

THE KHYBER PAKHTUNKHWA HOME BASED WORKERS (WELFARE AND PROTECTION) ACT, 2021

(KHYBER PAKHTUNKHWA ACT NO. XV OF 2021)

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AN
ACT

to provide for the protection and welfare of home based workers and to regulate their working conditions and terms of employment, in the Province of Khyber Pakhtunkhwa

WHEREAS the Constitution of the Islamic Republic of Pakistan guarantee right to equality, elimination of all kind of exploitation and promotion of social and economic wellbeing of the people by ensuring equitable adjustment of rights between employer and employees;

WHEREAS it is necessary to protect and recognize the rights of home based workers and to ensure their welfare by providing them a safe working environment to lead their lives with dignity and self-respect;

AND WHEREAS it is expedient to regulate by law the terms of employment and working conditions of service of home based workers and for matters connected herewith and ancillary thereof;

It is hereby enacted by the Provincial Assembly of Khyber Pakhtunkhwa as follows:

1. Short title, extent, application and commencement.---(1) This Act may be

called the Khyber Pakhtunkhwa Home Based Workers (Welfare and Protection) Act, 2021.

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

(3) It shall apply to all the home based workers.

(4) It shall come into force at once.

2. Definitions.---(1) In this Act, unless the context otherwise requires,-

(a) "contractor" means a person natural or legal, who agrees to carryout work or assignment for the benefits of the employer;

(b) "Department" means the Labour Department of Government;

(c) "employer" means the person or body of person whether incorporated or not, who or which engages or hires the services or skills of the home based worker, whether directly or indirectly through any middle man, contractor, sub-contractor, as the case may be, in connection with the work of any industry,

establishment, undertaking, factory or commercial establishment;

(2)

(d)

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“Government” means the Government of the Khyber Pakhtunkhwa;

“home based worker” means a person, who indulges in production and manufacturing of goods and rendering of services in relation or ancillary thereto for the employer, within his home boundaries or in any other premises of his choice, but other than the work place of the employer, contractor, sub-contractor or middle man, as the case may be, for the purpose of remuneration, irrespective of whether or not the employer provides the equipment, material or other input but does not include a domestic worker;

“Labour Court” means the Labour Court, established under section 48 of the Khyber Pakhtunkhwa Industrial Relations Act, 2010 (Khyber Pakhtunkhwa Act No. XVI of 2010);

“prescribed” means prescribed by rules;

“Province” means the Province of Khyber Pakhtunkhwa;

“rules” mean the rules made under this Act;

“sub-contractor” means a person natural or legal, who agrees to carryout all or a part of work or assignment for the contractor, for the benefits of the employer;

“wages” means the remuneration or any consideration, paid to the home based worker, either in cash or in kind by the employer, contractor, sub-contractor or middle man, as the case may be, for the work, which shall not be in any case less than the minimum wages fixed by Government from time to time; and

“work place” means the place where the home based worker carry out his work.

The words and expressions used in this Act, but not defined shall have the same meaning, as assigned to them in the relevant labour laws for the time being inforce.

3. Responsibility of the Department.---The Department shall, in consultation and coordination with other relevant Departments of Government or Organizations in private sector, may —

(a)

(b)

(c)

upon complaint, visit for identifying the places of work and removing the hazardous conditions of the home based workers;

create awareness amongst the employers and home based workers regarding their rights and responsibilities including the minimum wages for which home based workers are entitled;

arrange for the training of skill development or enhancement to home based workers from time to time in such manner as may be prescribed;

(d)

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(f)

conduct seminars, conferences and workshops inviting home based workers, employers and other relevant persons for participation as far as the welfare of the home based workers is concerned;

ensure that the home based workers are dealt in accordance with the provisions of this Act and rules; and

facilitate the home based workers in getting without interest or low interest loans from any commercial bank on such terms and conditions as may be prescribed.

