

AZAD GOVERNMENT OF THE STATE OF JAMMU AND KASHMIR
LAW, JUSTICE, PARLIAMENTARY AFFAIRS AND HUMAN RIGHTS
DEPARTMENT MUZAFFARABAD

Dated: 29th March, 2017

No. LD/Legis-Act/256-267/2017. The following Act of Assembly received the assent of the President on the 16th day of March 2017, is hereby published for general information.

(ACT XVIII OF 2017)

An

Act

to consolidate and regulate the payment of wages to certain classes of person employed in Industry

WHEREAS, it is expedient to consolidate and regulate the payment of wages to certain classes of persons employed in industry in the manners hereinafter appearing:

It is hereby enacted as follow:-

1. Short title, extent, commencement and application.-(1) This Act may be called the Azad Jammu and Kashmir Payment of

Wages Act, 2017.

(2) It extends to the whole of Azad Jammu and Kashmir.

(3) It shall come into force on such date as the Government may, by notification in the Official Gazette appoint.

(4) It applies to the payment of wages to persons employed in any factory, industrial establishment or commercial establishment and to persons employed (otherwise than in a factory), either directly or through a sub-contractor.

2. Definitions.- In this Act, unless there is anything repugnant in the subject or context,-

(i) "Commercial Establishment" means an establishment in which the business of advertising commission or forwarding is conducted, or which is a commercial agency, and includes a clerical department of factory or of any industrial or commercial undertaking, the office establishment of a person who for the purpose of fulfilling a contract with the owner of any commercial establishment or industrial establishment, employs workman, a unit of a joint stock company, an insurance company, a banking company or a bank's office of stock exchange, educational institutions and clinics/ hospitals

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in private sector, club a hotel a restaurant or an eating house, a cinema or theater, and such other establishment or class thereof, as Government may, by notification in the official Gazette, declare to be a commercial establishment for the purposes of this Act;

“Factory” means a factory as defined in clause (j) of Section 2 of the Factories Act, 1934 (XXV of 1934), as enforced in AJ&K;

“Government” means the Azad Government of the State of Azad Jammu and Kashmir;

“Industrial establishment” means any,-

(a) motor or omnibus service;

(b) inland steam-vessel;

(c) mine, quarry or oil-field;

(d) plantation;

(e) workshop or other establishment in which articles are produced, adapted or manufactured, with a view to their use, transport or sale.

establishment of a contractor who, directly or indirectly, employs persons to do any skilled or unskilled, manual or clerical labour for hire or reward in connection with the execution of a contract to which, he is a party, and includes the premises in which, or the site at which, any process connected with such execution is carried on;

Explanation: Contractor includes a sub-contractor, headmen or agent.

“plantation” means any estate which is maintained for the purpose of growing cinchonas, rubber, coffee or tea, and on which twenty-five or more persons are employed for that purpose;

“Prescribed” means prescribed by rules made under this Act; and

“Wages” means all remuneration, capable of being expressed in terms of money, which would, if the terms of the contract of employment, express or implied, were fulfilled, be payable, whether conditionally upon the regular attendance, good work or conduct or other behavior of the person employed, or otherwise, to a

person employed in respect of his employment or of work done in such employment, and includes any bonus or other additional remuneration of the nature aforesaid which would be so payable and any sum payable to such person by reason of the termination of his employment, but shall not include,-

(a) the value of any house accommodation, supply of light, water, medical attendance or other amenity, or of any service excluded by general or special order of the Government;

(b) any travelling allowance or the value of travelling concession; or

(c) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment.

Responsibility for _payment_of_wages.- Every employer

including a contractor shall be responsible for the payment to persons employed by him of all wages required to be paid under this Act:

Provided that, in the case of persons employed otherwise than by a contractor,-

(a) in factories, if a person has been named as the manager of the factory under clause (e) of sub-section (1) of Section 9 of the Factories Act, 1934 (XXV of 1934), as enforced in AJ&K,

(b) in industrial establishments, if there is a person responsible to the employer for the supervision and control of the industrial establishment.

Fixation of wage periods.- (1) Every person responsible for the payment of wages under Section 3 shall fix periods (in this Act referred to as wage-periods) in respect of which such wages shall be payable.

(2) No wage-period shall exceed one month.

