

# Employment Law

ALERT | 10 February 2025



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## The decriminalised approach to workplace discipline and ghost employees

In *Gauteng Department of Education v General Public Service Sectoral Bargaining Council and Others* (JA141/2022) [2025] ZALAC 2 (22 January 2025) the Labour Appeal Court (LAC) recently confirmed – for the umpteenth time – that disciplinary proceedings are not criminal or civil trials. This trite, yet widely ignored, legal position was confirmed in the **Draft Code of Good Practice on Dismissal (Draft Code) published for public comment on 22 January 2025.**

In the matter, the employer had brought allegations of misconduct against several employees for “*having been involved in the appointment and payment of ghost employees over a period of almost two years*”. Mr Mothlang was the main character in this matter who utilised the employees login details to the employer’s system where he appointed, and effected payment to, the ghost employees.

The employer dismissed the employees, who referred a dispute to the Commission for Conciliation, Mediation and Arbitration. The undisputed evidence before the commissioner was that:

- Mr Mothlang obtained the employees’ login details to the employer’s payroll and human resources system, including their passwords, which he used to effect the fraudulent transactions (i.e. appointment and payment of ghost employees);
- Mr Mothlang repeatedly obtained the employees’ passwords, which they updated monthly;

- the employees changed their passwords on a monthly basis; and
- one of the employees signed a form appointing a ghost employee, which Mr Mothlang had brought to her for processing.

### The LAC’s findings

The LAC emphasised that none of the employees explained how Mr Mothlang repeatedly obtained their updated passwords, yet the commissioner concluded that the employer’s case was “*highly improbable and not convincing at all*” and found their dismissal to be substantively unfair. The Labour Court dismissed the employer’s review application.

The LAC criticised the commissioner and the Labour Court for their unduly narrow and technical approach to the charge sheet and the finding that the employees “*were never charged in relation to the condition of their [passwords] but were charged for actual theft*”.

The LAC reaffirmed the decriminalized approach to workplace discipline:

- An employer is required to notify the employee of allegations of misconduct in sufficient detail and in a form and language that the employee can reasonably understand to allow the employee to answer such allegations.
- An employer is not required, when formulating charge sheets, to advise the employee of the precise charge required to be answer.

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## The decriminalised approach to workplace discipline and ghost employees

CONTINUED



- Disciplinary proceedings are not criminal trials, nor are they intended or required to resemble highly technical civil trials.
- Employers in disciplinary proceedings may not be lawyers and may at times define the nature of the alleged misconduct raised against an employee imprecisely, too narrowly or even erroneously record the legal basis for such misconduct.
- It is not necessary for the employee to be given notice of the precise legal basis for a complaint of misconduct in a highly technical charge sheet.
- The employee need only be informed in the appropriate manner of the allegation of misconduct raised in sufficient detail to enable the employee to understand the complaint and answer to it.

The LAC set the Labour Court's order aside because it adopted an overtly technical approach and failed consider the employees' failure to explain how Mr Mothlang repeatedly obtained their updated passwords over a period of almost two years.

The Draft Code echoes the LAC's judgment and states that a fair procedure is simply one:

- where allegations of misconduct are made available to an employee or explained in sufficient detail to allow the employee to understand them;
- in which an employee is given a reasonable opportunity to respond to the allegations; and
- that is aimed at ensuring genuine dialogue and an opportunity for reflection before a decision is taken.

Workplace disputes are not criminal or technical civil disputes. Workplace discipline ideally should be informal, expeditious and simple. The Labour Relations Act places a purposive premium on the expeditious resolution of disputes. This approach also mitigates unnecessary costs (direct and indirect) that may be incurred by adopting formalistic and time consuming processes.

**JJ van der Walt**



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## Annual increase to the national minimum wage, effective 1 March 2025

The National Minimum Wage Act 9 of 2018 (Act) was enacted to advance economic development and social justice by, *inter alia*, improving the wages of the lowest paid workers, and protecting workers from unreasonably low wages by establishing the national minimum wage (NMW).

In accordance with the requirements of section 6(5) of the Act, the Minister of Employment and Labour published the adjusted NMW rates in the Government Gazette on 4 February 2025, increasing the rates as follows:

### NMW increases

**R27.58** >> **R28.79**

for each ordinary hour worked

This includes farm workers and domestic workers

The hourly wage equates to a minimum weekly wage of

**R1,295.55**

for a 45-hour workweek and a minimum monthly wage of

**R5,614.05**

based on 195 hours.

