

THE KHYBER PAKHTUNKHWA MINIMUM WAGES ACT, 2013.

(KHYBER PAKHTUNKHWA ACT NO. XII OF 2013)

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THE KHYBER PAKHTUNKHWA MINIMUM WAGES ACT, 2013.
(KHYBER PAKHTUNKHWA ACT NO. XII OF 2013)

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AN
ACT

to provide for the regulation of minimum rates of wages and various allowances for different categories of workers employed in certain industrial and commercial undertakings and establishments.

Preamble.---WHEREAS it is expedient to provide for regulation of minimum rates of wages and various allowances for different categories of workers employed in certain industrial and commercial undertakings and establishments and for matters connected therewith and ancillary thereto;

It is hereby enacted as follows:

1. Short title, extent, application and commencement.---(1) This Act may be called the Khyber Pakhtunkhwa Minimum Wages Act, 2013.

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

(3) It shall apply to all industrial establishment and commercial establishment shops in the Province of the Khyber Pakhtunkhwa.

(4) It shall come into force at once.

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

(i) "Adhoc Relief" means an allowance allowed by Government under sub-section (4) of section 8;

(ii) "Adolescent" means a person who has completed fourteenth year of his age but has not completed eighteenth year of his age;

(iii) "adult" means a person who has completed his eighteenth year of age;

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“Board” means a Minimum Wages Board established under section 3;

“Chairman” means Chairman of the Board;

“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 Organization.

“Cost of Living Allowance” means an allowance allowed by Government under sub-section (2) of section 8;

“Dearness Allowance” means an allowance allowed by Government under sub-section (3) of section 8;

“employer” means any person who employs either directly or through another person, whether on behalf of himself or any other person, any person for whom a minimum rate of wages may be declared under this Act, and includes-

(a) in relation to a factory, a manager or other person who has ultimate control over the affairs of the factory; and

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(b) in other cases, any person responsible to the owner for supervision and control of such worker or for payment of his wages;

“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);

“Government” means the Government of the Khyber Pakhtunkhwa;

“Industrial establishment” means-

(a) a workshop or other establishment in which the work of making, altering, repairing, ornamenting, finishing or packing or otherwise treating an article or substance with a view to its use, sale, transport, delivery or disposal is carried out, or where any such service is rendered to a customer and any other establishment which Government may, by notification in the official Gazette, declare to be an industrial establishment;

(b) a factory;

(c) an industry as defined in clause (xv) of section 2 of the Khyber Pakhtunkhwa Industrial Relations Act, 2010 (Khyber Pakhtunkhwa Act No. XVI of 2010);

(d) railway as defined in sub-section (4) of section 3 of the Railway Act, 1890 (IX of 1890);

(e) the 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 execution of a contract, to which he is a party, and includes premises in which, or the site at which, any process connected with execution is carried on; and

Explanation.---Contractor includes a sub-contractor, headman, middleman or agent;

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

Explanation.---construction industry means an industry engaged in the construction, reconstruction, maintenance, repair, alteration or 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;

“juvenile worker” means a worker who is not an adult;
“member” means a member of the Board;

“minimum wages” means minimum rates of wages announced, declared, adopted or notified by Government from time to time which shall include the basic pay and statutory allowances i.e. Cost of Living Allowance, Dearness Allowance and Adhoc Relief;;

“prescribed” means prescribed by rules;
“Province” means the Province of the Khyber Pakhtunkhwa;
“rules” mean rules made under this Act;

“unskilled worker” means a worker employed to do unskilled labour or a person employed against a job or to perform duties which do not need any practical training or related theoretical instructions for attaining the laid down standards of skill and proficiency;

“wages” mean all cash remunerations which includes basic pay and all other statutory or non-statutory allowances, which would, if the term of contract of employment, expressed or implied, were fulfilled, be payable to a worker employed in

respect of his employment or of work done in such employment and not include-

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- (a) any contribution paid by the employer in respect of such person under any scheme of social insurance or to a pension fund or provident fund;
- (b) any travelling allowance or the value of any travelling concession;
- (c) any sum paid to such person to defray special expenses incurred by him in respect of his employment;
- (d) any sum paid as annual bonus; or
- (e) any gratuity payable on discharge.