Time of payment of Wages.- (1) The wages of every person employed upon or in,-

(a) any railway, factory or Industrial Establishment or Commercial Establishment upon or in which less than one thousand persons are employed, shall be paid before the expiry of seventh day;

(b) any other railway, factory or industrial or commercial establishment shall be paid before the expiry of the tenth day, after the last day of the wage-period in respect of which the wages are payable.

(2) Where the employment of any person is terminated by or on behalf of the employer, the wages earned by him shall be paid before the expiry of the second working day from the day on which his employment is terminated.

(3) The Government may, by general or special order, exempt, to such extent and subject to such conditions as may be specified in the order, the person responsible for the payment of wages to persons employed upon by railway (otherwise than in a factory) from the operation of this Section in respect of the wages of any such person or class of such persons.

(4) All payments of wages shall be made on working day.

Wages to be paid in currency notes.-All wages shall be paid in currency notes.

Deductions which may be made from wages.- (1) The wages of an employed person shall be paid to him without deductions of any kind except those authorized by or under this Act.

Explanation.- Every payment made by the employed person to the employer or his agent shall, for the purposes of this Act, be deemed to be a deduction from wages.

(2) Deductions from the wages of an employed person shall be made only in accordance with the provisions of this Act, and may be of the following kinds only, namely,-

- (a) fines;
- (b) deductions for absence from duty;
- (c) deductions for damages to or loss of goods expressly

entrusted to the employed person for custody, or for loss of money for which he is required to account, where such damage or loss is directly attributable to his negligence or default;

- (d) deductions for house-accommodation supplied by the employer;
- (e) deductions for such amenities and services supplied by

the employer as the Government may, by general or special order, authorize;

Explanation.-The word 'services' in this sub-clause does not include the supply of tools and raw materials required for the purposes of employment.

(f) deductions for recovery of advances or for adjustment of overpayments of wages;

(g) deductions of income-tax payable by the employed person;

(h) deductions required to be made by order of a Court or other authority competent to make such order;

(i) deductions for payments to co-operative societies approved by the Government, or to a scheme of insurance maintained by the Pakistan Post Office; and

G) deductions, made with the written authorisation of the employed person, in furtherance of any War Savings Scheme, approved by the Government, for the purchase of securities of the Government or Government of Pakistan.

Fines.- (1) No fine shall be imposed on any employed person save in respect of such acts and omissions on his part as the employer, with the previous approval of the Government, or of the prescribed authority, may have specified by notice under sub-section (2).

(2) A notice specifying such acts and omissions shall be exhibited in the prescribed manner on the premises in which the employment is carried on or in the case of persons employed upon a railway (otherwise than in a factory), at the prescribed place or places.

(3) No fine shall be imposed on any employed person until he has been given an opportunity of showing cause against the fine, or otherwise than in accordance with such, procedure as may be prescribed for the imposition of fines.

(4) The total amount of fine which may be imposed in any one wage-period on any employed person shall not exceed an amount equal to three percent of the wages payable to him in respect of that wage-period.

(5) No fine shall be imposed on an employed person who is under the age of fifteen years.

(6) No fine imposed on any employed person shall be recovered from him by installments or after the expiry of sixty days from the day on which it was imposed.

(7) Every fine shall be deemed to have been imposed on the day of the act or omission in respect of which it was imposed.

(8) All fines and all realizations thereof shall be recorded in a register to be kept by the person responsible for the payment of wages under Section 3 in such form as may be prescribed; and all such realizations shall be applied only to such purposes beneficial to the persons employed in the factory or establishment as are approved by the prescribed authority.

Explanation.-When the persons employed upon or in any railway, factory or industrial establishment are part only of a staff employed under the same management, all such realizations may be credited to a common fund maintained for the staff as a whole, provided that the fund shall be applied only to such purposes as are provided by the prescribed authority.

Deductions for absence from duty.-(1) Deductions may be

made under clause (b) of sub-section (2) of Section 7 only on account of the absence of an employed person from the place or places, where by the terms of his employment, he is required to work, such absence being for the whole or any part of the period during which he is so required to work.

(2) The proportion of deduction and wage payable shall not be greater than the proportion of absence period and total working period, for which employer is required to work:

Provided that, subject to any rules made in this behalf by the Government, if ten or more employed persons acting in plan absent themselves without due notice (that is to say without giving the notice which is required under the terms of their contracts of employment) and without reasonable cause, such deduction from any such person may include such amount not exceeding his wages for eight days as may by any such terms be due to the employer in lieu of due notice.

