

THE KHYBER PAKHTUNKHWA INDUSTRIAL AND COMMERCIAL

EMPLOYMENT (STANDING ORDERS) ACT, 2013.

(KHYBER PAKHTUNKHWA ACT NO. XI OF 2013)

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THE KHYBER PAKHTUNKHWA INDUSTRIAL AND COMMERCIAL
EMPLOYMENT (STANDING ORDERS) ACT, 2013.

(KHYBER PAKHTUNKHWA ACT NO. XI OF 2013)

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AN
ACT

to provide for regulation of industrial and commercial
employment in the Province of the Khyber Pakhtunkhwa.

Preamble.---WHEREAS it is expedient to provide for regulation of industrial and commercial employment in the Province of the Khyber Pakhtunkhwa and for matters connected therewith or ancillary thereto;

It is hereby enacted as follows:

1. Short title, extent, application and commencement.---(1) This Act may be called the Khyber Pakhtunkhwa Industrial and Commercial Employment (Standing Orders) Act, 2013.

(2) It shall extend to whole of the Province of the Khyber Pakhtunkhwa.

(3) It applies to-

(a) every industrial establishment or commercial establishment wherein ten or more workers are employed, directly or through any other person whether on behalf of himself or any other person, or were so employed on any day during the preceding twelve months;

(b) such classes of the industrial and commercial establishments as the Government may, from time to time, by notification in the official Gazette, specify in this behalf:

Provided that nothing in this Act shall apply to industrial establishment and commercial establishments carried on by or under the authority of the Federal Government or Government, where statutory rules of service, conduct or discipline are applicable to the workers employed therein:

Provided further that the provisions of clauses 13, 15, sub-clauses (6) and (8) of 17 and 20 of the Standing Orders, contained in the Schedule shall not apply, in the first instance, to any industrial establishment wherein not more than 20 persons were employed on any day during the preceding twelve months but Government may, by notification in the official Gazette, extend all or any of the said provisions to any such industrial establishment or any class of such

establishment.

(4) It shall come into force at once.

2. Definitions.---(1) In this Act, unless there is anything repugnant in the subject or context-

(a) "collective agreement" means an agreement in writing intended

to specify the conditions of employment, and entered into between one or more employers on the one hand, and one or more trade unions or, where there is no trade union, the duly authorized representatives of workers, on the other;

(b) "commercial establishment" for the purpose of this Act, 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 a 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 worker, a unit of a joint stock company, an insurance company, a banking company or a bank, a broker's office or stock-exchange, a club, a hotel, a restaurant or an eating house, a cinema or theater, '[Deleted] private health centres, clinical laboratories, private security agencies, other establishment or class thereof which run on commercial and profit basis, 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:

Provided that relevant provisions of this Act shall also apply to the employees of societies registered under the Societies Registration Act, 1860 (Act No. XXI of 1860) and the Voluntary Social Welfare Originations.

(c) "construction industry" means an industry engaged in the construction, reconstruction, maintenance, repair, alteration or

'Deleted vide Khyber Pakhtunkhwa Act No. XVIII of 2015

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demolition of any building, railway, tramway, harbour, dock, pier, canal, inland waterway, road, tunnel, bridge, dam, viaduct, sewer, drain, water work, well, telegraphic or telephonic installation, electrical undertaking, gas work, or other work of construction as well as the preparation for, or laying the foundations of, any such work or structure;

“employer” means the owner of an industrial establishment or commercial establishment to which this Act for the time being applies, and includes-

(i) in a factory, the name of the person who shall be the manager for the purposes of this Act;

(ii) in any industrial establishment under the control of any department of the Federal Government or Government, or District Government, the authority appointed by such Government in this behalf, or where no such authority is so appointed, the head of the department; and

(iii) in any other industrial establishment or commercial establishment, any person responsible to the owner for the supervision and control of such establishment;

“factory” means any premises, including the precincts thereof, whereon ten or more workers are working or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on or is ordinarily carried on with or without the aid of power, but does not include a mine, subject to the operation of the Mines Act, 1923 (IV of 1923);

“go-slow” means an organized, deliberate and purposeful slowing down of normal output of work by a body of workers in a concerted manner and which is not due to any mechanical defect, break-down of machinery, failure or defect in power supply, or in the supply of normal materials and spare parts of machinery;

“Government” means the Government of the Khyber Pakhtunkhwa; and

“industrial establishment” means-

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(i) tramway or motor omnibus service;

(ii) dock, wharf or jetty;

(iii) inland steam-vessel;

(iv) mine, quarry, oil-field or gas-field;

(v) plantation;

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

(vii) 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, headman, middle-man or agent;

(viii) a factory;

(ix) a railway as defined in clause (4) of section 3 of the Railways Act, 1890 (IX of 1890);

(x) the establishment of a person who, directly or indirectly, employs worker in connection with any construction industry.