4. Duties of employer.--- The employer shall-

(a) ensure to provide dignified working conditions;

(b) not take hazardous work from home based worker nor he shall expose him to any other work which causes him any injury or other harm;

(c) maintain a register which indicates all the necessary particulars of the home based workers, as may be prescribed and on the basis of which employer shall allot a registration number to each home based worker;

(d) update the register from time to time;

(e) facilitate the home based workers for medical examination on annual basis by a registered medical practitioner;

(f) pay the wages as are determined by Government; and

(g) provide all other facilities as are provided in this Act or rules.

5. Rights of home based workers.---A home based worker shall-

(a) not to be discriminated in recruitment, continuation of employment, deciding wages, benefits and other rights on ground of religion, race, caste, sex, region, domicile, migration or any other reason;

(b) not be subjected or assigned to any work without his free will or extra remuneration;

(c) perform only those functions that are reflected in their letter of appointment or agreement; and

(d) be entitled to any other benefits as are provided in this Act or rules.

6. Entitlement of home based workers.--- Every home based worker, who

remained in the employment of the employer for more than one (1) year shall be entitled,-

(a)
(b)

(c)

for such medical benefits, as may be prescribed by rules;

to such number of medical, festival, or other leaves as may be prescribed;

to join and associate with organizations of his own choice in the prescribe manner; and

(d) to all necessary benefits that are required when an accident occurs in the work place which causes death or bodily injury and prevent the home based worker from resuming his work during the forty eight (48) hours after the accident occurs.

7. Duties of home based worker.--- Every home based worker shall-

(a) properly adopt working conditions provided by the employer;

(b) adopt safe work practices;

(c) not to engage child under the age of fourteen (14) years as prohibited under the Khyber Pakhtunkhwa Prohibition of Employment of Children Act, 2015 (Khyber Pakhtunkhwa Act No. XIX of 2015); and

(d) not to make any advance under or in pursuance of the bonded labour system or compel any person to render any bonded labour.

8. Appointment on work.---(1) Every appointment of a home based worker shall be subject to issuance of a letter of appointment in the prescribed form showing the terms and conditions of his appointment including nature of work, amount of wages and criteria for payment.

(2) On the commencement of this Act, employer shall issue letter of appointment to each of the home based worker who are in his employment before the commencement of this Act.

(3) The home based worker shall not be required to work for more than eight hours in a day, however, a home based worker, at free consent, may work for such duration and for such remuneration as may be prescribed.

(4) Any work by a home based worker in excess of forty eight hours shall incur over time rates as may be prescribed, however, weekly working time shall not exceed sixty hours.

9. Termination of appointment.---The termination of employment shall be subject to one month's prior notice in writing either by the home based worker or by the employer and in lieu of the notice, one month's wages shall be paid calculated on the basis of average of wages earned during the preceding three months.

10. Time and conditions of payment of wages.---(1) The wages of every home based worker shall be paid before the expiry of the fifth day, after the last day of the wage-period in respect of which the wages are payable:

Provided that where the wages are subject to completion of an order, such wages shall be paid within one day after completion of the said order.

(2) No wage period, so fixed, shall exceed one month.

(3) Where the employment of any home based worker is terminated by 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.

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

(5) All wages shall be paid in current coin or currency notes or in both in the prescribed manner.

11. Prohibition to pay below the minimum rate of wages.--- (1) The employer shall not pay wages to any home based worker at a rate lower than the rate determined under this Act to be the minimum rate of wages for such home based worker.

(2) All claims of a home based worker relating to the wages or claims arising out of deductions from wages against the employer, as the case may be, shall be settled and recovered in the same manner as is provided in the Khyber Pakhtunkhwa Payment of Wages Act, 2013 (Khyber Pakhtunkhwa Act No. IX of 2013).

(3) If the Authority under the Khyber Pakhtunkhwa Payment of Wages Act, 2013 after hearing any application under this section is satisfied that no amount is to be paid as wages due from the employer to the applicant, it shall reject the application; and if the application, in the opinion of the Authority, is malicious or vexatious, the Authority when rejecting it, may direct the applicant to pay a penalty not exceeding five thousand rupees to the employer.