Explanation: For the purposes of this Section, an employed person shall be deemed to be absent from the place where he is required to work, if, although present in such place, he refuses, in pursuance of a stay-in-strike or any other cause which is not reasonable in the circumstances, to carry out his work.

Deductions for damage or loss.-(1) A deduction under clause (c) of sub-section (2) of Section 7 shall not exceed the amount of

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the damage or loss caused to the employer by the neglect or default of the employed person and shall not be made until the employed person has been given an opportunity of showing cause against the deduction, or otherwise than in accordance with such procedure as may be prescribed for making such deduction.

(2) All such deductions and all realizations thereof shall be recorded in a register to be kept by the person responsible for the payment of wages under Section 3 in such form as may be prescribed.

Deductions for services rendered.-A deduction under clause (d) or clause (e) of sub-section (2) of Section 7 shall not be made from the wages of an employed person unless the house-accommodation, amenity or service has been accepted by him as a term of employment or otherwise, and such deduction shall not exceed an amount equivalent to the house accommodation, amenity or service supplied and, in the case of a deduction under the said clause (e), shall be subject to such conditions as the Government may impose.

Deductions for recovery of advances.-Deductions under clause (f) of sub-section (2) of Section 7 shall be subject to the following conditions, namely,-

(a) recovery of an advance of money given before employment began shall be made from the first payment of wages in respect of a complete wage period, but no recovery shall be made of such advances given for travelling-expenses;

(b) recovery of advances of wages not already earned shall be subject to any rules made by the Government regulating the extent to which such advances may be given and the installments by which they may be recovered.

Deductions for payments to co-operative societies and insurance schemes.—Deductions under clause (j) and clause (k)

of sub-section (2) of Section 7 shall be subject to such conditions as the Government may impose.

Inspectors.- (1) An Inspector of Factories appointed under sub-section (1) of Section 10 of the Factories Act, 1934, (XXV of

1934) as enforced in AJ&K, shall be an Inspector for the purposes of this Act in respect of all factories within the local limits assigned to him.

(2) The Government may appoint Inspectors for the purposes of this Act in respect of all persons employed upon a railway (otherwise than in a factory) to whom this Act applies.

(3) The Government may, by notification in the Official Gazette, appoint such other persons as it thinks fit to be inspectors for the purposes of this Act, and may define the local limits within which and the class of factories and industrial establishments in respect of which they shall exercise their functions.

(4) An inspector may, at all reasonable hours, enter on any premises, and make such examination of any register or document relating to the calculation or payment of wages and take on the spot or otherwise such evidence of any person, and exercise such other powers of inspection, as he may deem necessary for carrying out the purposes of this Act.

(5) Every inspector shall be deemed to be a public servant within the meaning of the Azad Penal Code, 1860 (XLV of 1860), as enforced in AJ&K.

Claims out of deductions from wages or delay in payment of wages and penalty for malicious or vexatious claims.- (1) The

Government may, by notification in the official Gazette, delegate powers to any Commissioner for Workmen's Compensation or to any District Magistrate or Judge of a Civil Court to be the authority to hear and decide for any specified area all claims arising out of deductions from the wages, or non-payment of dues relating to provident fund or gratuity payable under any law, or delay in the payment of wages, of persons employed or paid in that area.

(2) Where contrary to the provisions of this Act any deduction has been made from the wages of an employed person, or any payment of wages or of any dues relating to provident fund or gratuity payable under any law, has been delayed, such person himself, or any legal practitioner, or any official of a registered trade union authorized in writing to act on his behalf, or any Inspector under this Act, or of any heirs of an employed person who has died, or any other person acting with the permission of the authority appointed under sub-section (1), may apply to such authority for direction under sub-section (3):

Provided that every such application shall be presented within three years from the date on which the deduction from the wages was made or from the date on which the payment of the wages was due to be made, as the case may be:

Provided further that any application may be admitted after the said period of three years when the applicant satisfies the authority that he had sufficient cause for not making the application within such period.