(xi) any other establishment or class thereof as the Government may by notification in the official gazette declare to be an industrial establishment for the

purposes of this Act.

“manager” means a person who has overall control over the affairs of the industrial or commercial establishment;

“Standing Orders” mean the Orders contained in the Schedule;

“Schedule” means the Schedule appended to this Act;

() "trade union" means a trade union for the time being registered under the Khyber Pakhtunkhwa Industrial Relations Act, 2010 (Khyber Pakhtunkhwa Act No. XVI of 2010), or any other relevant federal or provincial statute;

(m) "wage" means wage as defined in the Khyber Pakhtunkhwa Payment of Wages Act, 2013 (Khyber Pakhtunkhwa Act No. IX of 2013);

(n) "worker" means any person employed in any industrial establishment or commercial establishment or a mine to do any skilled or unskilled, manual or clerical work for hire or reward and includes permanent, probationer, badlis, temporary, apprentices and contract workers.

(2) Expressions used in this Act, but not defined herein shall have the same meaning, as assigned to them in the relevant labour laws.

3. Modification of Standing Orders.---Standing Orders may be modified by means of collective agreement and not otherwise:

Provided that no such agreement shall have the effect of taking away or diminishing any right or benefit available to the worker under the provisions of the Schedule.

4. Posting of the Act.---The text of the Act shall be prominently posted and kept in a legible condition by the employer in English and Urdu, and in the language understood by the majority of his workers on special boards to be maintained for the purpose at or near the entrance through which the majority of the workers enter the industrial establishment or commercial establishment and in all departments thereof where the workers are employed.

5. Inspectors.---(1) The Inspectors of Mines appointed under section 4 of the Mines Act, 1923 (IV of 1923), the Inspectors appointed under section 10 of the Factories Act, 1934 (Act XXV of 1934), and such other persons, not being conciliators appointed under the Khyber Pakhtunkhwa Industrial Relations Act, 2010 (Khyber Pakhtunkhwa Act XVI of 2010), as Government may, by notification in the official Gazette, appoint, shall be the Inspectors for the purposes of this Act within the local limits assigned to each.

(2) An Inspector may at all reasonable hours enter on any premises and make such examination of any register or document relating to the maintenance or enforcement of the Standing Orders 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.

(3) Every Inspector shall be deemed to be a public servant within the meaning of the Pakistan Penal Code, 1860 (XLV of 1860).

6. Penalties and procedure.---(1) An employer, who modifies the Standing Orders as applicable to his industrial establishment or commercial establishment, otherwise than in accordance with section 3, shall be punishable with fine which may extend to fifty thousand rupees but not less than ten thousand rupees and in the case of a continuing offence, with a further fine which may extend to two thousand rupees, but not less than one thousand rupees, for every day after the first day during which the offence continues.

(2) An employer who does any act in contravention of the Standing Orders as applicable to his industrial establishment or commercial establishment shall be punishable with fine which may extend to twenty thousand rupees but not less than five thousand rupees and in the case of a continuing offence, with a further fine which may extend to one thousand rupees, but not less than five hundred rupees, for every day after the first day during which the offence continues.

(3) Whoever contravenes any of the provisions of this Act or rules made hereunder, shall, if no other penalty is elsewhere provided by or under this Act or the rules made hereunder, for such contravention, be punishable with fine which may extend to twenty thousand rupees but not less than five thousand rupees. .

(4) Whoever, having been convicted of any offence punishable under sub-sections (1), (2) or (3), again commits such offence shall, on conviction, be liable to double the punishment prescribed for such offence under the aforesaid sub-sections.

(5) No prosecution for an offence punishable under this Act shall be instituted except by the Inspector.

(6) No court other than the Labour Court established under the Khyber Pakhtunkhwa Industrial Relations Act, 2010 (Khyber Pakhtunkhwa Act No. XVI of 2010), shall try offence under this Act.