“worker” means any person employed in an industrial establishment or commercial establishment and includes an apprentice employed in any industrial establishment or commercial establishment to do any skilled or unskilled, intellectual, technical, clerical, manual or other work for hire or reward but does not include-

- (a) a person employed by the Federal Government or Government;
- (b) persons employed in coal mines in respect of whom minimum wages may be fixed under the Coal Mines (Fixation of Rates of Wages) Ordinance, 1960 (Act No. XXXIX of 1960); and
- (c) persons employed in agriculture.

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

3. Establishment of Minimum Wages Board.---(1) As soon as may be after the commencement of this Act, Government shall establish a Minimum Wages Board for the Province consisting of the following, namely:

(a)

(b)
(c)

(d)

the Chairman of the Board;
one independent member;
one member to represent the employers of the

Province; and

one member to represent the workers of the Province;

(e) one member to represent the employers connected with the industry concerned; and

(f) one member to represent the workers engaged in such industry.

(2) The Chairman and the members shall be appointed by Government.

(3) The Chairman and the independent member shall be appointed from persons with adequate knowledge of industrial, labour and economic conditions of the Province, who are not connected with any industry or associated with any employers' or workers' organization.

(4) The member to represent the employers of the Province and the member to represent the workers of the Province under sub-section (1), shall be appointed after considering nominations, if any, of such organizations as Government considers to be representative organizations of such employers and workers respectively.

(5) The member to represent the employers connected with and the workers engaged in the industry concerned, shall be appointed after considering nominations, if any, of such organizations as Government considers to be representative organizations of such employers and workers respectively.

(6) The term of office of the Chairman and the members, the manner of filling casual vacancies therein, the appointment of its committees, if any, the procedure and conduct of the meetings of the Board and its committees and all matters connected therewith, including the fees and allowances to be paid for attending such meetings, and other expenses, including expenses for the services of experts and advisers obtained by the Board, shall be such as may be prescribed.

4. Recommendation of minimum rates of wages for unskilled and Juvenile workers.---(1) The Board shall, upon a reference made to it by Government, recommend to Government, after such enquiry as the Board may deem fit, the minimum rates of wages for adult, skilled and unskilled workers and juvenile workers employed in industrial undertakings in the Province.

(2) In its recommendations under sub-section (1) the Board shall indicate, whether the minimum rates of wages should be adopted uniformly throughout the Province or with such local variations for such localities as specified therein.

5. Recommendation of minimum rates of wages for workers with respect to particular industries.---(1) Where in respect of any particular industry for which no adequate machinery exists for effective regulation of wages, Government is of the opinion that, having regard to the wages of the workers employed in the under-

takings engaged in such industry, it is expedient to fix the minimum rates of wages of such workers, it may direct the Board to recommend, after such enquiry as the Board may deem fit, the minimum rates of wages either for all such workers or for such of them as are specified in the direction:

Provided that, except with the previous approval in writing of the Federal Government, no such direction shall be given with respect to persons employed in any undertaking under the management or control of the Federal Government, including those employed by a Port Authority.

(2) In pursuance of a direction under sub-section (1), the Board may, recommend minimum rates of wages for all classes of workers, including skilled and unskilled, in any grade and, in such recommendation, may specify-

(a) the minimum rates of wages for-

(i) time work;
(ii) piece work;
(iii) — overtime work; and

(iv) | work on the weekly day of rest and for paid holidays;
and

(b) the minimum time rates for workers employed on piece work so as to guarantee minimum wages on a time basis for such workers.

(3) The time rates recommended by the Board may be on hourly, daily, weekly or monthly basis.