(3) When any application under sub-section (2) is entertained, the authority shall hear the applicant and the employer or other person responsible for the payment of wages under Section 3, or give them an opportunity of being heard, and, after such further inquiry (if any) as may be necessary, may, without prejudice to any other penalty to which such employer or other person is liable under this Act, direct the refund to the employed person or, if the applicant is one of the heirs of an employed person, the payment to such applicant, of the amount deducted, or the payment of the delayed wages, or of any dues relating to provident fund or gratuity payable under any law together with the payment of such compensation as the authority may think fit, not exceeding ten times the amount deducted in the former case and not exceeding one thousand rupees in the latter:

Provided that no direction for the payment of compensation shall be made in the case of delayed wages, if the authority is satisfied that the delay was due to,-

(a) a bona fide error or bona fide dispute as to the amount payable to the employed person; or

(b) the occurrence of an emergency, or the existence of exceptional circumstances, such that the person responsible for the payment of the wages was unable, though exercising reasonable diligence, to make prompt payment; or

(c) the failure of the employed person to apply for or accept payment.

(4) If the authority hearing any application under this Section is satisfied that it was either malicious or vexatious, the authority may direct that a penalty not exceeding five hundred rupees be paid to the employer or other person responsible for the payment of wages by the person presenting the application;

(5) Any amount directed to be paid under this Section may be recovered,-

(a) if the authority is a Magistrate, by the authority as if it were a fine imposed by him, as Magistrate; and

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(b) if the authority is not a Magistrate, by the authority as an arrear of land-revenue, or, in the prescribed manner, by the authority through distress and sale of the moveable property belonging to the person by whom the amount is to be paid, or by attachment and sale of the immoveable property belonging to such person, to whom the authority makes application in this behalf, as if it were a fine imposed by such Magistrate.

Single _application_in_respect_of claims from _an_ unpaid group.- (1) Employed persons are said to belong to the same

unpaid group if they are borne on the same establishment and if their wages for the same wage-period or periods have remained unpaid after the day fixed under Section 5.

(2) A single application may be presented under Section 15 on behalf or in respect of any number of employed persons belonging to the same unpaid group and in such case the maximum compensation that may be awarded under sub-section (3) of Section 15 shall be one thousand rupees per head.

(3) The Authority may deal with any number of separate pending applications, presented under Section 15 in respect of persons belonging to the same unpaid group, as a single application presented under sub-section (2) of this Section, and the provisions of that sub-section shall apply accordingly.

Appeal.-(1) An appeal against a direction made under sub-section (3) or sub-section (4) of Section 15 may be preferred within thirty days of the date on which the direction was made before the Labour Court constituted under the Azad Jammu and Kashmir Industrial Relations Ordinance, 1974 within whose jurisdiction the cause of action to which the appeal relates arose,-

(a) by the employer or other person responsible for the payment of wages under Section 3, if the total sum directed to be paid by way of wages and compensation exceeds ten thousand rupees:

Provided that no appeal under this clause shall lie unless the memorandum of appeal is accompanied by a certificate of the authority to the effect that the appellant has deposited with the authority the amount payable under the direction appealed against, or

(b) by an employed person or, if he has died, by any of his heirs, if the total amount of wages claimed to have been withheld from the employed person or from the unpaid

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group to which he belonged exceeds five hundred rupees, or

(c) by any person directed to pay a penalty under sub-section (4) of Section 15.

(2) Save as provided in sub-section (1), any direction made under sub-section (3) or sub-section (4) of Section 15 shall be final.

Powers of authorities appointed under Section 15.-Every authority appointed under sub-section (1) of Section 15 shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 (V of 1908), as enforced in the Azad Jammu and Kashmir for the purpose of taking evidence and of enforcing the attendance of witnesses and compelling the production of documents, and every such authority shall be deemed to be a Criminal Court for all the purposes of Section 195 and of Chapter XXXV of the Code of Criminal Procedure, 1898 (V of 1898), as enforced in the Azad Jammu and Kashmir.

Power to recover from employer in certain cases.-When the authority referred to in Section 17 is unable to recover from any

person (other than an employer) responsible under Section 3 for the payment of wages any amount directed by such authority under Section 15 or Section 17 to be paid by such person, the authority shall recover the amount from the employer of the employed person concerned.

Penalty for offences under the Act.-(1) Whoever being responsible for the payment of wages to an employed person contravenes any of the provisions of any of the following Sections, namely, Section 5 and Sections 7 to 13, both inclusive, shall be punishable with fine which may extend to ten thousand rupees.

(2) Whoever contravenes the provisions of Section 4, Section 6 or Section 25 shall be punishable with fine which may extend to five thousand rupees.