7. Penalty for obstructing Inspectors.---(1) Whoever willfully obstructs an Inspector in the exercise of any powers under this Act and the rules made hereunder, or fails to produce on demand by an Inspector any register or other document in his custody, or conceals or prevents any worker in an establishment from appearing before or being examined by an Inspector, shall be punishable with imprisonment for a term which may extend to one month or with a fine which may extend to fifty thousand rupees but shall not be less than ten thousand rupees or with both.

(2) In case of subsequent offence, after having been convicted previously, shall be punishable with simple imprisonment for a term which may extend to six

months but shall not be less than seven days or with a fine which may extend to fifty thousand rupees or with both.

8. Power to exempt.---Government may subject to such conditions as it may deem fit to impose, by notification in the official Gazette, exempt any industrial establishment or commercial establishment or class of such establishments from all or any of the provision of this Act.

9. Protection to existing conditions of employment.---Nothing in this Act shall affect law, custom, usage, award or agreement in force immediately before the enactment of this Act in so far as such law, custom, usage, award or agreement ensures conditions of employment more favourable to worker than those provided in the Standing Orders.

10. Protection against discrimination.---No discrimination shall be made on the basis of religion, political affiliation, sect, colour, caste, creed, ethnic background in considering and disposing of issues relating to the enforcement of this Act.

11. Protection to persons acting under this Act.---No suit, prosecution or other legal proceeding shall lie against any person for anything which is done or intended to be done in good faith, under this Act.

12. Removal of difficulties.---If any difficulty arises, in giving effect to any provisions of this Act, Government may, by notification in the official Gazette, make such order, not inconsistent with the provisions of this Act, as may appear to it to be necessary for the purpose of removing the difficulty.

13. Repeal and Savings.---(1) The West Pakistan Industrial & Commercial Employment (Standing Orders) Ordinance, 1968 (W.P. Ordinance No.VI of 1969) is hereby repealed in its application to the Province of the Khyber Pakhtunkhwa.

(2) Notwithstanding the aforesaid repeal, anything done, action taken, rule made, and notification or order issued under the aforesaid Ordinance, shall, so far as it is not inconsistent with the provisions of this Act, be deemed to have been done, taken, made or issued, under this Act, and shall have effect accordingly.

(3) Any document referring to the repealed Ordinance shall be construed as referring to the provisions of this Act.

SCHEDULE
STANDING ORDERS
[Section-2(1)(j)]

1. Classification of worker.---(a) Worker shall be classified as-

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(i) permanent,

(ii) probationers,

(iii) badlis,

(iv) temporary,

(v) apprentices,

(vi) contract worker

A “permanent worker” is a worker who has been engaged on work of permanent nature likely to last more than nine months and has satisfactorily completed a probationary period of three months in the same or another occupation in the industrial or commercial establishment, including breaks due to sickness, accident, leave, lock-out, strike (not being an illegal strike) or involuntary closure of the establishment and includes a badli who has been employed for a continuous period of ninety days or for one hundred and eighty-three days during any period of twelve consecutive months;

A “probationer” is a worker who is provisionally employed to fill a permanent vacancy in a post and has not completed three months service therein. If a permanent employee is employed as a probationer in a higher post he may, at any time during the probationary period of three months, be reverted to his old permanent post;

A “badli” is a worker who is appointed in the post of a permanent worker or probationer, who is temporarily absent.

A “temporary worker” is a worker who has been engaged for work which is of an essentially temporary nature likely to be finished within a period not exceeding nine months.

An “apprentice” is a person who is an apprentice within the meaning of the Apprenticeship Ordinance, 1962 (LVI of 1962)].

A “contract worker” means a worker who works on contract basis for

a specific period mentioned in the Letter of Contract:

Provided that the employer shall obtain prior No Objection Certificate from the Director Labour to contract out jobs of peripheral nature and not related to the basic production/activities of the establishment concerned:

Provided further that No Objection Certificate shall not be issued for period in excess of six months or one hundred & eighty days:

Provided also that No Objection Certificate shall contain certain conditions related to the job and employment of contract workers.

2. Tickets.---(1) Every worker employed in an industrial establishment or commercial establishment shall be given a permanent ticket unless he is a probationer, a badli, a temporary worker, an apprentice or a contract worker.

(2) Every permanent worker shall be provided with a departmental ticket, showing his number, and shall on being required to do so, produce it to any person authorized by the employer in this regard or an Inspector appointed by Government.

