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SINDH ACT NO.VIII OF 2016

THE SINDH MINIMUM WAGES ACT, 2015

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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.

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. (dd) This Act may be called the Sindh Minimum Wages Act, 2015.

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

(3) It shall apply to all industrial establishments and commercial establishments in the Province of the Sindh.

(4) It shall come into force at once.

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

(i) "ad hoc 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;

(iv) "Board" means the Minimum Wages _ Board constituted under section 3;

(v) "Chairperson" means Chairperson of the Board;

(vi) "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 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 workers, a unit of a joint stock company, an insurance company, a banking company or a bank, a broker's office or stock-

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exchange, a club, a hotel, a restaurant or an eating house, a cinema or theater, schools, colleges, private educational institutions, hospitals, private health centers, 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 organisations.

(vii) "cost of living allowance" means an allowance allowed by Government under sub-section (2) of section 8;

(viii) "dearness allowance" means an allowance allowed by Government under sub-section (3) of section 8;

(ix) "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 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 overall control over the affairs of the factory; and

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

(x) "factory" means a factory as defined in clause (j) of section 2 of the Factories Act 1934 (Act XXV of 1934);

(xi) "Government" means the Government of the Sindh;

(xii) "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;

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(c) an industry as defined in clause (xv) of section 2 of the Sindh Industrial Relations Act, 2013(Sindh Act No. XVI of 2010);

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

(e) 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, harbor, 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;

(xiii) “juvenile worker” means a worker who is not an adult;

(xiv) “member” means a member of the Board;

(xv) “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 that is to say cost of living allowance, dearness allowance and adhoc relief;

(xvi) “prescribed” means prescribed by rules;

(xvii) “rules” mean rules made under this Act;

(xviii) “unskilled worker” means a worker employed to do unskilled labour without any skilled training;

(xix) “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 behaviour of the person employed or otherwise, to a person employed in respect of his employment or of work done in such employment and includes basic pay and all statutory and non-statutory allowances, 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 does

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(a) any contribution paid by the employer to any pension fund or provident fund;

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

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

(d) any gratuity payable on discharge.

(xx) "worker" means any person employed in industrial establishment or commercial establishment and includes an apprentice 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);

(c) a person employed in the capacity of employer as defined in clause (c) of section 2 of the Industrial and Commercial Employment (Standing Orders) Ordinance, 1968; and

(d) person(s) notified as an occupier and a manager under Factories Act, 1934.

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

(a) the Chairperson;

(b) one member to represent the employers;

(c) one member to represent the workers;

(d) one member to represent the employers connected with the industry or trade concerned; and

(e) one member to represent the workers engaged in such industry or

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trade.

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

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

(4) The member to represent the employers and the member to represent the workers 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 Chairperson 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. () 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 and adolescent workers employed in industrial establishments or commercial establishments or both.

(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 and for such localities as specified therein.

5. (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 undertakings 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

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deem fit, the minimum rates of wages either for all such workers or for such of them as are specified in the direction.

(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;

(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. (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 wages, 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

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recommendation is called for, make report to that effect stating reasons therefor.

(3) | Upon receipt of the recommendation of the Board under sub section (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 with the previous approval in writing of Government, be declared under sub-section (1) or sub-section (3) in respect of persons employed in any undertaking 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. (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. (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

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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. (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 rates of wages for such worker.

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

(a) to require or authorize an employer to reduce the rates 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 Payment of Wages Act, 1936 (Act No.IV of 1936).

(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 fifty thousand rupees but not less than 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. (1) Government may, by notification in the official Gazette, appoint any person to be Authority for any area, specified in the notification, to hear and decide all claims arising out of non- payment, or delay in the payment of wages to workers in that area whose minimum

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rates of wages have been declared under the provisions of this Act.

(2) | Where contrary to the provisions of this Act, wages of any worker have been withheld or delayed, such worker himself or through any other person authorized by him in this behalf, may, within six months from the day on which such payment was to be made, apply to the Authority appointed under subsection (1) having jurisdiction, for an order directing the payment to him of such wages:

Provided that any such application may be admitted after the said period of six months but not later than one year from the date on which the payment was to be made, if 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 alleged to have been withheld or delayed 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 may be liable under section 9 or any other law for the time being in force direct the employer or such other person to make payment to the applicant of the wages which have been withheld or delayed, together, with such penalty, not exceeding ten times the wages withheld or delayed:

Provided that no direction for the payment of a penalty 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 employee; or

(b) the occurrence of any emergency or the existence of such exceptional circumstances that the person responsible for the payment of the wages was unable to make prompt payment ; and

(c) the fault of the worker.