Procedure in trial of offences.-(1) No court shall take cognizance of a complaint against any person for an offence under sub-section (1) of Section 20 unless an application in respect of the facts constituting the offence has been presented

under Section 15 and has been granted wholly or in part and the authority empowered under the latter Section, or the Appellate Court granting such application, has sanctioned the making of the complaint.

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(2) Before sanctioning the making of a complaint against any person for an offence under sub-section (1) of Section 20, the authority empowered under Section 15 or the Appellate Court, as the case may be, shall give such person an opportunity of showing cause against the granting of such sanction, and the sanction shall not be granted if such person satisfies the authority or Court that his default was due to,-

(a) a bonafide error or bonafide dispute as to the amount payable to the employed person, or

(b) the occurrence of an emergency, or the existence of exceptional circumstances, such that the person responsible for the payment of the wages was unable, though exercising reasonable diligence, to make prompt payment, or

(c) the failure of the employed person to apply for or accept payment.

(3) No Court shall take cognizance of contravention of Section 4 or of Section 6 or of a contravention of any rule made under Section 26 except on a complaint made by or with the sanction of an inspector under this Act.

(4) In imposing any fine for an offence under sub-section (1) of Section 20, the Court shall take into consideration the amount of any compensation already awarded against the accused in any proceedings taken under Section 15.

Bar of suits.-No Court shall entertain any suit for the recovery of wages or of any deduction from wages in so far as the sum so claimed,-

(a) forms the subject of an application under Section 15 which has been presented by the plaintiff and which is pending before the authority appointed under that Section or of an appeal under Section 17; or

(b) has formed the subject of a direction under Section 15 in favour of the plaintiff; or

(c) has been adjudged, in any proceeding under Section 15, not to be owed to the plaintiff; or

(d) could have been recovered by an application under Section 15.

Contracting out.-Any contract or agreement, whether made

before or after the commencement of this Act, whereby an

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employed person relinquishes any right conferred by this Act shall be null and void in so far as it purports to deprive him of such right.

Publicity of this Act. The person responsible for the payment of wages to persons employed in the factory, industrial establishment or commercial establishment shall, at a prominent place in the factory, industrial establishment or commercial establishment, display a notice containing the abstracts of this Act and the rules made under it in English and Urdu, as may be Prescribed.

Rule-making power.-(1) The Government may make rules to regulate the procedure to be followed by the authorities and Courts referred to in Sections 15 and 17.

(2) The Government may, by notification in the official Gazette make rules for the purpose of carrying into effect the provisions of this Act.

(3) In particular and without prejudice to the generality of the foregoing power, rules made under sub-section (2) may,-

(a) require the maintenance of such records, registers, returns and notices as are necessary for the enforcement of the Act and prescribe the form thereof;

(b) require the display, in a conspicuous place on premises, where employment is carried on, of notices specifying rates of wages payable to persons employed in such premises;

(c) provide for the regular inspection of the weights, measures and weighing machines used by employers in checking or ascertaining the wages of persons employed by them;

(d) prescribe the manner of giving notice of the days on which wages will be paid;

(e) prescribe the authority competent to approve under sub-section (1) of Section 8 acts and omissions in respect of which fines may be imposed;

(f) prescribe the procedure for the imposition of fines under Section 8 and for the making of the deductions referred to in Section 10;

(g) prescribe the conditions subject to which deductions may

be made under the proviso to sub-section (2) of Section 9;

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prescribe the authority competent to approve the purposes on which the proceeds of fines shall be expended;

prescribe the extent to which advances may be made and the installments by which they may be recovered with reference to clause (b) of Section 12;

regulate the scales of costs which may be allowed in proceedings under this Act;

prescribe the amount of court-fees payable in respect of any proceedings under this Act; and

prescribe the abstracts to be contained in the notices required by Section 25.

In making any rule under this Section, the Government

may provide that a contravention of the rule shall be punishable with fine which may extend to such rupees as may be fixed by the Government.

(5)

All rules made under this Section shall be subject to the

condition of previous publication and the date to be specified under clause (3) of Section 23 of the General Clauses Act, 1897 (X of 1897), shall not be less than three months from the date on which the draft of the proposed rules was published.

Repeal.-The Payment of Wages (Application to Azad Jammu and Kashmir) Act, 1967 (Act IV of 1967) is hereby repealed.

Sd/-

(Mehr-un-Nisa Qadri)

Section Officer (Legislation)