(3) Every badli shall be provided with a badli card, on which shall be entered the days on which he has worked in the establishment, and which shall be surrendered if he obtains permanent employment.

(4) Every temporary worker shall be provided with a temporary ticket which he shall surrender on his discharge.

(5) Every apprentice shall be provided with an apprentice card, which shall be surrendered if he obtains permanent employment.

(6) Every contract worker shall be provided with a card giving reference to his contract and contractor or sub-contractor, as the case may be, which he shall surrender on termination of the contract.

3. Terms and conditions of service to be given in writing.---(1) Every worker, at the time of his appointment, shall be given an appointment letter showing, conspicuously, the terms and conditions of his employment including wages.

(2) Every worker upon his transfer or promotion shall be provided with an order in writing, showing the terms and conditions of his service including wages.

4. Certificate of termination of service. ---Every permanent worker shall be entitled to a service certificate at the time of his dismissal, discharge, retrenchment or retirement from service.

5. Publication of working time. ---The periods and hours of work for all classes of workers in each shift shall be exhibited in Urdu and in the principal language of workers employed in the industrial establishment or commercial establishment on notice boards maintained at or near the main entrance of the establishment and at the time-keeper's office, if any.

6. Publication of holidays and pay days. ---Notices specifying-

(a) The days observed by the industrial establishment or commercial establishment as holidays; and

(b) Pay days shall be posted on the said notice boards.

7. Publication of wage rates.---Notices specifying the rates of wages payable to all classes of worker and for all classes of work shall be displayed on the said notice boards.

8. Shift working.---More than one shift may be worked in a department or any section of a department of the industrial establishment or commercial establishment at the discretion of the employer. If more than one shift is worked, the worker shall be liable to be transferred from one shift to another. No shift working shall be discontinued without one month's notice being given prior to such discontinuance, provided that no such notice shall be necessary, if, as a result of the discontinuance of the shift, no permanent worker is discharged. If as a result of discontinuance of shift working, any permanent worker is to be discharged; he shall be discharged having regard to the length of his service in the establishment, the one with the shortest term of service being discharged first. If shift working is restarted, a week's notice thereof shall be given by posting notice at the main entrance of the establishment and the time-keeper's office, if any, and the workers, discharged as a result of the discontinuance of the shift, shall, if they present themselves at the time of the restarting of the shift, have preference in being re-employed, having regard to the length of their previous service under the establishment, those with the longest term of service being re-employed first.

9. Attendances and late coming.---All workers shall be at work at the establishment at the time fixed and notified under clause 5. Workers attending late shall be liable to the deduction provided for in the Khyber Pakhtunkhwa Payment of Wages Act, 2013 (Khyber Pakhtunkhwa Act No. IX of 2013).

10. Leave.---(1) Holidays and leave with pay shall be allowed as hereinafter specified:-

(a) annual holidays, festival holidays, casual leave and sick leave as provided for in Chapter-IV-A of the Factories Act, 1934 (Act No. XXV of 1934); and

(b) other holidays in accordance with the law, contract, custom and usage.

(2) A worker who desires to obtain leave of absence shall apply to the employer, who shall issue orders on the application within a week of its submission or two days prior to the commencement of the leave applied for, whichever is earlier provided that if the leave applied for is to commence on the date of the application or within three days thereof, the order shall be given on the same day. If the leave asked for is granted, a leave pass shall be issued to the worker. If the leave is refused or postponed, the fact of such refusal or postponement and the reasons therefor shall be recorded in writing in a register to be maintained for the purpose, and if the worker so desires, a copy of the entry in the register shall be supplied to him. If the worker after proceeding on leave desires an extension thereof, he shall apply to the employer who shall send a written reply either granting or refusing extension of leave to the worker if his address is available and if such reply is likely to reach him before the expiry of the leave originally granted to him.

11. Payment of wages.---(1) Any wages due to the worker but not paid on the usual pay day on account of their being unclaimed, shall be paid by the employer on an unclaimed wages pay day in each week, which shall be notified on the notice boards as aforesaid.

(2) All workers shall be paid wages on a working day before the expiry of the 7th or 10th day after the last day of the wage period, in respect of which the wages are payable if the total number of workers employed in the establishment is one thousand (1,000) or less or exceeds one thousand (1,000) respectively.