(4) — If the Authority hearing any application under this section is satisfied that no amount to be paid as wages is due from the employer or other person responsible for the payment of wages 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 fifty rupees to the employer or other person responsible for the payment of wages.

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

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

(b) if that Authority is not a Magistrate, by any Magistrate to whom the Authority makes application in this behalf, as if it were a fine imposed by such Magistrate.

11. (1) An appeal against a direction made or order passed under sub-section (3) or sub-section (4) of section 10 may be preferred to the Labour Court within thirty days of the date on which the direction was made or order was passed —

(a) by the employer or other person responsible for the payment of wages, if the amount directed to be paid as wages or as wages and penalty exceeds one hundred rupees;

(b) by a worker, if the total amount of wages claimed to have been withheld from him exceeds rupees fifty; or

(c) by the person directed under sub-section (4) to pay a penalty:

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

(2) If there is no appeal, the direction or order of the Authority made under sub-section (3) or sub-section (4) and where there is an appeal as provided in sub-section (6), the decision in appeal, shall be final and shall not in any manner be questioned by any person in any court or before any authority.

(3) An Authority appointed under sub-section (1) shall, for the purposes of determining any matter referred to in sub-section (3) or sub-section (4) of section 10—

(a) have all the powers of a Civil Court under the Code of Civil Procedure, 1908 (V of 1908), for the purposes of enforcing the attendance of witnesses, compelling the production of documents, and the taking of evidence; and

(b) be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXXV of the Code of Criminal Procedure, 1898 (V of 1898).

12. (1) | The Board, or the Chairperson 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

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as the Board, or the Chairperson may, as the case may be, require, and every such employer shall comply with such direction.

(2) The Chairperson if he deems necessary may exercise all powers of Inspector for purpose of this Act and may 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 there under any book, register or other documents, shall be punishable with fine which may extend to twenty thousand rupees.

13. The Board shall, while holding an enquiry under this Act or the Powers of the Board tules, be deemed to be Civil Court and shall have the same powers as are to collect evidence. 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.

14. An Inspector notified under the Factories Act, 1934 or Shops and Inspector. Establishments Act,1968 shall also be an Inspector for the purpose of this

Act; provided that a Shop inspector shall visit only those shops and establishments where the number of workers are nine or less.

15. (1) | Whoever willfully obstructs an Inspector in the exercise of Penalty for any powers under this Act and the rules made there under, or fails to obstructing produce on demand by an Inspector any register or other document in his Inspectors.

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 one month or with a fine of rupees one thousand per day reckoned from the date of first

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conviction.

(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.

(4) | Whosoever discriminate in payment of minimum wages between male and female shall be punished with a fine which may extend to fifty thousand rupees but shall not be less than twenty thousand rupees and in case of subsequent offence, after having been convicted previously, shall be punishable with fine which may extend to seventy five thousand rupees but shall not be less than fifty thousand rupees.

16. No court other than the Labour Court established under the Sindh Industrial Relations Act, 2013 (Act No.XVI of 2010) shall take cognizance of offences under this Act shall be except by or with the previous sanction of the Inspector.

17. The Chairperson, Inspectors, members, officers and servants of the Board shall be deemed to be public servants within the meaning of section 21 of the Pakistan Penal Code (Act XLV of 1860).

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

19. 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.

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

21. (1) | The following enactments, to their extent to the Province of Sindh are hereby repealed:-

G@) Minimum Wages Ordinance, 1961 (Ordinance No.XXXIX of 1961);

Gi) the Minimum Wages for Unskilled Workers Ordinance, 1969 (W.P.Ord.No.XX of 1969);

(iii) the Employees Cost of Living Allowance (Relief) Act, 1973.

(2) The Sindh Employees Special Relief Allowance 1986 and

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the Sindh (Payment of Dearness Allowance to Certain Employees) Act, 1991 (Sindh Act No.II of 1991) are hereby repealed.

(3) Notwithstanding the repeal under sub-sections (1) and (2), anything done, action taken, rules 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.