Expanded public works programme worker:

**R15.83 per hour**

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## Annual increase to the national minimum wage, effective 1 March 2025

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Workers who have learnership agreements (section 17 of the Skills Development Act 97 of 1998):

NQF level	Credits already earned by learner	Minimum allowance per week
Level 1 to 2	0 - 120	433,33
	121 - 240	866,61
Level 3	0 - 120	433,33
	121 - 240	816,13
	241 - 360	1336,07
Level 4	0 - 120	433,33
	121 - 240	866,70
	241 - 360	1336,07
	361 - 480	1949,91
Level 5 to 8	0 - 120	433,33
	121 - 240	938,82
	241 - 360	1404,67
	361 - 480	1978,85
	481 - 600	2527,66



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# Annual increase to the national minimum wage, effective 1 March 2025

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## Contract cleaning sector

### Area A

City of Cape Town, Greater  
East Rand Metro, City of  
Johannesburg, Tshwane and  
Nelson Mandela Bay

**R31.69**

per hour

**R1,426.05**

per week

(based on a 45 hour week)

**R6,179.07**

per month

(based on 4.3 weeks)

### Area B

KwaZulu-Natal

**Determined by**

the Bargaining Council  
for the Contract Cleaning  
Service Industry

### Area C

All other jurisdictions

**R28.89**

per hour

**R1,300.05**

per hour

(based on a 45 hour week)

**R5,633.12**

per month

(based on 4.3 weeks)

# Annual increase to the national minimum wage, effective 1 March 2025

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## Wholesale and retail sector

Bergrivier, Breederivier, Buffalo City, Cape Agulhas, Cederberg, City of Cape Town, City of Johannesburg Metropolitan Municipality, City of Tshwane, Drakenstein, Ekurhuleni, Emalahleni, Emfuleni, Ethekewini Metropolitan Unicity, Gamagara, George, Hibiscus Coast, Karoo Hoogland, Kgatelopele, Khara Hais, Knysna, Kungwini, Kouga, Hessequa local authority, Lesedi, Makana, Mangaung, Matzikama, Metsimaholo, Middelburg, Midvaal, Mngeni, Mogale, Mosselbaai, Msunduzi, Mtubatuba, Nama Khoi, Nelson Mandela, Nokeng tsa Taemane, Oudtshoorn, Overstrand, Plettenbergbaai, Potchefstroom, Randfontein, Richtersveld, Saldanha Bay, Sol Plaatjie, Stellenbosch, Swartland, Swellendam, Theewaterskloof, Umdoni, uMhlathuze and Witzenberg.

Job category	< 27 hours per week – no agreement – rate per hour	< 27 hours per week – agreement – rate per hour	> 27 hours a per week – rate per hour	> 27 hours a per week – rate per week	> 27 hours a per week – rate per month
General Assistant / Trolley Collector	28.79	33.84	28.79	1,295.55	5,613.62
Security Guard	28.79	34.39	28.79	1,295.55	5,613.62
Forklift Operator	28.79	36.74	28.79	1,295.55	5,613.62
Driver <3,500kg	28.79	37.48	28.79	1,295.55	5,613.62
Merchandise/ Shop Assistant/ Checker / Deli Assistant	31.09	38.89	28.79	1,295.55	5,613.62
Cashier	32.97	41.23	31.85	1,433.25	6,210.27
Driver 3,501 <9,000kg	35.87	44.83	34.62	1,557.90	6,750.38
Clerk/ Sales Assistant/ Sales person/ Blockman/ Baker	38.82	48.51	37.49	1,687.05	7,309.99
Driver 9,001 <16,000kg	39.07	48.81	37.68	1,695.60	7,347.03
Displayer	40.32	50.38	38.92	1,751.40	7,588.82
Driver 16,001kg>	42.89	53.63	41.41	1,863.45	8,074.33
Supervisor	47.75	59.71	46.11	2,074.95	8,990.76
Trainee Manager	51.57	64.48	49.81	2,241.45	9,712.20
Assistant Manager	56.18	70.24	54.21	2,439.45	10,570.14
Manager	61.58	76.97	59.46	2,675.70	11,593.81

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## Annual increase to the national minimum wage, effective 1 March 2025

CONTINUED

Metropolitan and local municipalities not mentioned in the table above:

Job category	< 27 hours per week – no agreement – rate per hour	< 27 hours per week – agreement – rate per hour	> 27 hours a per week – rate per hour	> 27 hours a per week – rate per week	> 27 hours a per week – rate per month
General Assistant / Trolley Collector	28.79	31.59	28.79	1,295.55	5,613.62
Security Guard	28.79	34.39	28.79	1,295.55	5,613.62
Forklift Operator	28.79	31.82	28.79	1,295.55	5,613.62
Driver <3500kg	28.79	32.65	28.79	1,295.55	5,613.62
Merchandise/ Shop Assistant/ Checker / Deli Assistant	28.79	34.38	28.79	1,295.55	5,613.62
Cashier	28.79	36.43	28.79	1,295.55	5,613.62
Driver 3,501 <9,000kg	31.22	39.04	28.79	1,295.55	5,613.62
Clerk/ Sales Assistant/ Sales person/ Blockman/ Baker	38.82	48.51	33.03	1,486.35	6,440.35
Driver 9,001 <16,000kg	37.35	46.70	35.83	1,612.35	6,986.31
Displayer	33.26	41.58	31.95	1,437.75	6,229.77
Driver 16,001kg>	41.05	51.32	39.40	1,773.00	7,682.41
Supervisor	41.74	52.20	40.09	1,804.05	7,816.95
Trainee Manager	44.68	55.84	42.86	1,928.70	8,357.06
Assistant Manager	49.26	61.58	47.20	2,124.00	9,203.29
Manager	53.42	66.76	51.19	2,303.55	9,981.28

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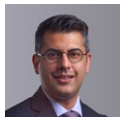
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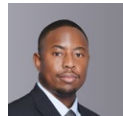
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**BBBEE STATUS:** LEVEL ONE CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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