

# Public sector wage increases invalid, ConCourt rules

By [Lizle Louw](#) and [Joani van Vuuren](#)

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The Constitutional Court has found a collective agreement concluded between a Minister and various trade unions to be invalid, unlawful, and unenforceable.



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The Constitutional Court (CC) had to decide whether increases agreed in a wage agreement as concluded between the Minister of Public Service and Administration and Department of Public Service and Administration (DPSA) and various trade unions, were valid and lawful. The judgment became available on 28 February 2022.

During 2018, the DPSA and various trade unions concluded a collective agreement which regulated the salary increases of public service employees for the three consecutive years. The DPSA abided by the agreement for the first two years but was unable to pay the increases for the third year which led the trade unions to approach the courts to have the provisions of the collective agreement enforced.

The CC found that the collective agreement was concluded in contravention of regulations 78 and 79 of the Public Services Regulations read with sections 213, 215 and 216 of the Constitution of the Republic of South Africa.



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The CC held that these regulations specifically authorised Ministers to negotiate and conclude collective agreements only where the particular Minister

*“ can cover the costs of the collective agreement from his or her departmental budget, or on the basis of written commitment from Treasury to provide additional funds, or if the costs can be recovered from funds from other departments or agencies with their written consent coupled with Treasury approval. ”*

In this case, the DPSA did not meet the above requirements which rendered the collective agreement invalid, unlawful, and unenforceable. As a result, the DPSA is not required to pay the salary increases of the public service employees for the period 2020/2021.

It is important to note that this judgment deals with specific legislative provisions which regulates collective bargaining in the public sector that has no bearing on employers in the private sector.

## ABOUT THE AUTHOR

Lizle Louw is a Partner and Joani van Vuuren, a Senior Associate, at Webber Wentzel.

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