(4) The rates recommended under this section for overtime work and work on paid holidays shall not be less than the minimum rates fixed for such work under any other law for the time being in force.

6. Power to declare minimum rates of wages.---(1) Upon receipt of a recommendation of the Board under section 4 or section 5, Government may,-

(a) by notification in the official Gazette, declare that the minimum rates of wages recommended by the Board for, the various workers shall, subject to such exceptions as may be specified in the notification, be the minimum rates of wage, for such workers; or

(b) if it considers that the recommendation is not in any respect, equitable to the employers or the workers, within thirty days of such receipt, refer it back to the Board for reconsideration with such comments thereon and giving such information relating thereto as Government may deem fit to make or give.

(2) Where a recommendation is referred back to the Board under clause (b) of sub-section (1), the Board shall, reconsider it after taking into account the comments made and information given by Government and, if necessary, shall hold further enquiry and submit to Government-

(a) a revised recommendation; or

(b) if it considers that no revision or change in the recommendation is called for, make report to that effect stating reasons therefor.

(3) Upon receipt of the recommendation of the Board under subsection (2), Government may, by notification in the official Gazette, declare that the minimum rates of wages recommended under that sub-section by the Board for various workers shall, subject to such modifications and exceptions as may be specified in the notification, be the minimum rates of wages for such workers.

(4) Unless any date is specified for the purpose in the notification under sub-section (1) or sub-section (3), the declaration thereunder shall take effect on the date of publication of such notification.

(5) Where after the publication of a notification under sub-section (1) or sub-section (3) or after the minimum rates of wages declared thereunder have taken effect, it comes to the notice of Government that there is a mistake in the minimum rates of wages so declared, or that any such rate is inequitable to the employers or the workers, it may refer the matter to the Board and any such reference shall be deemed to be a reference under sub-section (2).

(6) The minimum rates of wages shall not, except the previous approval in writing of the Federal Government, be declared under sub-section (1) or sub-section (3) in respect of persons employed in any under-taking under the management or control of the Federal Government, including those employed by a Port Authority.

(7) The minimum rates of wages declared under this section shall be final and shall not in any manner be questioned by any person in any Court or before any competent authority.

7. Periodical review of minimum rates of wages.---(1) The Board shall review its recommendations, if any change in the economic conditions and cost of living and other relevant factors so demand, and recommend to Government any amendment, modification or revision of the minimum rates of wages declared under section 6.

(2) Review and recommendation under this section shall be deemed to be an enquiry and recommendation under section 4 or, as the case may be under section 5, and, so far as may be, the provisions of this Act shall to such review and recommendation, apply accordingly.

8. Powers of Government to adopt minimum rates of wages for unskilled workers, notify Cost of Living Allowance, Dearness Allowance and Adhoc Relief.---(1) Government may, by notification in the official Gazette, adopt minimum rates of wages, for such workers or class of workers, or establishments or class of establishments, as per conditions, as may be specified in the notification.

(2) Government may by notification in the official gazette, allow Cost of Living Allowance, to such workers or class of workers, or establishments or class of establishments, as per conditions, as may be specified in the notification.

(3) Government may, by notification in the official Gazette, allow Dearness Allowance, to such workers or class of workers, or establishments or class of establishments, as per conditions, as may be specified in the notification.

(4) Government may, by notification in the official Gazette, allow Adhoc Relief, to such workers or class of workers, or establishments or class of establishments, as per conditions, as may be specified in the notification.

9. Prohibition to pay wages at a rate below the minimum rate of wages.---

(1) Subject only to such deductions as may be authorized under this Act or under any other law for the time being in force, no employer shall pay any worker wages at a rate lower than the rate declared under this Act to be the minimum rate of wages for such worker.