12. Group incentive scheme.---(1) In every industrial establishment, which is a factory and in which fifty or more worker are employed there shall be introduced from such date as may be specified by Government, by notification in the official Gazette, a group incentive scheme to provide incentive for greater production to groups of worker employed in the factory. The scheme shall provide the manner in which the performance of different groups of worker, whether in the same section, shop, department or shift or in different sections, shops, departments or shifts, shall be evaluated.

(2) The incentive shall be in the form of additional wages or additional leave with wages or in both such forms to the members of the group of worker whose production exceeds that of the other groups or the average of all the groups. The incentive shall be according to such scales as may be prescribed and shall be related to the extent of the excess production achieved by the group with the best performance.

13. Compulsory Group Insurance.---(1) The employer shall have all the permanent workers employed by him insured against natural death and disability and death and injury arising out of contingencies not covered by the Workmen's Compensation Act, 1923, (Act

No. VIII of 1923) or the Provincial Employees' Social Security Ordinance, 1965 (W.P. Ord. No. X of 1965).

(2) The employer shall in all cases be responsible for the payment of the amount of premia and for all administrative arrangements whether carried out by himself or through an insurance company.

(3) The amount for which each worker shall be insured shall not be less than the amount of compensation specified in Schedule IV to the Workmen's Compensation Act, 1923, (Act No. VIII of 1923).

(4) Where the employer fails to have a permanent worker employed by him insured in the manner laid down in sub-clauses (1), (2) and (3) and such worker suffers death or injury arising out of contingencies mentioned in sub-clause (1), the employer shall pay, in the case of death, to the heirs of such worker, or in the case of injury, to the worker, such sum of money as would have been payable by the insurance company had such worker been insured.

(5) All claims of a worker or his heirs for recovery of money under sub-clause (4) shall be settled in the same manner as is provided for the determination and recovery of compensation under the Workmen's Compensation Act, 1923, (Act No. VIII of 1923).

14. Payment of bonus.---(1) Every employer making profit in any year shall pay for that year within three months of the closing of that year to the workers who have been in his employment in that year for a continuous period of not less than ninety days a bonus in addition to the wages payable to such workers.

(2) The amount of the bonus payable shall-

(a) if the amount of the profit is not less than the aggregate of one month's wages of the worker employed, be not less than the amount of such aggregate, subject to the maximum of thirty percent of such profit;

Illustration -1.---If the profit is Rs. 1,20,000.00 and the aggregate of one month's wages of the worker is Rs.30,000.00, the amount of bonus, payable shall be not less than the aggregate of one month's wages, that is to say, Rs.30,000.00.

Illustration -2.---If the profit is Rs. 30,000.00 and the aggregate of one month's wages of the worker is also Rs. 30,000.00, the amount of bonus payable shall be not less

than thirty percent of the profit, that is to say,
Rs. 9,000.00; and

(b) if the amount of the profit is less than the aggregate referred to in paragraph (a), be not less than fifteen percent of such profit.

(3) The bonus payable to a worker entitled thereto under sub-clause (1) shall bear to his monthly wages the same proportion as the total bonus payable by the employer bears to the aggregate of the wages referred to in paragraph (a) of sub-clause (2) and shall be paid either in cash or in N.L.T. Units of equivalent value at the option of such worker.

(4) Nothing in this section shall be deemed to affect the right of any worker to receive any bonus other than that payable under sub-clause (1) to which he may be entitled in accordance with the terms of his employment or any usage or any settlement or an award of a Labour Court established under the Khyber Pakhtunkhwa Industrial Relations Act, 2010 (Khyber Pakhtunkhwa Act No. XVI of 2010).

Explanation.- For the purpose of this section-

(a) "N.L.T. Units" mean the Units referred to in the National Investment (Unit) Trust Ordinance, 1965 (VII of 1965);

(b) "Profit" means the 'net profits' as defined in the relevant federal laws; and

(c) "wages" does not, for the purpose of calculating the bonus payable to a person under sub-clause (1), include the bonus referred to in clause (x) of section 2 of the Khyber Pakhtunkhwa Payment of Wages Act, 2013 (Khyber Pakhtunkhwa Act No. IX of 2013).

15. Stoppage of work.---(1) The employer may, at any time, in the event of fire, catastrophe, break-down of machinery or stoppage of power supply, epidemics, civil commotion or other cause beyond his control, stop any section or sections of the establishment, wholly or partially for any period or periods without notice.