(4) An appeal against a direction made under sub-section (2) or sub-section (3) may be preferred, within thirty days of the date on which the direction was made, before the Labour Court constituted under the Khyber Pakhtunkhwa Industrial Relations Act, 2010 (Khyber Pakhtunkhwa Act No. XVI of 2010), within whose jurisdiction the cause of action to which the appeal relates, arose-

(a) by the employer, if the total sum directed to be paid by way of wages exceeds twenty 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; and

(b) by the applicant directed under sub-section (3) of to pay a penalty.

(5) The decision of appeal shall be final and shall not be in any manner questioned by any person in any court or before any authority.

12. Inspection.--- (1) The Department may authorize any officer of the Directorate of Labour, Khyber Pakhtunkhwa to act as an Inspector for the purposes of this Act.

(2) An Inspector may, upon complaint, visit the work place at any time for inspection of the workplace and register in order to ascertain whether the work has been done through registered home based worker and in accordance with the Act and rules or otherwise.

(3) It shall be the foremost duty of employer to produce the relevant register on demand by the Inspector and the employer shall not conceal anything from Inspector.

(4) The Inspector may authenticate the information so provided by the employer from the home based worker by visiting his home or place of work, as the case may be.

(5) The Inspector shall submit his report, regarding the inspection and the information so collected during such inspection from the employer or the home based

worker, as the case may be, to the concerned Chief Inspector appointed under the relevant labour laws for the time being inforce, for further processing.

(6) The Inspector may issue advices and directives to the employer or home based worker, as the case may be, from time to time, which shall be followed by them.

13. Dispute resolution.---(1) Any dispute arising between the employer and home based worker in connection of work or wages paid to the home based worker, shall be settled by the dispute resolution committee, to be constituted by the Department and with such terms and conditions as may be prescribed.

(2) The dispute resolution committee while deciding the dispute between the employer and home based worker shall hear both the parties personally or through their representatives, as the case may be.

(3) The directions of the settlement shall be reached on majority of the members of the dispute resolution committee so constituted in the shape of settlement order in writing.

14. Complaint and its procedure.---(1) An employer or a home based worker, as the case may be, aggrieved from the settlement order of the dispute resolution committee, so constituted, shall file a complaint in the Labour Court against the order passed by it.

(2) The complaint shall be filed within thirty (30) days after the order passed by the dispute resolution committee.

(3) The complaint shall be in writing and also be accompanied with such other supporting documents as are required for filing a complaint.

(4) The Labour Court shall, after receiving a complaint in this regard, decide such complaint within sixty (60) days:

Provided that the Labour Court, for reasons to be recorded, may extend the time period of sixty (60) days for further period of sixty (60) days.

(5) The decision, passed by the Labour Court under sub-section (4) shall be final and of binding nature on both the employer and home based worker.

15. Penalty.--- Whoever contravenes the provisions of this Act shall be liable to such fine as may be prescribed.

16. Presumptions.--- A child present in a workplace along with one or both of his parents who are employed therein shall not be presumed to be in employment within the meaning of the Act unless proved otherwise.

17. Prosecution.--- No prosecution under this Act or any rules made thereunder shall be instituted except by or with the previous sanction of the Inspector.

18. Trial of offence.--- No Court, inferior to that of a Magistrate of the first class, shall try any offence under the Act or the rules made thereunder.

19. Protection of actions taken under the Act.--- No suit, prosecution or other proceedings shall lie against any person for anything which is in good faith done or intended to be done in pursuance of the Act or rules made thereunder.

20. Act to override the other laws.---Notwithstanding anything contained in any other law for the time being inforce, this Act shall have overriding effect and in case of any inconsistency the provisions of this Act shall be prevailed.

21. Removal of difficulty.---If any difficulty arises in giving effect to any provision of this Act, the Department may, by notification in the official Gazette make such orders, not inconsistent with the provisions of this Act, as may appear to it to be necessary for the purposes of removing the difficulty.

22. Power to make rules.---Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.