(2) Nothing in sub-section (1) shall be deemed-

(a) to require or authorize an employer to reduce the rate of wages of any worker; or

(b) to affect, in any way, the right of a worker to continue to receive wages at a rate higher than the minimum rate declared under this Act if, under any agreement, contract or award, or as a customary differential, or otherwise, he is entitled to receive wages at such higher rate, or to continue to enjoy such

amenities and other advantages as are customary for such worker to enjoy; or

(c) to affect the provisions of the Khyber Pakhtunkhwa Payment of Wages Act, 2013 (Khyber Pakhtunkhwa Act No. IX of 2013).

(3) Any employer who contravenes the provisions of this section shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to twenty thousand rupees or with both, in addition to payment of sum not less than the difference in wages actually paid to the worker and the amount which would have been paid to him had there been no such contravention.

10. Inspector.---Government may, by notification in the official Gazette, appoint such persons of the Labour Department to be Inspector for the purposes of this Act as it may deem appropriate.

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

12. Cognizance of offences.---(1) No prosecution under this Act shall be instituted except by or with the previous sanction of the Inspector.

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

13. Penalty for obstructing Inspectors.---(1) Whoever willfully obstructs an Inspector in the exercise of any powers under this Act and the rules made thereunder, 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 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.

(3) Whosoever contravenes any other section of this Act or the rules, for which a specific penalty has not been prescribed, shall be punishable with a fine which may extend to twenty thousand rupees but shall not be less than five thousand rupees; and in case of subsequent offence, after having been convicted previously,

shall be punishable with fine which may extend to fifty thousand rupees but shall not be less than ten thousand rupees.

14. Power of Board to collect information.---(1) The Board, or the Chairman may, for the purpose of an enquiry under this Act or the rules, made thereunder, direct any employer to furnish such records, documents or information and do such other acts as the Board, or the Chairman may, as the case may be, require, and every such employer shall comply with such direction.

(2) The Chairman and such members, officers and servants thereof as are authorized in this behalf by the Chairman, may, for the discharge of any function under this Act or the rules, made thereunder,-

(a) enter, at all reasonable times, any establishment;

(b) inspect any book, register and other documents relating to such establishment; and

(c) record statements of persons connected with the working of such establishment:

Provided that no one shall be required under this clause to answer any question tending to incriminate himself.

(3) Any employer, who contravenes the provisions of sub-section (1), and any person who willfully obstructs anyone in the exercise of any power under sub-section (2), or fails to produce on demand thereunder any book, register or other documents, shall be punishable with fine which may extend to twenty thousand rupees.

15. Powers of the Board to collect evidence.---The Board shall, while holding an enquiry under this Act or the rules, be deemed to be Civil Court and shall have the same powers as are vested in such Courts under the Code of Civil Procedure, 1908 (Act V of 1908), in respect of the following matters, namely-

(a) enforcing the attendance of any person and examining him on oath;

(b) compelling the production of documents and material objects; and

(c) issuing commissions for the examination of witnesses.

16. Offices, etc., deemed to be public servants.---The Chairman and the members, officers and servants thereof, shall all be deemed to be public servants within the meaning of section 21 of the Pakistan Penal Code (Act XLV of 1860).

17. Removal of difficulties.---If any difficulty arises, in giving effect to any provisions of this Act, the 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.

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

19. Power to make rules.---Subject to the provisions of this Act, Government may make rules for carrying out the purposes of this Act.

20. Repeal and Savings.---(1) The Minimum Wages Ordinance, 1961 (Ord. No. XXXIX of 1961), the West Pakistan Minimum Wages for Unskilled Workers Ordinance, 1969 (W.P. Ord. No. XX of 1969), the Employees Cost of Living Allowance (Relief) Act, 1973 (Act No. I of 1974), are hereby repealed to the extent of the Province.

(2) The Khyber Pakhtunkhwa (Payment of Dearness Allowance to Certain Employees) Act, 1991 (Khyber Pakhtunkhwa Act No. II of 1991) is hereby repealed.

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

(4) Any document referring to the repealed Ordinances or Acts, shall be construed as referring to the corresponding provisions of this Act.