No Subsidiary Legislation</i> </p>
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