(2) In the event of such stoppage during working hours, the workers affected shall be notified by notices put up on the notice board in the departments concerned or in the office of the employer, as soon as practicable, when work will be resumed and whether they are to remain or leave their place of work. The workers shall not ordinarily be required to remain for more than two hours after the

commencement of the stoppage. If the period of detention does not exceed one hour, the workers so detained shall not be paid for the period of detention. If the period of detention exceeds one hour, the workers so detained shall be entitled to receive wages for the whole of the time during which they are detained as a result of the stoppage. In the case of piece-rate workers, the average daily earnings for the previous month shall be taken to be the daily wage. Wherever practicable, reasonable notice shall be given of resumption of normal work.

(3) In cases where workers are laid-off on account of failure of plant, a temporary curtailment of production or any stoppage of work for reasons mentioned in sub-clause (1), they shall be paid by the employer an amount equal to one-half of their daily wages during the first fourteen days of lay-off as compensation. When, however, the workers have to be laid-off for an indefinite period beyond the above-mentioned fourteen days, their services may be terminated after giving them due notice or pay in lieu thereof.

(4) The employer may, in the event of a strike affecting either wholly or partially any section or department of the establishment, close down, either wholly or partially, such section or department and any other section or department affected by such closing down. The fact of such closure shall be notified by notices put up on the notice board in the section or department concerned and in the time-keeper's office, if any, as soon as practicable. The worker concerned shall also be notified by a general notice, prior to resumptions of work, as to when work will be resumed.

16. Closure of establishment.---Notwithstanding anything contained in clause 15, no employer shall terminate the employment of more than fifty percent of the workers or close down the whole of the establishment without prior permission of Government in this behalf, except in the event of fire, catastrophe, stoppage of power supply, epidemics or civil commotion:

Provided that the employer may prefer appeal to the Labour Court against the orders of Government, if he feels aggrieved.

Explanation.---'Close down' in this clause includes lay-off of worker beyond fourteen days where such lay-off results in closure of an establishment but does not include lock-out declared, commenced or continued in accordance with the provisions of the Khyber Pakhtunkhwa Industrial Relations Act, 2010 (Khyber Pakhtunkhwa Act No. XVI of 2010).

17. Termination of employment.---(1) For terminating employment of a permanent worker, for any reason other than misconduct, one month's notice shall be given either by the employer or the worker. One month's wages calculated on the basis of average wages earned by the worker during the last three months shall be paid in lieu of notice.

(2) No temporary worker, whether monthly-rated, weekly-rated, daily-rated or piece-rated, and no probationer, badly or contract worker shall be entitled to any notice, if his services are terminated by the employer, nor shall any such worker be required to give any notice or pay any wages in lieu thereof to the employer if he leaves employment of his own accord.

(3) The services of a worker shall not be terminated, nor shall a worker be removed, retrenched, discharged or dismissed from service, except by an order in writing which, shall explicitly state the reason for the action taken. In case a worker is aggrieved by the termination of his services or removal, retrenchment, discharge or dismissal, he may take action in accordance with the provisions of section 37 of the Khyber Pakhtunkhwa Industrial Relations Act, 2010 (Khyber Pakhtunkhwa Act No. XVI of 2010) and thereupon the provisions of the said section shall apply as they apply to the redress of an individual grievance.

(4) Where the services of any worker are terminated, the wages earned by him and other dues, including payment for unavailed leaves as defined in sub-clause (1) of clause 10 shall be paid before the expiry of the second working day from the day on which his services are terminated.

(5) The services of a permanent or temporary worker shall not be terminated on the ground of misconduct otherwise than in the manner prescribed in clause 21.

(6) Where a worker resigns from service or his services are terminated by the employer, for any reason other than misconduct, he shall, in addition to any other benefit to which he may be entitled under this Act or in accordance with the terms of his employment or any custom, usage or any settlement or an award of a Labour Court under the Industrial Relations Act, 2010 (Khyber Pakhtunkhwa Act No. XVI of 2010) be paid gratuity equivalent to thirty days wages, calculated on the basis of the wages admissible to him in the last month of service if he is a fixed-rated worker or the highest pay drawn by him during the last twelve months if he is a piece-rated worker, for every completed year of service or any part thereof, in excess of six months:

Provided that, where the employer has established a provident fund to which the worker is a contributor and the contribution of the employer to the provident fund, shall not be less than the contribution made by the worker, no such gratuity shall be payable for the period during which such provident fund has been in existence:

Provided further that amount paid to the worker under provident fund shall not be less than the amount of gratuity admissible to such worker under this Act:

(7) A worker shall be entitled to receive the amount standing to his credit in the provident fund, including the contributions of the employer to such fund, even if he resigns or is dismissed from service.

(8) Where a worker dies while in service of the employer, his dependant shall be paid gratuity in accordance with the provision of sub-clause (6):

Provided that no payment of gratuity in such case shall be made otherwise than by a deposit with the Commissioner, who shall proceed with the allocation of the deposit to the dependant of the deceased in accordance with the provisions of section 8 of the Workmen's Compensation Act, 1923, (Act No. VIII of 1923).

(9) If the employer fails to deposit the amount of the gratuity under sub-clause (8) the dependant of the deceased may make an application to the Commissioner for the recovery of the amount thereof.

Explanation.--- "Commissioner" and "dependant" in this clause shall have the same meanings as are respectively assigned to them in the Workmen's Compensation Act, 1923, (Act No. VIII of 1923).

(10) 'If a worker is not allowed to work or mark his attendance by his employer in any manner, the worker may bring the same into the notice of the area Inspector in writing within ten days of the incidence and in such case the employer shall be precluded to initiate any action against the worker.

18. Procedure for retrenchment.---Where any worker is to be retrenched and he belongs to a particular category of workers, the employer shall retrench the worker, who is the last person employed in that category.

19. Re-employment of retrenched worker.---Where any number of worker are retrenched and the employer proposes to take into his employment any person within a period of one year from the date of such retrenchment, he shall give an opportunity to the retrenched workers belonging to the category concerned, by sending a notice by registered post to their last known addresses to offer themselves for re-employment, and they shall have preference over other persons, each having priority according to the length of his service under the employer:

Provided that in the case of a seasonal factory within the meaning of section 4 of the Factories Act, 1934 (Act No. XXV of 1934), a worker who was retrenched in one season and reports for duty within ten days of the resumption of work in the factory in the immediately following season shall be given preference for employment by the employer:

Provided further that in the case of such a seasonal factory, as defined in the Factories Act, 1934 (Act No. XXV of 1934), the employer may by sending notice by

registered post to the last known address of a worker who was retrenched in one season require him to report on a day specified in the notice, not being earlier than ten days before resumption of work in such factory, and if such worker so reports he shall be given preference for employment and paid full wages from the day he reports.

20. Special provision for construction workers.---Where any worker is retrenched or discharged by a contractor or any employer engaged in the construction industry due to completion, cessation or discontinuance of work, he shall be given preference for employment in any other similar work undertaken by the contractor or employer within a period of one year from the date of such retrenchment or discharge:

Provided that where a worker is re-employed within one month of his retrenchment or discharge, he shall be deemed to have been in continuous service of the contractor or employer notwithstanding the interruption caused by his retrenchment or discharge but no wages shall be paid to him for the period of interruption.

21. Punishments.---(1) A worker may be reprimanded or fined in the manner prescribed under the Khyber Pakhtunkhwa Payment of Wages Act, 2013 (Khyber Pakhtunkhwa Act No. IX of 2013), upto five percent of the wages payable to him in a month, for any of the following acts or omissions, namely:

(i) in case where the Khyber Pakhtunkhwa Payment of Wages Act, 2013 (Khyber Pakhtunkhwa Act No. IX of 2013) is applicable, the list of acts and omissions for which fine may be levied shall be same as approved by the Chief Inspector of Factories or any other officer concerned;

(ii) in other cases, the following shall be the list of acts and omissions-

- (a) disregard or disobedience of rules or orders;
- (b) improper behaviour, such as drunkenness;
- (c) making false or misleading statements;

(d) inefficient, dilatory, careless or wasteful working; and

(e) malingering.

(2) A worker found guilty of misconduct shall be liable to any of the following punishments:

(3)

(i) fine in the manner prescribed under the Khyber Pakhtunkhwa Payment of Wages Act, 2013 (Khyber Pakhtunkhwa Act No. IX of 2013), upto five percent of the wages payable to him in a month;

(ii) withholding of increment or promotion for a specified period not exceeding one year;

(iii) — reduction to a lower post; or

(iv) dismissal without payment of any compensation in lieu of notice.

The following acts and omissions shall be treated as misconduct:

(i) willful insubordination or disobedience, whether alone or in combination with others, to any lawful and reasonable order of a superior;

(ii) theft, fraud, or dishonesty in connection with the employer's business or property;

(iii) — willful damage to or loss of employer's goods or property;

(iv) taking or giving bribes or any illegal gratification;

(v) habitual absence without leave or absence without leave for more than ten days; provided that where a worker is barred by the employer to enter the factory (gate-bandi), the period of ten days shall not apply, subject to the condition that the worker reports the incidence to the concerned Labour Office within ten days of the gate-bandi;

(vi) habitual late attendance;

(vii) habitual breach of any law applicable to the establishment;

(viii) riotous or disorderly behaviour during working hours at the establishment or any act subversive of discipline;

(ix) habitual negligence or neglect of work;

(x) frequent repetition of any act or omission referred to in sub-clause (1);

(xi) _ striking work or inciting others to strike in contravention of the provisions of any law, or rule having the force of law;

(xii) go-slow.

(4) No order of dismissal shall be made unless the worker concerned is informed in writing of the alleged misconduct within one month of the date of such misconduct or of the date on which the alleged misconduct comes to the notice of the employer and is given an opportunity to explain the circumstances alleged against him. The approval of the employer shall be required in every case of dismissal and the employer shall institute independent inquiries before dealing with charges against a worker:

Provided that the worker proceeded against may, if he so desires for his assistance in the enquiry, nominate any worker employed in that establishment and the employer shall allow the worker so nominated to be present in the enquiry to assist the worker proceeded against and shall not deduct his wages if the enquiry is held during his duty hours.

(5) Where, for the purposes of conducting an inquiry into the alleged misconduct of a worker, if the employer considers it necessary, he may suspend the worker concerned for a period not exceeding one week at a time, however, so that the total period of such suspension shall not exceed four weeks except where the matter is pending before an Arbitrator, a Labour Court, Tribunal, Commissioner, Authority or Conciliator for the grant of permission under section 61 of the Khyber Pakhtunkhwa Industrial Relations Act, 2010 (Khyber Pakhtunkhwa Act No. XVI of 2010). The order of suspension shall be in writing and may take effect immediately on delivery to the worker. During the period of suspension, the worker concerned shall be paid by the employer the same wages as he would have received if he had not been suspended.

22. Eviction from residential accommodation.---(1) Notwithstanding the provisions of any law for the time being in force, including those of the West Pakistan Urban Rent Restriction Ordinance, 1959 (W.P. Ordinance No. VI of 1959), a worker occupying residential accommodation provided by his employer, who has resigned or retired, or has been retrenched, discharged or dismissed, or whose services have been terminated, shall vacate such accommodation within a period of two months from the date of his retrenchment, discharge, dismissal or termination of services, as the case may be; provided that in case of reinstatement of the worker, the employer shall be bound to provide him with similar residential accommodation from the date of such reinstatement or pay him per mensem an allowance in lieu thereof at the rate of three times the wages of the last full working day.

(2) If a worker, who has been retrenched, discharged or dismissed, or whose services have been terminated, fails to vacate any residential premises provided by the employer, within the period specified in sub-clause (1), the employer may lodge a

complaint with a Magistrate of the First Class having jurisdiction in the area where such residential accommodation is located.

(3) The Magistrate on hearing the parties, may, notwithstanding anything contained in any other law for the time being in force, summarily decide the case and may pass an order of eviction, giving the worker a reasonable time to vacate the premises.

(4) Where a Magistrate passes an order for the eviction of a worker, he may also pass an order directing a police officer to evict such worker and any other person occupying through such worker the residential accommodation in respect of which the order of eviction is made, if the worker or such other person fails to vacate the accommodation within the time allowed under sub-clause (3).

(5) A police officer acting under an order of the Magistrate under sub-clause (4), shall notify the occupants of the premises in question the contents of the Magistrate's order and his intention to enter on such premises, and shall allow at least two hours' time to the occupants to vacate the premises and shall give all reasonable facilities to the children and female occupants, if any, to withdraw therefrom before applying any force for taking over the possession of such premises.

(6) Where a worker, occupying residential accommodation provided to him by the employer dies, the procedure prescribed in this clause shall mutatis mutandis and so far as applicable, apply for evicting any person, who was occupying the premises through such worker, and after his death continues to remain in occupation thereof.

23. Liability of employer.---The employer of the industrial and commercial establishment shall personally be held responsible for the proper and faithful observance of the Standing Orders, whether or not the worker of such establishment are employed through contractors.